



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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## **THE FISHERIES MANAGEMENT AND DEVELOPMENT ACT**

CHAPTER 378

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**CHAPTER 378****FISHERIES MANAGEMENT AND DEVELOPMENT ACT**

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**CHAPTER 378****FISHERIES MANAGEMENT AND DEVELOPMENT ACT***[Date of assent: 3rd September, 2016.]**[Date of commencement: 23rd September, 2016.]*

**An Act of Parliament to provide for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of communities dependent on fishing and to establish the the Kenya Fisheries Service; and for connected purposes**

*[Act No. 35 of 2016.]***PART I – PRELIMINARY****1. Citation**

This Act may be cited as the Fisheries Management and Development Act.

**2. Interpretation**

In this Act, unless the context otherwise requires—

"access agreement or arrangement" means any agreement or arrangement entered into pursuant to section 128;

"Act" includes regulations or other forms of subsidiary legislation made hereunder;

"agent" means any person or unit appointed by the Board or Director-General to execute designated functions under this Act, or such other agent as may be appointed in accordance with section 17(1)(c);

"aircraft" means any propelled or remotely controlled airborne device capable of sustained movement through the atmosphere and includes helicopters and monitoring devices;

"artisanal fisheries" means small scale traditional fisheries that may be carried out for subsistence or commercial purposes in which the owner is directly involved in the day-to-day running of the enterprise and relatively small amounts of capital are used;

"artisanal fishing vessel" means any local fishing vessel, canoe or un-decked vessel with a length overall of not more than ten meters, which is motorised or not motorised by an outboard or inboard engine not exceeding forty horsepower, or powered by sails or paddles, but does not include decked or undecked semi-industrial fishing vessels or vessels used for recreational fishing;

"Authority" means the Fish Marketing Authority established by section 198;

"aquaculture" means the cultivation, propagation or farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants whether from eggs, spawn, spat, seed or other means or by rearing fish lawfully taken from the wild or lawfully imported into Kenya, or by other similar process;

"aquaculture establishment" means any area, enclosure, premise or structure set up or used on land or in water for the purposes of aquaculture, and includes any cage or raft or other system;

"aquaculture resources" means live fish and marine plants cultivated under aquaculture;

"authorized officer" includes a fisheries officer, a disciplines officer of the service and any person appointed by the Board under section 18;

"automatic location communicator" means a device approved by the Director which is placed on a fishing vessel and is designed to transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing and such other activities of the vessel as may be required and includes a mobile transceiver unit;

"barter" means trade of fish and fish products by two or more persons without use of money;

"beach management unit" means an organization of fishers, fish traders, boat owners, fish processors and other beach stakeholders who traditionally depend on fisheries activities for their livelihoods;

"Board" means the Fisheries Service Board established by section 10;

"Board of Directors" means the Board of Directors of the Fish Marketing Authority established under section 201;

"buy" includes—

- (a) barter;
- (b) purchase;
- (c) attempt to barter;
- (d) attempt to purchase;
- (e) receive on account or consignment;
- (f) receive in order to send, forward or deliver for sale;
- (g) broker a sale;
- (h) purchase or barter for future goods or for any consideration of value; and
- (i) purchase or barter as an agent for another person;

"buyer" means any person who buys;

"Cabinet Secretary" means Cabinet Secretary for the time being responsible for fisheries;

"carrier vessel" means a vessel that carries fish that have been harvested by another vessel but does not engage in fishing itself;

"commercial aquaculture" includes any aquaculture operation resulting or intending or appearing to result in the sale or trade of any fish which is a product of such aquaculture operation, including semi-commercial aquaculture;

"Council" means the Kenya Fisheries Council established under section 6;

"crew member" means a worker who is part of a team working on a fishing vessel, towards a common function, whether paid or unpaid, other than the master, a pilot or shore-based persons carrying out work aboard a fishing vessel and fisheries observers;

"dealing in fish" includes collecting, transporting, storing, transshipping, buying or selling fish or fish products for purposes of trade;

"designated Fishing Port" means fishing port established under section 50(1)b;

"Director-General" means the person appointed as such under section 15;

"export" in relation to fish or fish products means to—

- (a) send or take out of Kenya; or
- (b) carry or transport anything out of the country;

"export facility" means any building or vessel or area in which fish and fish products is handled, prepared and stored for export purposes, including the surroundings under the control of the same management;

"farming" in relation to any fish means the breeding, cultivating and rearing of any such fish or the cultivating of any such vegetation, as the case may be;

"fish" means any marine or aquatic animal or plant, living or not and processed or not, and any of their parts and includes any shell, coral, reptile and marine mammal;

"fisher" means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers;

"fish landing station" means a point on the shore of any waters or coastline of which the Director-General has by notice in the *gazette* designated as a point to land fish;

"fish processing" means any process that adds value to or preserves fish and includes the cutting up, dismembering, cleaning, sorting, icing, freezing, drying, chilling, salting, gutting, smoking, canning or any other action taken to alter the shape, appearance or form of fish from that in which the fish is when first taken from its natural habitat;

"fish processing establishment" means any place other than a licensed fishing vessel where fish are canned, dried, gutted, salted, iced, chilled, frozen, smoked or otherwise processed or stored but does not include a restaurant, eating place, hotel, or place where fish is prepared for immediate retail sale or consumption;

"fish product" means any product or part thereof (including oil) obtained by fish processing, and intended for use as human food, animal feed or raw material ingredient in the manufacture of other commodities of commercial or ornamental value;

"fisheries officer" means the Director-General and any employee of the Service described in the first schedule;

"fishery" means—

- (a) one or more stocks of fish, or parts thereof existing in a delineated area, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
- (b) any fishing for such stocks;

"fishery resources" or "fisheries resources" means any fishery or stock, species or habitat of fish or part thereof;

"fishing" means—

- (a) searching for or taking of fish;
- (b) the attempted searching for or taking of fish;
- (c) engaging in any other activity which can reasonably be expected to result in the locating or taking of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;
- (e) any operation on Kenya fishery water or on the high seas in support of or in preparation for any activity described in paragraphs (a), (b), (c) or (d);
- (f) use of an aircraft which is related to any activity described in paragraphs (a), (b), (c) or (d), except for flights in emergencies involving the health or safety of a crew member or the safety of a vessel, but does not include aquaculture or the transportation of fish;

"fishing gear" means any equipment, implement, structure, construction, installation or other article that can be used in the act of fishing, whether or not it is used in connection with a vessel, including any fishing net, line, float, cork, buoy, basket, light, winch, boat or aircraft;

"fishing operations" includes fishing, supply of provisions to fishing vessels, and the handling and processing of fish up to the time it is first landed;

"fishing port" means a place on a lake shore or sea front where fishing vessels may resort for shelter, servicing, loading and off-loading of fish and fishing equipment;

"fishing related activity" means any activity in support of, or in preparation for, fishing including the—

- (a) transshipping of fish to or from any vessel;
- (b) landing, packaging, processing, handling or transporting of fish that have not been previously landed at port;
- (c) provision of personnel, fuel, gear and other supplies at sea or performing other activities in support of fishing operations;
- (d) exporting fish or fish products from the country; and
- (e) attempting or preparing to do any of the above;

"fishing vessel" means any vessel used for, equipped to be used for, or of a type that is normally used for, fishing or fishing related activities;

"flag State" in relation to a vessel that is not a Kenya fishing vessel means the State in which the vessel is registered, provided it is registered in only one State;

"foreign fishing vessel" means any fishing vessel other than a Kenya fishing vessel and includes any support vessel, notwithstanding that the vessel may be registered or licensed or required to be registered or licensed in Kenya pursuant to this Act or under the Merchant Shipping Act (Cap. 389) and Kenya Maritime Authority Act (Cap. 370);

"genetic resource" includes germplasm of plants, animals or other organisms containing useful characters of actual or potential value;

"Government" means the Government of Kenya;

"high seas" means the waters beyond areas under the jurisdiction of any State including the territorial sea, exclusive economic zone or other zone of national jurisdiction;

"illegal fishing" includes—

- (a) activities conducted by national or foreign vessels in waters under the jurisdiction of a state without the permission of that state, or in contravention of its laws and regulations;
- (b) activities conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which those states are bound or relevant provisions of international law; and
- (c) activities carried out in violation of national laws or international laws or international obligations, including those undertaken by co-operating states to a relevant regional fisheries management organization;

"import" means the bringing into Kenya or Kenya Fishery waters of any fish or fish product and aquatic flora from any place outside Kenya;

"industrial fishing vessel" means a decked fishing vessel with an overall length of twenty meters or greater and with an inboard engine;

"international agreement" includes any treaty, convention, or other legally binding instrument, including bilateral, multilateral regional agreements or arrangements that Kenya is a party pursuant to the Treaty Making and Ratification Act (Cap. 4D);

"international conservation and management measures" means measures which are notified in the *Gazette* in accordance with section 31;

"Kenya fishery waters" includes all maritime zones declared in the Maritime Zones Act (Cap. 371) internal waters, Lakes, riverine systems and any other waters including intertidal, inland and riverine over which Kenya exercises or claims jurisdiction;

"Kenya fishing vessel" means a fishing vessel which is registered under the Merchant Shipping Act (Cap. 389) and does not hold any other registration, or is wholly owned and crewed by residents of Kenya or by other persons *gazetted* by the Service as persons who traditionally fish in Kenya fishery waters, and which meets such other conditions as may be prescribed;

"Kenya Marine and Fisheries Research Institute" means the institute established under the Science and Technology Act (Cap. 511);

"landing" means bringing any fish or fish product to the harbour, port or beach from within or outside the Kenya fishery waters and offloading;

"licensing period" means the period of time during which any licence or authorization issued in accordance with this Act is valid;

"locally based foreign fishing vessel" means any foreign fishing vessel which—

- (a) is based in and fully controlled or operated from Kenya;
- (b) fishes exclusively in the Kenya fishery waters; and

(c) lands all of its catch or a substantial part of its catch in Kenya;

"master" means a person in command or in charge or apparently in command of the vessel, aircraft or a vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

"management" means an integrated process of information gathering, analysis, planning, consultation, decision making, allocation of resources, formulation and implementation of rules and regulations which govern fisheries activities in order to ensure the continued production of the resources and accomplishment of other fisheries objectives;

"operator" means any person responsible for the operations of, directs or controls a vessel, including the owner, charterer and master of the vessel;

"person" means any natural person or business enterprise and includes a corporation, partnership, cooperative, association and any foreign government, its subdivisions or agents;

"pollution" shall have the meaning assigned to it under the Environmental Management and Co-ordination Act (Cap. 387);

"recreational fishing" means non-commercial fishing by an individual for leisure or relaxation;

"sell" includes—

- (a) any method of disposition for consideration of anything which has value or which can be exchanged for cash or barter;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to dispose of for value or receiving or having in possession for disposal for value or displaying for disposal for value, or sending or delivering for disposal for value or causing or permitting to be sending or delivering for disposal for value, or causing or permitting to be disposed for value, offered or displayed for disposal for value; and
- (d) disposition by way of raffle, lottery, or other game of chance under the Betting Control and Licensing Act (Cap. 131); and "sell" and "sold" have a corresponding meaning;

"semi-industrial fishing vessel" includes—

- (a) a decked fishing vessel with an overall length of not less than ten meters and not more than fifty GRT and not powered by an inboard engine; and
- (b) an undecked fishing vessel with an overall length of not less than ten meters and not more than twenty meters with less than fifty GRT and powered by engines of at least forty horse power;

"subsistence fishing" means local or non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption by the fishers, their families and community;

"support vessel" means a vessel carrying out operations in connection with and support of a fishing vessel including transport, supply;

"surveillance" means checking and ensuring compliance with control measures imposed under this Act in fishing or fishing related activities;



"Service" means the Kenya Fisheries Service established under section 7;

"subsistence fishing" means local or non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption by the fishers, their families and community;

"support vessel" means any vessel carrying out operations in connection with and support of a fishing vessel including transport, supply or fishing;

"surveillance" means checking and ensuring compliance with control measures imposed under this Act in fishing and fishing related activities;

"test fishing operation" means any fishing operation undertaken over a limited period of time with the approval of the Director-General for the purpose of testing the feasibility of commercial fishing operations with a view to establishing fishery operations, and not for commercial purposes;

"territorial waters" shall have the meaning assigned to it under the Maritime Zones Act (Cap. 371) and includes the territorial sea;

"transshipment" means transferring fish or fish products to or from any vessel, whether or not the fish or fish products have first been taken on board the vessel from which the fish is passed;

"unregulated fishing" includes—

- (a) activities conducted by vessels without nationality, or by those flying the flag state not party to that organization, or by a fishing identity in a manner that is not consistent with the conservation and management measure; and
- (b) activities carried in areas or fish stocks in relation to which there are no applicable conservation or management measures in where the fishing activity is conducted;

"unreported fishing" includes activities which the relevant authority has not been notified;

"vehicle" means any car, truck, van, bus, trailer or other powered land conveyance;

"vessel monitoring system" includes a satellite based reporting system capable of monitoring the position and activities of fishing vessels.

### **3. Jurisdiction and sovereign rights of Kenya**

(1) Kenya shall have full jurisdiction and sovereign rights over fisheries resources in accordance with the Maritime Zones Act (Cap. 371), and such other maritime zones or areas which may be claimed from time to time, and full sovereignty and jurisdiction over fisheries resources in all public waters within its territory, including to the outer limit of the territorial sea, notwithstanding any right, including ownership or occupation, that any person may possess in relation to the water, seabed, riverbed or subsoil.

(2) In accordance with subsection (1), the sovereign rights of management and control over such fisheries resources are vested in Kenya.

(3) Ownership of all information required to be reported, notified or otherwise given pursuant to this Act, including all information generated by an automatic location communicator or similar device that is part of a vessel monitoring system, is vested in the Government.

**4. Application**

This Act, unless the contrary intention appears, shall apply to—

- (a) all Kenya fishery waters and areas over which Kenya exercises jurisdiction or sovereign rights;
- (b) fishing and fishing related activities, utilization of fish and genetic material derived from fish and any other activity falling within the scope of this Act;
- (c) persons, vessels, vehicles, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;
- (d) persons (including non-citizens) and vessels (including foreign vessels) in and in relation to the Kenya fishery waters;
- (e) persons (including non-citizens) and vessels (including foreign vessels) in areas beyond national jurisdiction—
  - (i) following hot pursuit initiated in the Kenya fishery waters and conducted in accordance with international law; or
  - (ii) as required pursuant to this Act or international conservation and management measures; or
  - (iii) as permitted by international law or any international agreement; and
- (f) all Kenya fishing vessels and all persons on them or dealing with them or having any relevant relationship to them or to persons on them, in and in relation to any area within or beyond national jurisdiction in so far as it does not conflict with the jurisdiction of another State.

**5. Objective and guiding principles**

(1) The objective of this Act is to protect, manage, use and develop the aquatic resources in a manner which is consistent with ecologically sustainable development, to uplift the living standards of the fishing communities and to introduce fishing to traditionally non-fishing communities and to enhance food security.

(2) The implementation of this Act shall be guided by the following principles—

- (a) long-term sustainable use, conservation and management of fisheries resources and habitat, and adoption and implementation of management measures in such a manner as to ensure that the fisheries resources and habitat are not overexploited, threatened or endangered;
- (b) allocation and access to the fisheries resources in a manner that achieves optimum utilization, equitable distribution and long-term sustainable development of fisheries resources to achieve economic growth, human resource development, employment creation, a sound ecological balance and generational equity;
- (c) conservation and protection of fisheries habitats;
- (d) ensuring the effective application of the ecosystem approach to fisheries management;
- (e) ensuring that biodiversity and genetic diversity in the marine environment is maintained and enhanced;

- (f) fostering recreational and ornamental fishing, aquaculture and commercial fishing activities for the benefit of the country;
- (g) encouraging the participation of users of the fisheries resources, and the general community, in the management of fisheries;
- (h) ensuring that management measures are based on the best scientific evidence available and are designed to maintain or restore stocks capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international standards;
- (i) application of the precautionary approach to the management and development of the fisheries at no less standard than is set out in any international agreement;
- (j) managing fisheries resources in an efficient and cost effective manner, including setting targets for the recovery of management costs;
- (k) collection and, as appropriate sharing, in a timely manner complete and accurate data and information concerning fishing activities and fisheries;
- (l) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance;
- (m) promotion of sustainable aquaculture in appropriate zones as a viable option to contribute to food security replenishing natural habitats through diversification from capture fisheries and wealth generation;
- (n) minimization of wastage, bycatch, discards, catch by lost or abandoned gear, pollution and the promotion of development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (o) prevention or elimination of over-fishing and excess capacity and managing levels of fishing efforts so they do not exceed levels commensurate with sustainable use of fishery resources;
- (p) effective implementation of international agreements and relevant international laws in conformity with the Treaty Making and Ratification Act (Cap. 4D);
- (q) ensuring effective cooperation with coastal States, fishing States and entities and competent organisations; and
- (r) ensuring that the livelihood of fishers is enhanced.

(3) All of the principles in subsection (1) should be applied to the greatest extent possible, and the principle set out in subparagraph (2)(a) shall be given priority at all times.

## PART II – THE KENYA FISHERIES ADVISORY COUNCIL

### 6. Establishment of the Kenya Fisheries Council

(1) There is hereby established an advisory body to be known as the Kenya Fisheries Advisory Council ("the Council"), which shall consist of—

- (a) the Cabinet Secretaries responsible for fisheries;
- (b) the Cabinet Secretary responsible for interior and co-ordination of national government;

- (c) Cabinet Secretary responsible for transport and infrastructure;
- (d) the Cabinet Secretary responsible for national treasury;
- (e) the Cabinet Secretary responsible for foreign affairs and international trade;
- (f) a representative from a university or research institution with expertise in fisheries and who shall be nominated by the University council;
- (g) a representative from the consumer federation nominated by the national consumer federation;
- (h) a designate from the Council of Governors with expertise in fisheries who shall be nominated by the Council of governors; and
- (i) a representative of fisheries nominated by a national umbrella of body fisheries.

(2) The function of the Council shall be to review and advise the national Government on—

- (a) policies in relation to the co-ordination of fisheries management in relation to the aquatic environment and human dimensions;
- (b) the allocation and access to fisheries resources;
- (c) intergovernmental agreements and arrangements related to fisheries;
- (d) research, education, capacity development in fisheries and the management of fisheries resources;
- (e) management plans and resources for the development of the fisheries sector; and
- (f) any other matters connected with this or any other related Act.

(3) The Chairperson of the Council shall be appointed by the President from persons nominated under section 6(1) not being a Cabinet Secretary, upon recommendation by the Cabinet Secretary responsible for fisheries.

(4) The vice Chairperson of the Council shall be elected by members of the Council at their first sitting, provided that the chair and vice chairperson shall not be of the same gender.

(5) In making appointments of the members to the Council, the Cabinet Secretary shall observe regional, gender, age, disability and ethnic balance.

(6) Each Cabinet Secretary represented on the Council in accordance with subsection (1) may designate an alternate who is knowledgeable and experienced in issues relevant to fisheries;

(7) The Council may establish such working groups and committees as it deems necessary and as are agreed by the Cabinet Secretary.

(8) The Ministry responsible for fisheries shall provide secretariat services for the Council.

### PART III – THE KENYA FISHERIES SERVICE

#### **7. Establishment and status**

(1) There is hereby established a Service to be known as the Kenya Fisheries Service, which shall be responsible for the conservation, management and development of Kenya's fisheries resources in accordance with this Act.

(2) The Service shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing, charging and disposing of movable and immovable property, and doing any other act or thing which may or be done by a body corporate.

(3) The common seal of the Service shall not be affixed to any instrument except pursuant to a resolution of the Board and the affixing of the seal shall be attested by two members of the Board.

## **8. Headquarters**

The Service shall have its headquarters in Nairobi and may establish such offices in the counties as may be appropriate to ensure that its services are provided at the county level.

## **9. Functions of Service**

The functions of the Service shall be to—

- (a) ensure the appropriate conservation development of standards on management, sustainable use, development and protection of the fisheries resources;
- (b) formulate and monitor the implementation of policies regarding the conservation, management and utilization of all fisheries resources within the scope of this Act;
- (c) develop standards for the management of all fisheries and aquaculture activities and fishing related activities within the scope of this Act;
- (d) develop guidelines for the preparation of fisheries specific management plans for the Kenya fishery waters;
- (e) provide education to create public awareness and support for fisheries conservation, management, development and sustainable use;
- (f) set and meet goals for fisheries conservation, management, development and sustainable use;
- (g) in consultation with the Kenya Marine and Fisheries Research Institute, approve and co-ordinate research activities in relation to matters falling within the scope of this Act;
- (h) collect and analyse data in relation to resources and activities falling within the scope of this Act;
- (i) identify manpower requirements and recruit manpower at all levels for the Service;
- (j) liaise as appropriate with agencies and persons, including stakeholders, industry, government agencies, regional and international organisations and experts, whether local or foreign, on matters falling within the scope of this Act;
- (k) act on behalf of the government, subject to the Treaty Making and Ratification Act (Cap. 4D) in relation to any domestic or international agreement relating to fishing, fishing related activities or any matter falling within the scope of this Act, to which Kenya is or may become a party;
- (l) administer and co-ordinate international protocols, conventions and treaties regarding fisheries in all its aspects in consultation with the

Cabinet Secretary pursuant to the Treaty-Making and Ratification Act (Cap. 4D);

- (m) subject to the Public Health Act (Cap. 242) and the Food, Drugs and Substance Act (Cap. 254) control and regulate fish safety and quality;
- (n) raise revenue through levies, fees, investments and other means in accordance with this Act and the Constitution, including solicitation by public appeal or otherwise, and accept and receive subscriptions, donations, devices and bequests, whether of movable or immovable property and whether absolute or unconditional for the general or special purposes of the Service or subject to any trust;
- (o) undertake the development of appropriate fisheries infrastructure, that relates to its mandate under this Act and the Constitution;
- (p) facilitate investment in commercial fisheries, in collaboration with relevant agencies, persons or bodies, including Government departments;
- (q) promote development and introduction of appropriate technologies in aquaculture production, processing and preservation in collaboration with relevant agencies, county governments and stakeholders;
- (r) identify and promote construction of any works deemed necessary for the sustainable development and economic utilization of fisheries resources;
- (s) in collaboration with county government and the Fish Marketing Authority established under section 201, identify opportunities and promote all aspects of fisheries marketing;
- (t) arrange and enter into joint ventures or any other forms of investment arrangement for purposes of performing any of its functions;
- (u) co-ordinate fish quality assurance and operations of the marine and coastal fisheries, aquaculture and inland and riverine fisheries;
- (v) coordinate and or undertake monitoring, control and surveillance of all activities within the scope of this Act; and
- (w) perform such other duties and functions consistent with the provisions of this Act as may be necessary to carry out the objectives and provisions of this Act.

#### **10. Establishment, functions, powers and duties of the Board of Directors**

- (1) There shall be a board of directors of the Service, which shall—
  - (a) provide general control over and be accountable to the Cabinet Secretary for the exercise of the functions and powers of the Service;
  - (b) advise the Cabinet Secretary on all matters pertaining to the conservation, management standards, development, and sustainable use of fisheries resources;
  - (c) provide recommendations to the Cabinet Secretary for overall policy in matters within the scope of this Act;
  - (d) collaborate with the Fish Marketing Authority established under section 204 and other agencies to ensure that trade in fish is carried out in accordance with the provision of this Act;
  - (e) approve the annual budget and financial plan of the Service and otherwise provide oversight for all financial matters;

- (f) endorse the annual report of the Service required under section 25 and transmit it through the Cabinet Secretary to Parliament;
- (g) establish an open, competitive, transparent and objective selection process, and required qualifications for, the Director-General, and as appropriate for other persons employed by the Service;
- (h) establish an open, competitive employment policies, a transparent and objective selection process and general terms and conditions for employees of the Service;
- (i) provide policy guidance over the exercise of the functions and powers of the Service; and
- (j) perform any other function which the Cabinet Secretary may by notice in the *Gazette* prescribe.

(2) The staff of the service shall be as provided under the First Schedule.

(3) Each member of the Board, when exercising powers or performing duties under this Act shall—

- (a) act in good faith and in what the member believes to be the best interests of the Service;
- (b) comply with the provisions of this Act;
- (c) exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, among other things, to—
  - (i) the nature of the Service;
  - (ii) the nature of the decision; and
  - (iii) the position of member and the nature of the responsibilities undertaken by him or her; and
- (d) rely on reports, statements and financial data and other information officially provided to the Board by the Director-General and other government entities.

## **11. Membership of the Board**

(1) The members of the Board shall consist of—

- (a) a Chairperson appointed by the President from among the members appointed under paragraph (c);
- (b) the Principal Secretaries of the Ministries for the time being responsible for—
  - (i) fisheries;
  - (ii) defence;
  - (iii) finance;
- (c) five members, not being public officers, openly appointed by the Cabinet Secretary for their long-term knowledge and experience in the conservation, management, development and sustainable use of fisheries resources;
- (d) all members must meet the requirements of Chapter Six of the Constitution.

(2) The Director-General shall be the secretary to the Board.

(3) The members of the Board shall at their first meeting after appointment, elect a deputy Chairperson from amongst their numbers provided that the Chairperson and deputy Chairperson shall not be of the same gender.

(4) The Cabinet Secretary shall in making appointments under subsections (1)(c) have regard to the principle of gender parity, age, regional and ethnic balance and shall, to the extent possible, ensure an equitable representation from different sub-sectors of the fisheries sector.

(5) A person shall be qualified to be appointed under subsection (1)(c) if, in addition to the requirements of that subsection, such person holds a university degree or its equivalent in—

- (a) natural resource or environmental management, development or science;
- (b) fisheries studies, including fisheries governance, management, development or science;
- (c) marine affairs;
- (d) port management;
- (e) aquatic science; or
- (f) any other matters related to the functions of the Board.

(6) The term of all members described in subsection (1) and (2) who are not *ex officio* members, and persons appointed pursuant to subsection (5) shall be three years, and they shall be eligible for re-appointment for a total of two terms.

## **12. Termination of appointment as a member of the Board**

(1) The office of member of the Board, other than an *ex officio* member, shall become vacant if the member—

- (a) resigns from office by notice in writing addressed to the Chairperson, who shall transmit such resignation to the Cabinet Secretary;
- (b) is removed from office by the Cabinet Secretary if the member—
  - (i) has been absent from three consecutive meetings of the Board without notifying the Chairperson;
  - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
  - (iii) is convicted of an offence involving false statements, fraud or dishonesty;
  - (iv) is convicted of a criminal offence;
  - (v) is unable to, by reason of mental or physical infirmity to discharge functions as a member of the Board;
  - (vi) is found to have acted in a manner prejudicial to the aims and objectives of this Act; or
  - (vii) fails to comply with the provisions of this Act relating to disclosure.

(2) Vacancies occurring pursuant to this section or for any other reason prior to the expiration of a member's term, shall—

- (a) in the case of an *ex officio* member be filled by appointment of another nominee by the Cabinet Secretary of the relevant Ministry or the governing body of the relevant parent organization;



- (b) in the case of a member other than an *ex officio* member be filled in the same manner as vacancies arising from the expiration of that member's term

Provided that such appointments shall only be effective for the remainder of any applicable unexpired term of the departing member.

(3) The exercise of a power or the performance of a function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

### **13. Disclosure of interest**

(1) A member of the Board shall declare his or her interest in any matter falling within the functions of the Board in which the member of the Board knows or ought to have reasonably known that an interest exists as described in subsection (5).

(2) A member who has an interest shall, after the relevant facts have come to his or her knowledge, immediately disclose the nature of his or her interest to Board members through the Chairperson.

(3) The disclosure given under subsection (2) shall be recorded in the minutes of the Board meeting at which the disclosure is made, or the first Board meeting which follows the disclosure, and the member shall—

- (a) not take part, after the disclosure, in any matter under consideration by the Board which relates to the interest, including any deliberation or decision of the Board;
- (b) be disregarded for the purpose of constituting a quorum of the Board for any deliberation or decision referred to in subsection (a).

(4) A person has an interest in a matter where that person—

- (a) could benefit directly or indirectly from a decision on a matter over which he or she has influence or control, or if a matter over which that member has influence or control relates in any way to—
  - (i) a business or property the member directly or indirectly owns or controls;
  - (ii) a business or property owned or controlled, directly or indirectly, by a family member;
  - (iii) a business or property in which the member has a beneficial interest of any kind, whether through a trust or otherwise;
- (b) is party to, or will or may derive a material financial benefit from the matter;
- (c) has a material financial interest in another party to the matter;
- (d) is a family member of a person who will or may derive financial benefit from the matter; or
- (e) is otherwise directly or indirectly materially interested in the transaction.

(5) In this section, the following terms shall have the meanings stated—

"benefit" shall mean gain or advantage of any kind, and shall include financial gain, property, service, or improvement of condition;

"business" shall mean businesses of any kind whether situated in the Republic of Kenya or elsewhere and whether incorporated or not;

"family member" shall mean a parent, brother, sister, spouse, cousin, aunt, uncle, nephew, niece or child including a person who is adopted legally or for whom

care was given by the member such that there exists a relationship in the nature of parent and child, and shall also mean a spouse of any person referred to in this definition and their children and any other member of a person's immediate family;

"interest" shall mean either direct ownership of, indirect ownership of, shares in financial benefit from, remuneration, fees or commissions from, or complete or partial control of, such property or business;

"member" or "member of the Board" means any member of the Board of Directors;

"property" shall mean real or personal property of every description whether situated in the Republic of Kenya or elsewhere.

#### **14. Meetings of the Board**

(1) The Board shall meet not less than four times in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting and the date for each meeting shall be confirmed not less than five working days in advance of such meeting.

(2) Special meetings shall be convened upon a written request by the Chairperson of the Board or not less than four members, and in accordance with such other procedures as the Board may agree in by-laws:

Provided that at least five working days' notice of the meeting shall be given to every member.

(3) At a meeting of the Board—

- (a) five members, one of whom shall be the Chairperson or his or her nominee, constitute a quorum;
- (b) the Chairperson, or in his or her absence the Deputy Chairperson, shall preside, and if both the Chairperson and the Deputy Chairperson are absent, the members present shall appoint, from among their own number, a Chairperson for that meeting;
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(4) The Chairperson may nominate an employee of the Service to attend any Board meeting and present any matter or introduce any item of business, but shall not be entitled to vote or be counted towards a quorum.

(5) The Board shall cause minutes of its meetings to be recorded and kept.

(6) The Board may, in its discretion at any of its meetings—

- (a) invite a person or persons to attend; or
- (b) receive or hear submissions or information from any person.

(7) The Board shall establish a consultative process with the stakeholders in order that information and views on relevant fisheries management may be exchanged as appropriate, and the Board shall take into account any information or views received from stakeholders through such process when considering management measures relevant to those stakeholders.

(8) The Board may from time to time, establish such advisory sub-committees as it considers necessary in relation to its functions and powers for the purpose of

making reports and recommendations to the Board and sub-committees shall be comprised of Board members.

(9) Any decision of a sub-committee established by the Board under subsection (8) shall be subject to ratification by a fully constituted Board meeting.

(10) Subject to this Act, the procedures of the Board are as determined by the Board.

#### **15. Appointment of the Director-General**

(1) There shall be a Director-General of the Service who shall be competitively recruited by the Board openly and transparently, and on such terms and conditions as may be specified in the instrument of appointment.

(2) A person shall be qualified to be appointed under subsection (1) if such person holds an advanced degree from a recognized university in—

- (a) natural resource or environmental management, or science;
- (b) fisheries studies, including fisheries governance, management, development or science;
- (c) aquatic science; or
- (d) any other related field, and has at least ten years' experience in a senior management position in a public institution.

#### **16. Functions of the Director-General**

(1) The Director-General shall be the chief executive officer of the Service and shall be responsible to the Board for the day-to-day management of the affairs of the Service and shall, on behalf of the Board and subject to this Act, have the general superintendence of all matters within the scope of this Act.

(2) Without prejudice to the generality of the foregoing, the Director-General shall—

- (a) be responsible for carrying out the functions, managing the affairs and exercising the powers of the Service;
- (b) ensure efficient and effective administration of the Service, including through the preparation of annual work plans and development strategies for the Service;
- (c) recommend to the Board the recruitment of competent human resources for the Service;
- (d) collaborate with the Fish Marketing Authority established under section 204 and other agencies to identify marketing and investment opportunities for the fisheries sector;
- (e) upon direction by the Board, enter into agreements on behalf of the Service for the management, conservation, use and exploitation of fisheries resources; and
- (f) perform such other functions as the Board may in consultation with the Cabinet Secretary direct from time to time.

(3) The Director-General may, in writing, delegate the exercise of any of the powers and functions conferred on him by this Act to the Director or any other staff member of the Service as may be approved by the Board, except this power of delegation.

**17. Other staff of the Service**

- (1) The Board may, on such terms and conditions as it deems fit, appoint—
  - (a) such officers of the Service as are specified in Part A of the First; and
  - (b) such disciplined officers of the unit established under section 20 as are specified in Part B of the First Schedule; and
  - (c) such other employees, agents, servants or consultants of the Service, as may be necessary for the performance of the functions of the Service.
- (2) Every person appointed under subsection (1)(b) shall take and subscribe to the oath of allegiance set out in Part C of the First Schedule.
- (3) The provisions Part D of the First Schedule have effect with respect to the Service.
- (4) The Board shall within a reasonable time provide for a staff superannuation scheme to determine service for the employees of the Service.

**18. Authorized officers**

- (1) The Cabinet Secretary may, in consultation with the Council and the Director-General and with the approval of the Board, by notice in the *Gazette* appoint a police officer of or above the rank of an inspector, or an officer with the Kenya Navy or other armed force to be an authorised officer for purposes of this Act.
- (2) A person appointed under subsection (1), shall perform such functions as the Board may specify.

**19. Honorary fisheries officers**

- (1) The Director-General may, with the approval of the Board, by notice in the *Gazette* appoint suitable persons to be honorary fisheries officers for the purpose of assisting the Service in carrying into effect the provisions of this Act.
- (2) An honorary fisheries officer shall—
  - (a) hold office subject to such conditions as the Director may prescribe, for a period of five years; and
  - (b) have such functions as may be prescribed by rules made under this Act.

**20. Establishment of Monitoring, Control and Surveillance Unit**

- (1) There is hereby established within the Service Monitoring, Control and Surveillance Unit (MCS) hereinafter referred to as "the MCS Unit".
- (2) The MCS Unit shall have the functions of—
  - (a) monitoring, control and surveillance, including enforcement, and compliance with this Act and any other legislation relating to activities falling within the scope of this Act; and
  - (b) cooperating and coordinating with, and performing relevant functions within the broader system of monitoring, control and surveillance at bilateral, sub-regional, regional and international levels to implement agreements or measures which are binding upon Kenya or which the Cabinet Secretary, as appropriate in consultation with the Cabinet Secretaries responsible for internal security and defence, directs subject to the Treaty Making and Ratification Act (Cap. 4D).

(3) The MCS Unit shall include the officers specified in Part B of the First Schedule, and such other persons or categories of officers as may be appointed by the Cabinet Secretary by notice in the *Gazette* from time to time.

(4) In addition to the provisions in Part XIII of this Act relating to the powers of authorized officers, the Cabinet Secretary may by notice in the *Gazette* provide for—

- (a) the organization and deployment of the Unit;
- (b) the duties to be performed by members of the Unit, and their guidance in the discharge of those duties;
- (c) the regulation of matters relating to discipline in the Unit;
- (d) the description and issue of arms, ammunition accoutrements, uniforms and other necessary supplies to members of the Unit; and
- (e) matters relating generally to the good order and administration of the Unit.

## **21. Inter-agency monitoring, control and surveillance unit**

(1) The Cabinet Secretary may make regulations establishing and assigning functions to an inter-agency monitoring control and surveillance unit ("the Inter-agency MCS Unit").

(2) The Inter-agency MCS Unit shall comprise members specified in Part D of the First Schedule and such other persons as the Cabinet Secretary may co-opt thereto.

(3) The principal function of the inter-agency MCS Unit shall be to ensure coordinated and effective inter-agency enforcement of and compliance with this Act.

(4) The Director-General shall serve as the chairperson and the Service shall be the secretariat of the Inter-agency MCS Unit.

## **PART IV – FINANCIAL AND ADMINISTRATIVE PROVISIONS**

## **22. Funds of the Service**

(1) The funds of the Service shall consist of—

- (a) such monies as may be appropriated by Parliament;
- (b) such monies or assets as may accrue to or vest in the Service in the course of the exercise of its powers and the performance of its functions under this Act; and
- (c) all monies from any other source provided for or donated or lent to the Service.

(2) The moneys of the Service shall be expended in accordance with this Act, and only in payment for—

- (a) discharge of expenses, obligations and liabilities of the Service;
- (b) the remuneration of the staff of the Service and for allowances to the members of the Board;
- (c) contracts for technical consultants, observers, researchers and other personnel, activities or operations which support the functions and programmes of the Service;
- (d) travel expenses relating to official;

- (e) training and education courses or programmes for purposes relating to the objectives of the Service, and the functions and programmes of the Service;
- (f) financial assistance for management and development activities in the Counties consistent with the functions of the Service;
- (g) grants to institutions, agencies, associations or other organizations for the purpose of promoting fisheries conservation and management;
- (h) rewards for information leading to convictions for offences under this Act, in accordance with such requirements as may be prescribed;
- (i) purchase of capital items necessary to carry out the functions and duties of the Service;
- (j) contributions to donor aid projects as agreed with the donor agency; and
- (k) such other purposes as are consistent with the functions and powers of the Service as the Board, after consultation with the Director-General, shall determine.

(3) The Service may make such investments as the Board may approve, subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance.

(4) The Service may open and maintain an account with a bank approved by the National Treasury under the Public Finance and Management Act (Cap. 412A) and shall at all times maintain one account and shall pay all its moneys into such account.

### **23. Financial Year**

The financial year of the Service shall be the period of twelve months ending on the thirtieth June in each year.

### **24. Annual estimates**

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Service for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Service for the financial year concerned, and in particular shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff and members of the Service;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Service; and
- (c) the acquisition, maintenance, and repair and replacement of the equipment and other movable property of the Service.

(3) No expenditure shall be incurred for the purpose of the Service except in accordance with the annual estimates approved under subsection (2).

### **25. Accounts and audit**

(1) The Board shall cause to be kept proper books and records of account of its income, expenditure and assets of the Service.

(2) The accounts of the Service shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412B).

#### **26. Director-General to report to the Board**

(1) The Director-General shall, within four months after close of each fiscal year, furnish to the Board—

- (a) an annual report on the progress and the performance of the Service in relation to its functions and the exercise of its powers; and
- (b) a financial report, audited by an auditor appointed by the Board, for the year ended 30th June previously in accordance with the requirements in section 26(2).

(2) The financial reports of the Service shall be recorded under an "accrual basis" of accounting in accordance with accounting principles generally applied in commercial practice.

(3) The Board shall consider and as appropriate endorse the reports required under subsection (1) as soon as practicable after receiving them, and transmit them through the Cabinet Secretary to the National Assembly.

(4) The Cabinet Secretary shall transmit the reports required under subsection (1) to the Speaker for presentation to Parliament.

(5) The Service shall ensure that the reports required pursuant to subsection (1) are available to the public or other government agencies upon the presentation to Parliament.

#### **27. Fisheries Research and Development Fund**

(1) There is established a fund to be known as the Fisheries Research and Development Fund which shall be administered by the Director-General.

(2) There shall be paid into the Fund—

- (a) such monies as may be provided by Parliament;
- (b) donations made to the Service from any source for purposes of the Fund, and
- (c) royalties paid to the Service:

Provided that the Service shall not accept any grant, gift, donation or bequest made on any condition that the Service performs or discharges any duty or obligation other than duties or obligations imposed by this Act.

(3) The object of the fund shall be to provide supplementary funding for research intended to further the development of fisheries management, capacity building, scholarships, grants and support for the observer programme established under section 147.

(4) The Cabinet Secretary may by notice in the *Gazette* provide for the mode of administration of the Fund established under sub-section (1).

#### **28. Fish Levy Trust Fund**

(1) There is hereby established a fund to be known as the Fish Levy Trust Fund.

(2) The Fish Levy Trust Fund shall consist of—

- (a) a levy imposed by the Cabinet Secretary under section 28 by Order to require the payment of levies by persons engaged in fishing or fishing related activities of a fish levy ("the levy") which may provide requirements relating, inter alia, to activities within the scope of this

Act; and the evidence by which a person's liability to pay the levy, or the payment thereof, may be established, and the time at which any amount shall become payable.

- (b) donations made to the Service from any source for purposes of the Fund; and
- (c) such other sums of money or other assets as may be specifically designated to the Fish Levy Trust Fund by the Service out of its general fund.

(3) The object of the fund shall be to provide supplementary funding of activities geared towards management, development and capacity building, awards and urgent mitigation to ensure sustainability of the fisheries resource.

(4) The Trust shall be administered by a five member Board of Trustees nominated through an open and competitive process and they shall meet the requirements of Chapter six of the Constitution.

(5) The members of the Board of Trustees shall include—

- (a) two fisherpersons from fresh waters and marine waters;
- (b) two persons nominated by the traders exporters association and fish processors; and
- (c) one person appointed by the Cabinet Secretary responsible for fishing with background in aquatic science.

#### PART V – FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

### 29. Fisheries vest in the State

(1) All fisheries resources vest in the State and shall be conserved, managed and developed consistently with this Act, including its objective and principles, and acknowledging their role as the heritage of the people of Kenya.

(2) Nothing in this Act shall be deemed to prevent any member of the community from using, subject to such conditions as may be prescribed under this Act, such fisheries or fisheries resources as it has been the custom of that community to use.

#### Fisheries Development Measures

### 30. Fisheries development measures

The Director-General may, in consultation with County governments, other appropriate agencies and other departments of Government, promote the development of activities within the scope of this Act, through, *inter alia*—

- (a) providing a national framework of extension and training services;
- (b) conducting research and surveys;
- (c) promoting co-operation among fishers;
- (d) spearheading arrangements for the orderly marketing of fish;
- (e) stocking waters with fish and supplying fish for stocking;
- (f) promoting the adoption of alternative means of livelihood amongst fishers;
- (g) promoting the development of ornamental fisheries;
- (h) promote the development of other sustainable methods of *in situ* and *ex situ* fishing;



- (i) providing for the establishment of investor friendly licensing and approval systems;
- (j) developing a comprehensive fish marketing, system, including fish auction, through strengthening linkages along the market value chain;
- (k) encouraging persons in the private sector to organize into associations and form a national coordinating mechanism to ensure efficient marketing systems that adhere to sanitary and phytosanitary requirements;
- (l) facilitating participation in national, regional and international trade negotiations and meetings;
- (m) promoting value addition and utilization of fish by-products and by catch;
- (n) providing for the establishment of accredited fish safety and quality control laboratories and other infrastructural facilities; and
- (o) such other measures and actions as may be approved by the Board.

### **International fisheries conservation and management measures**

#### **31. Notification by the Director-General**

(1) The Director-General shall by notice in the *Gazette* give notice of any international conservation and management measures recognized by Kenya for the purposes of this Act.

(2) A notice under subsection (1) shall append the relevant agreement or arrangement, or international conservation and management measure.

#### **32. Implementation of international conservation and management measures**

Where the Director-General has reason to suspect that a foreign fishing vessel is, or has been, involved in the contravention of an international conservation or management measure in areas beyond the national jurisdiction of Kenya, the Director-General may, and in cases where such measure has been notified pursuant to section 31(1)—

- (a) provide to the appropriate authorities of the flag State, relevant coastal States, relevant regional fisheries management organization and others as appropriate, relevant information, including any available evidence, relating to such contravention;
- (b) request immediate investigations by the flag State;
- (c) when such foreign fishing vessel is in a port in Kenya, promptly notify the appropriate authorities of the flag State of the vessel accordingly; and
- (d) take additional measures in conformity with international law, including such measures as the flag State of the vessel has expressly requested or to which it has consented and any measures agreed through the relevant regional fisheries management organization.

**Co-ordination of Fisheries Management with the Counties****33. Director-General to keep Counties informed of management measures, processes**

(1) The Director-General shall ensure that all County Governments are consulted and kept informed of relevant management measures and processes taken pursuant to this Act.

(2) Each County shall collaborate with the Director-General in the management of fisheries and shall, for this purpose ensure that the Director-General is informed, by effective means of communication, of relevant developments in relation to the management of fisheries within the County.

**34. County may develop fisheries management plans**

(1) Each County may develop fisheries management measures and plans for fisheries resources within its jurisdiction as provided in the Fourth Schedule to the Constitution.

(2) In developing the management measures and plans, referred to in subsection (1), the relevant authorities in the County shall take steps to ensure that such plans and measures are consistent with the provisions of this Act, including its objective and principles, and that they take into account relevant measures taken, information and data available, and the economic and social value of the resource pursuant to this Act.

**35. County to submit fisheries management plans to Director-General for endorsement**

Each fisheries management plan developed by authorities in each County shall

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- (a) take into consideration, to the extent possible, elements of a fisheries management plan described in section 39; and
- (b) take into account any recommendations that may be made by the Director-General with respect to the plan.

**36. Relations between National and County governments**

(1) Where there is any conflict between a County fisheries management plan and the management-related provisions of this Act, the Director-General shall consult with the County government and give appropriate direction.

(2) Where the Director-General is of the opinion, based on information from the implementing officer, that the County government has conducted its affairs in relation to fisheries management in a manner which is contrary to the provisions of this Act, the Director-General shall, with the approval of the Board—

- (a) serve the County government with a notice requiring it to take specified action within a specified period to rectify and improve the fisheries management; and
- (b) if the County government does not take action as required, the Director-General shall prepare a report and submit to the Cabinet Secretary with recommendations on the action to be taken.

**37. Establishment of Beach Management Units**

(1) The Cabinet Secretary may for purposes of ensuring structured community participation in fisheries management, make regulations setting out standards

for the management of beach management units established by the county governments.

(2) Regulations made under subsection (1) may provide, *inter alia*, in respect of the beach management units, for—

- (a) objectives, structure, areas of jurisdiction and mandate in co-management;
- (b) minimum standards in the general administration of the beach management units;
- (c) standards to be adhered to by beach management units in imposing levies and charges and the management and utilization of such funds;
- (d) such other standards which the Cabinet Secretary may consider necessary for the effective administration and management of the beach management unit;
- (e) the protection of vulnerable groups, especially youth and women; and
- (f) processes necessary to ensure that not more than two thirds of Beach Management Units are of the same gender and to ensure the inclusion of youth and persons with disability in leadership.

### **Fisheries Conservation and Management**

#### **38. Responsibility for planning fisheries management**

The Director-General shall be responsible for planning for the conservation, management, development and sustainable use of all fish and fisheries within Kenya fishery waters.

#### **39. Fisheries management plans**

(1) The Board may, in consultation with the Council of Governors and on the recommendation of the Director-General, declare a fishery as a designated fishery where, having regard to scientific, economic, cultural, environmental and other relevant considerations, it is determined that the fishery—

- (a) is important to the national interest; and
- (b) requires special conservation and management measures for effective sustainable use of the fisheries resources.

(2) The Director-General shall, in consultation with the relevant county governments—

- (a) prepare, keep under review and be responsible for the implementation of fisheries management plans for the conservation management, development and sustainable use of each designated fishery in the Kenya fishery waters;
- (b) prepare, keep under review and be responsible for the implementation of fisheries management plans for any other fisheries in the Kenya fishery waters as may be necessary and practicable; and
- (c) determine the priority for the preparation of fisheries management plans, taking into account the advice of any committee established and carrying out functions under this Act and of other relevant stakeholders.

(3) The Director-General shall, in consultation with the counties and other stakeholders, develop guidelines and standards for the development of fisheries management plans that must conform to this Act and shall include—

- (a) identification of the fisheries resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem;
- (b) an assessment of the present state of exploitation of the fisheries resource and potential average annual yields;
- (c) the objectives to be achieved in the management and development of the fishery;
- (d) the best information on all relevant biological, social, economic and other applicable factors, determine the maximum sustainable yield;
- (e) the measures, if any, to be taken to promote the development of Kenya fisheries;
- (f) any relevant traditional fishing rights, methods or principles;
- (g) the impact of the plan upon the fishery or fisheries involved, associated and dependent species, habitat, the ecosystem in general and any other area determined relevant;
- (h) management measures;
- (i) any research necessary to enhance management of the fisheries;
- (j) the information and other data required to be given or reported for effective management and development;
- (k) an implementation strategy which explains how the objectives are to be achieved including through stakeholder consultations;
- (l) a plan for monitoring and assessment of the implementation of the fisheries management plan;
- (m) a process for amending or repealing the plan, including the consultation and other processes to be followed; and
- (n) social impact assessment of the plan with reference to disadvantaged groups including women, persons with disability and the youth.

(4) The Director-General shall, during the preparation of each fisheries management plan, consult as required and appropriate with any committee which may be established and performing its functions under this Act and stakeholders that may be affected by the plan.

(5) The Director-General shall consult wherever practicable with the appropriate fisheries management authorities of other States in the region, and in particular with those sharing the same or interrelated stocks, with a view to ensuring the harmonization of their respective fisheries management plans and fisheries management in general.

(6) Each fisheries management plan or review shall come into force upon its publication in the *Gazette*.

(7) The management measures in each fisheries management plan shall have the legal force of regulations made pursuant to this Act.

(8) Any person who engages in fishing or fishing related activities in the Kenya fishery waters or who processes or sells fish taken from the fishing waters shall supply such information in respect of such activities as the Director-General may require in accordance with a fisheries management plan.

(9) Any person who fails to comply with the management plan commits an offence and shall be liable—

- (a) in case of industrial fishing, to a fine not exceeding five hundred thousand shillings; or
- (b) in case of artisanal fishing, to a fine not exceeding one hundred thousand shillings.

(10) Any person who fails to supply information required under subsection (8) commits an offence and shall be liable on conviction to a fine of two hundred and fifty thousand shillings or to a term of imprisonment in respect of artisanal fishing not exceeding three months, and in respect of all other activities not exceeding six months or both.

#### **40. Fisheries management measures**

(1) The Director-General may in accordance with the best scientific advice and such other relevant information as may be available, with the approval of the Cabinet Secretary, by notice in the *Gazette*, impose, inter alia, any of the following measures for the conservation and management of any fishery—

- (a) closed seasons and or areas for species of fish or methods of fishing provided that customary fishing rights are protected;
- (b) prohibited fishing areas for all or designated species of fish or methods of fishing;
- (c) limitations on the types of gear, including mesh sizes of nets, that may be used for fishing;
- (d) limitations on the types and/or number of fishing vessels permitted to engage in fishing provided that customary fishing rights are protected;
- (e) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or traded;
- (f) regulate the landing of fish and provide for the management of fishing ports, including fish landing stations;
- (g) control of the introduction into, or harvesting or removal from Kenya fishery waters of any species of fish, including aquatic plants;
- (h) define and identify fragile aquatic ecosystems and provide structures to enable collaborative protection;
- (i) regulate trade in endangered species of fish and fish products;
- (j) prohibit the possession, trade in or manufacture of prohibited gear in a specified area or areas; and
- (k) any other measures consistent with the objective and principles of this Act.

(2) Any person who contravenes the provisions of a notice issued under this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or to both in respect of industrial fishing, and to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding three months or to both in respect of artisanal fishing.

(3) The measures referred to in this section may include—

- (a) refusal to issue or renew licences;
- (b) imposition of special licence or catch fees; and
- (c) preferential licencing.

**41. Limitation of fishing and fishing related activities**

(1) The Director-General may take fisheries management measures to limit fishing and fishing related activities in accordance with the objective and principles of this Act and shall communicate such measures by notice in writing to the persons affected.

(2) A person aggrieved by the action taken by the Director-General pursuant to subsection (1) may appeal in writing to the Cabinet Secretary.

**42. Prohibited fishing gear and methods**

(1) No person shall use, permit to be used or attempt to use or carry on board a vessel—

- (a) fishing gear that has not been authorized by a valid and applicable licence issued pursuant to this Act for the purpose of fishing unless otherwise provided in this Act;
- (b) any fish aggregating device unless an authorization has been issued in accordance with this Act;
- (c) a trawl net or other net the mesh of which is less in stretched diagonal length than the prescribed mesh size;
- (d) the method of pair trawling for the purpose of fishing;
- (e) monofilament net for the purpose of fishing;
- (f) more than one net at a time for the purpose of fishing with trawl net;
- (g) attachments to any trawl net except as may be prescribed;
- (h) a gill net, whether drifting or set, in any river or body of water forming part of the riverine system a gill net, whether drifting or set, in any river or body of water forming part of the riverine system if the mesh of the net is less than forty-five millimeters in stretched diagonal length;
- (i) a seine net the mesh of which is less than forty-five millimetres in stretched diagonal length;
- (j) a beach seine net for the purpose of fishing;
- (k) a seine net in any body forming part of the riverine system;
- (l) firearms or other electrical shock devices for the purpose of fishing including stunning, disabling or killing fish or in any way rendering fish to be caught easily; or
- (m) such other gear as may be prescribed or prohibited by regulations established under this Part.

(2) Unless otherwise prescribed, no person shall use for fishing, from an industrial fishing vessel, any net or combination of nets the mesh of which is less than—

- (a) sixty millimetres in stretched diagonal length for the meshes forming the cod-end of the net for demersal trawl nets;
- (b) forty-five millimetres in stretched diagonal length for the meshes in the cod-end for catching shrimp and other shellfish;
- (c) forty-five millimetres in stretched diagonal length for seine nets; and
- (d) in the case of a trawl net, where the sides of the net are less than the mesh of the cod-end.

(3) No person shall use on an industrial fishing vessel a bottom trawl in coastal waters of less than fifteen meters depth.

(4) No person shall, for the purpose of fishing, set any net across any river from bank to bank so as to form a barrier.

(5) No person shall—

- (a) permit to be used, use or attempt to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or
- (b) carry or have in possession or control any explosive, electric shock device, poison or other noxious substance in circumstances indicating an intention of using such substance for any of the purposes referred to in subparagraph (a).

(6) Any explosive, electric shock device, poison or other noxious substance found on board any fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in paragraph (1)(a) of subsection (42).

(7) A person who contravenes any of the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment not exceeding three years or to both in respect of industrial fishing and to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both in respect to artisanal fishing.

#### **43. Damage, destruction to and interference with fishing gear, vessel, person prohibited**

(1) No person shall while using a vessel, wilfully and negligently damage, destroy, interfere with, endanger or cause injury in respect of—

- (a) any fishing gear that he or she does not own or use or that is not associated with such vessel;
- (b) any other vessel and/or persons thereon; or
- (c) any persons on any other vessel or otherwise in the Kenya fishery waters.

(2) Where a vessel becomes entangled with fixed fishing gear or other object referred to in subsection (1), the master shall—

- (a) undertake to minimize any damage caused by the gear;
- (b) where practicable return the gear to the sea and log the position; and
- (c) make a full report of the incident and steps taken by him or her to the Director-General at the earliest opportunity.

(3) Where events referred to in subsection (1) or (2) occur, the master shall, immediately—

- (a) where any person has been injured or harmed in any way—
  - (i) rescue such person from the sea;
  - (ii) administer all possible first aid or medical treatment; and
  - (iii) steam directly to shore and seek further medical treatment;
- (b) where there has been a death of a person, recover the body and bring it directly to port; and
- (c) make full report of the incident and steps taken to the police.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term for a term of imprisonment not exceeding one year or to both,

and in addition that person shall fully compensate the owner of the fishing gear for any damage or injury caused under civil law as a consequence of the action unless there is sufficient proof that the damage, destruction, interference or endangerment took place in an area where the person or vessel that caused such consequence were legally entitled vessel that caused such consequence were legally entitled to be at that time and it was not reasonably possible to detect the fishing gear or vessel and any relevant fishing gear was not marked in accordance with the requirements pursuant to this Act.

(5) Where human life is lost as a consequence of any negligent or wilful action under subsection (1), the responsible person shall be liable on conviction to a fine not exceeding one million shillings or imprisonment to a term not exceeding ten years or to both, and in addition that person shall compensate the estate of the deceased under civil law.

(6) Each person making a claim for compensation pursuant to subsection (4) shall do so within a period of three years.

#### **44. Leaving or abandoning objects in the sea Prohibited**

(1) No person shall dump gear, moorings or other objects in the sea or leave unnecessarily or abandon such objects in the sea or on the seabed if they may adversely affect fish or other marine organisms including by continuing to enmesh, trap or otherwise catch fish, impede harvesting operations, damage harvesting gear or endanger vessels.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years, or to both, and in addition such person shall be responsible for the full cost of clearing or removing the relevant objects in respect of industrial fishing or to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding three months in respect of artisanal fishing.

#### **45. Declaration of endangered species of fish**

(1) The Cabinet Secretary may, by notice in the *Gazette*, declare any species of fish to be endangered or threatened with extinction, and shall, to the extent possible, include those species relevant to Kenya that have been declared endangered or threatened under any international agreement or instrument to which Kenya is party.

(2) Unless otherwise provided by the Cabinet Secretary, no person shall engage in fishing for, catch, possess, transport, process, buy or sell any species of fish declared endangered or threatened with extinction pursuant to subsection (1).

(3) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to—

- (a) a fine not exceeding two hundred and fifty thousand shillings or to a term of imprisonment not exceeding three years or to both in respect of industrial fishing; or
- (b) a fine not exceeding fifty thousand shillings or a term of imprisonment not exceeding six months in respect of artisanal fishing.

(4) Where a species of fish has been declared as endangered under subsection (1), the Cabinet Secretary shall take special measures for its protection.



**46. Prohibitions and requirements for marine mammals**

(1) Subject to subsection (3), no person shall engage in fishing for marine mammals in Kenya fishery waters or use any port in Kenya for the purpose of equipping or supplying a vessel intended to be used for fishing for marine mammals.

(2) Any marine mammal caught either intentionally or unintentionally shall be released immediately and returned to the waters from which it was taken with the least possible injury.

(3) The Director-General may give written authorization to fish for marine mammals in a limited manner for research purposes.

(4) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

**47. Marine Protected Areas**

(1) The Cabinet Secretary may, in consultation with the Kenya Fisheries Advisory Council, stakeholders and the Board, by notice in the *Gazette*, declare any area of the Kenya fishery waters to be a Marine Protected Area, and shall, as part of such declaration, identify its components including the following—

- (a) area;
- (b) boundaries;
- (c) purpose;
- (d) objective;
- (e) a mandate for total or partial regulation;
- (f) management measures;
- (g) decision-making responsibilities;
- (h) procedures for the coordination of stakeholders;
- (i) procedures for conflict resolution;
- (j) procedures for monitoring and review.

(2) The Cabinet Secretary may, subject to approval by the National Assembly, make regulations to give effect to this section.

**48. Fisheries impact assessments**

(1) Any person or Government Ministry or other agency that plans to conduct any activity other than fishing which is likely to have an adverse impact on fish and their habitat, shall apply to the Director-General in the prescribed form prior to the commencement of the planned activity with a view to ensuring the conservation and protection of such resources.

(2) Where an application is made under subsection (1), the Director-General shall refer the matter to the National Management Authority who shall give a report regarding the likely impact of such activity on the fishery resources, including their habitat and possible means of preventing or minimizing adverse impact.

(3) Any report or recommendation prepared in accordance with subsection (2) shall be taken into account by the relevant person, Government Department or other agency in the planning of the activity and in the development of means of preventing or minimising any adverse impacts.

(4) Any report made under subsection (2) shall be completed within six months of making the application.

(5) Any person who violated any provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both and in addition such a person shall be liable to pay compensation in respect of any resulting loss or damage as well as full cost of restoring the affected habitat to its previous state.

#### **49. Pollution of the Kenya Fishery Waters**

(1) No person shall prepare for the introduction of, attempt to introduce or introduce into the Kenya fishery waters, directly, indirectly, deliberately, any deleterious article or substance, including articles or substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the marine environment, and which may adversely affect the habitat or health of the fish.

(2) A person who contravenes subsection (1) is guilty of an offence and shall be liable on conviction to fine not exceeding five million shillings or to a term of imprisonment not exceeding ten years or to both, and in addition shall be liable to pay compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat and fishery resources to their previous state.

(3) The Director-General may suspend or cancel the licence of a vessel to which this section applies until such time as all fines, penalties and damages have been satisfied.

(4) Notwithstanding subsection (2), in the event of an accidental introduction into the Kenya fishery waters of any deleterious article or substance prohibited in subsection (1), or in the event of encountering such articles, the owner, operator or master of the vessel shall immediately report the incident to the Director-General giving the following information to the extent possible—

- (a) the name of the reporting person and, as appropriate, the name and call sign, if any, of the vessel from which the introduction or encounter occurred;
- (b) the nature of the article disposed or encountered;
- (c) the location of the article or substance; and
- (d) the time and date of the incident.

(5) Unless it is provided otherwise, the provisions of section 93 of the Environmental Management and Co-ordination Act (Cap. 387), shall apply to offences involving discharge of pollutants under this Act.

#### **50. Fish landing stations, etc.**

(1) The Cabinet Secretary may, on the recommendation of the Director-General as endorsed by the Board establish by a notice in the *Gazette*—

- (a) fish landing stations;
- (b) designated fishing ports; and
- (c) protected fish breeding grounds.

(2) Notwithstanding subsection (1), the areas specified in the Second Schedule are declared to be designated fishing ports, with effect from the date of the commencement of this Act.

(3) No person other than a sport fisherman shall land any fish at any point except at a fish landing station or port.

(4) A person who contravenes the provisions of subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three months or to both in case of fish landing stations or to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both in case of ports.

#### **51. Placing of live fish**

(1) No person shall place or, by act of omission or otherwise, cause to be placed, any species of live fish in any place in Kenya fishery waters without authorization issued in writing by the Director-General, except where—

- (a) the fish species being so placed previously occurred in the same body of water prior to being fished therefrom; or
- (b) a fish farmer is stocking his pond with fish obtained from another fish farmer with whom he shares the same water catchment area.

(2) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or to imprisonment for a term not exceeding two years, or to both.

#### **52. Director-General to direct stock assessments, collection and analysis of other information and forward to the Board**

(1) In addition to the information requirements specified in Part VIII, the Director-General may by notice in writing direct any person whom he is satisfied is suitably qualified to undertake the periodic stock assessment of all the fishery waters and collect and analyze statistical and other data and information on activities under the scope of this Act and forward the same to the Board.

(2) In addition to the requirements set out in Part VIII, any data collected pursuant to this section shall be maintained in a database in such form as the Director-General may determine.

(3) Any person who contravenes the provisions of a notice issued under this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

#### **53. Prohibited activities relating to fish or fish products taken contrary to the laws of another State**

(1) No person shall, within Kenya or in the fishery waters, on their own account or any other capacity—

- (a) cause or permit a person acting on his or her behalf; or
- (b) use or permit a vessel to engage in fishing or related activity, to take, import, export, tranship, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures in line with section 31 of this Act.

(2) This section does not apply to fish taken on the high seas contrary to the law of another State where Kenya does not recognise the jurisdiction of that State over those fish except to vessels flying Kenya's flag or to areas where the boundaries are disputed or not clear.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to—

- (a) a fine not exceeding five million shillings or to a term of imprisonment not exceeding five years or to both, in relation to industrial fishing; or
- (b) a fine not exceeding one hundred thousand shillings or to imprisonment for term not exceeding six months or to both, in relation to artisanal fishing.

#### **PART VI – IMPORT, EXPORT AND TRADE AND MARKETING OF FISH AND FISH PRODUCTS**

##### **54. Import and release of live fish**

(1) No person shall import any live fish into Kenya without the written approval of the Director-General and in accordance with such procedures as may be prescribed and the approval shall only be given upon production of an environmental impact assessment report on the effect of each introduction.

(2) No person shall release any live fish imported into Kenya into the fishery waters except with the written approval of the Director-General.

(3) The Director-General shall not approve any release of live fish unless the fish has been kept under observation and control for such period and on such terms and conditions as the Director-General thinks fit.

(4) Where the Director-General is satisfied that any fish which has been imported into Kenya is unsuitable for the purpose of release the Director may order the fish to be forfeited and destroyed.

(5) The importer and exporter of any fish destroyed under subsection (4) shall not be entitled to compensation.

##### **55. Export of live fish**

(1) No person shall export any live fish from Kenya except in accordance with regulations.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

##### **56. Possession and trade in fish, fish product or other marine resources prohibited**

(1) No person who has clear cause to believe that a fish, fish product or other fisheries resources have been obtained in contravention of this Act shall buy, sell, possess or otherwise trade in such fish, fish products, or other fisheries resources.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both, and in addition all fish or fish products in respect of which the offence is committed shall be forfeited.

##### **57. Promotion of fish production and marketing**

The Director-General may, in consultation with Fish Marketing Authority, for the purposes of promotion of fish production and marketing—

- (a) enter into arrangements and agreements with registered associations or institutions for the management development and administration of fisheries, and

- (b) facilitate the establishment of fish market management units and aquaculture production units.

## PART VII – FISH QUALITY AND SAFETY

### **58. Competent authority**

(1) The Ministry responsible for the Service shall be the competent authority responsible for the official control of the safety of fish, fish products and fish feed.

(2) The Cabinet Secretary shall establish a technical committee on Fish Quality and Safety.

(3) The functions of the Committee shall be to—

- (a) monitor the production of fish products and fish feed with a view to assessing risks to humans;
- (b) regulate fish handling, landing, transportation, processing and marketing;
- (c) work in collaboration with other Government agencies in matters related to this section;
- (d) carry out inspection of operational fishery enterprises for compliance with fish safety regulations issued by the Cabinet Secretary;
- (e) lay down all procedures to be followed for compliance with provisions under paragraph (f);
- (f) specify conditions for the placing on the market of fish, fish products and fish feed;
- (g) maintain a register of fishery enterprises approved by the competent authority;
- (h) issue health certification of fish, fish products and fish feed subject to the consignment meeting set requirements;
- (i) perform such other functions as may be necessary or expedient for food safety conditions of fish products in accordance with this Act.

(4) The Cabinet Secretary may for the purposes of subsection (2) make regulations, and such regulations shall regard to conduct of the affairs of the standing committee.

### **59. Harmonization of fish safety and quality standards**

The Director-General may, pursuant to the Treaty Making and Ratification Act (Cap. 4D) in consultation with the Cabinet Secretary enter into arrangements or agreements with other States within shared fishery resources for the purpose of harmonization of fish safety and quality standards.

### **60. Sale, export of adulterated or contaminated fish, or fish products prohibited**

(1) Any person who sells or exports fish or fish products intended for human consumption shall comply with all applicable food quality, health and sanitation requirements and shall not sell or export such fish or fish products which—

- (a) are adulterated;
- (b) are contaminated with or contains a poisonous or harmful substance or pathogenic micro-organisms;
- (c) have not met applicable inspection standards; or
- (d) are otherwise injurious to human health.

(2) A person who knowingly and wilfully contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to an imprisonment for a term not exceeding ten years or to both, and in addition any fish or fish products involved in the transaction and those owned or controlled by such person shall be forfeited.

## PART VIII – AQUACULTURE

### **61. Aquaculture activities requirements**

(1) No person shall engage in commercial aquaculture activities except in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

### **62. Aquaculture development plan**

(1) The Director-General shall, in consultation with the Oceans and Fisheries Advisory Council, prepare an aquaculture development plan for the review and endorsement by the Board and approval by the Cabinet Secretary, with the objective of promoting the sustainable development of aquaculture in Kenya in accordance with the principles and objectives of this Act.

(2) Any aquaculture development plan developed under subsection (1) shall be for duration of three years.

(3) The aquaculture development plan shall include—

- (a) a statement of the objectives and priorities of the plan and a strategy for achieving those objectives;
- (b) performance indicators to monitor the extent to which the objectives of the plan are being attained;
- (c) a strategy for monitoring progress at least on an annual basis, and as appropriate an evaluation of the implementation of the aquaculture plan that preceded it;
- (d) a description or identification of any area of water which is suitable for aquaculture and the type of aquaculture for which the area is suitable;
- (e) a description of suitable methods for undertaking any type of aquaculture;
- (f) identification of suitable or unsuitable species of fish for aquaculture;
- (g) requirements or standards for water quality, aquaculture waste, escapement, environmental impact assessments and the introduction, transfer and release of fish for purposes related to aquaculture; and
- (h) any other matter concerning aquaculture which the Board or Director-General considers appropriate.

(4) The first aquaculture development plan shall be prepared and submitted through the Board to the Cabinet Secretary for approval as soon as reasonably practicable and in any case within one year from the date on which this Act enters into force.

**63. Collaboration with Counties**

The Director-General shall, in collaboration with County authorities and relevant bodies, ensure that—

- (a) aquaculture development is ecologically sustainable and allows rational use of the resource shared by aquaculture and other activities; and
- (b) the livelihood, culture and traditions of local communities and their access to fishing grounds are not affected by aquaculture development.

**64. Prohibited to deprive community of traditional access to fisheries**

(1) No person shall, by carrying out aquaculture activities, deprive a local community of its traditional access to fishing grounds without good cause and without first consulting the affected community.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or to a term of imprisonment not exceeding three years or to both, and in addition shall restore to the local community its traditional access.

**65. County's responsibility to monitor non-commercial aquaculture activities**

(1) County governments shall monitor aquaculture and mariculture practices and operations in areas under their respective jurisdictions pursuant to this Act.

(2) Where any person or any County government has cause to believe that any fish and fish products from any waters used for aquaculture activities are infected with a disease which can reasonably be foreseen to become, or which has become, of epidemic proportions, such County government shall in consultation with the Cabinet Secretary, give notice in writing to the owner of the relevant waters requiring the destruction of all fish and fish products in the said waters or the taking of such other measures as the county government may specify in the notice.

(3) Every person who receives a notice under subsection (2) shall comply with its requirements at her own expense, and in default of such compliance, the local fisheries authority may enter the relevant facility and take or cause to be taken such measures as may be necessary for complying with the requirements of the notice and any expenses incurred shall be recoverable as a civil debt from the person so notified.

(4) A person who does not comply with the requirements in the notice received pursuant to subsection (2) commits an offence and shall be liable on conviction not exceeding three hundred thousand shillings or to a term of imprisonment not exceeding three years or to both, and in addition shall be responsible for costs directly associated with the resulting damage.

(5) Where an officer wilfully, negligently or without justifiable cause issues a notice under subsection (2), the officer shall be held personally liable for any resultant loss.

**66. Permission of Director-General and approval by Board required**

(1) No person shall, without written permission granted by the Director-General on the advice of the Board—

- (a) introduce or cause to be introduced into Kenya or the Kenya fishery waters any exotic species of fish or any genetically modified fish;

- (b) transfer any eggs, fingerlings or seed of exotic or genetically modified species or such adult species of fish from one aquaculture establishment in Kenya to another or from any location in Kenya to another;
- (c) import or export live fish for the purpose of aquaculture; or
- (d) release into the fishery waters any fish except for indigenous wild fish caught in Kenya.

(2) Permission for any activity in subsection (1) may be granted subject to such conditions as the Director-General, with the written approval of the Board, considers appropriate and after an environmental impact assessment has been undertaken.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

#### **67. Director-General's authority to inspect, seize fish destined for import or export or diseased, highly invasive fish**

(1) The Director-General may inspect or cause to be inspected any fish before or after they are imported for the purpose of aquaculture and inspect or cause to be inspected any fish produced by aquaculture operations that are destined for export.

(2) The Director-General may seize, hold, quarantine, disinfect or destroy any live fish that have been imported or that are destined for import or export for purposes of aquaculture, and shall take such measures where it is determined that the species are diseased or highly invasive.

#### **68. Aquaculture waste**

(1) Each person engaged in commercial aquaculture in Kenya shall ensure that aquaculture waste—

- (a) does not cause an unsightly or offensive condition at the licence area; and
- (b) is secured or treated in a manner designed to prevent it from being blown, washed or swept off the licence area.

(2) Where any person fails or apparently fails to fulfil the conditions set out in subsection (1), the Director-General, in consultation with the National Environmental Management Authority, may notify such person in writing of the requirement to take measures to restore the applicable area to such standard as the Director-General may specify within a stated period of time, and may upon inspection require such person to redesign the applicable area.

(3) Each person who is notified by the Director-General pursuant to subsection (2) shall promptly fulfil the requirements set out in the notification.

(4) A person who contravenes subsection (1) or (3) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both, and in addition shall be responsible for compensation for the costs of restoring the applicable area as required pursuant to subsection (2).

#### **69. Escapement**

(1) Each person engaged in commercial aquaculture in Kenya shall take appropriate measures to prevent or minimise the risk of the escape of aquaculture stock into the wild.



(2) Where there has been an escape of hatchery reared aquaculture stock or damage to a farming structure, equipment or facility that may lead to the escape of hatchery reared aquaculture stock, the operator of the relevant aquaculture establishment shall take immediate measures to minimise the damage and to repair any damage caused to the extent possible.

(3) Each person engaged in commercial aquaculture in Kenya shall, within twelve hours after becoming aware of the escape of hatchery reared aquaculture stock or damage to a farming structure in relation to a facility over which the person exercises management or control or to other equipment, that may lead to the escape of hatchery reared aquaculture stock, notify the Director-General of the escape or damage, including the following—

- (a) the species of fish affected;
- (b) the date (or an estimate of the date) on which the escape or damage took place;
- (c) the number and biomass (or an estimate of the number and biomass) of the fish that have escaped; and
- (d) the age or developmental stage of the fish at the time of their escape and details of the circumstances in which the escape or damage took place, and, within seven days after becoming aware of such escape or damage, notify the Director-General in writing of the action taken to deal with it.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

#### **70. Use of drug, chemical, etc. restricted**

(1) No person shall use in a commercial aquaculture establishment any drug, pharmaceutical, antibiotic or other chemical for the treatment of fish diseases or for the enhancement of fish growth without the written approval of the Director-General.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

#### **71. Information on wild, genetically modified species**

The Director-General shall have the authority to collect information and data on wild and genetically modified species for the purpose of assessing their impact on aquaculture.

#### **72. Interfering with aquaculture establishment prohibited**

(1) No person shall, without a valid and applicable aquaculture license—

- (a) interfere with or harvest the product of an aquaculture establishment without the written authority of the licensee;
- (b) place any object in the water, or promote or undertake any activity in a manner so as to obstruct an aquaculture operation being carried out by another person;
- (c) destroy, damage, displace or alter the position of any equipment lawfully deployed in connection with an aquaculture licence; or

- (d) without lawful excuse cause the release of any product of an aquaculture establishment.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding five years or to both, and in addition shall fully compensate the relevant licensee for any damage which is the direct result of his/her contravention.

### **73. Transboundary aquaculture ecosystems**

Subject to applicable regional and international law, the Director-General shall initiate dialogue with other riparian States to ensure that governments and aquaculture farmers are obliged to protect transboundary aquatic ecosystems from —

- (a) escapement of aquaculture species into shared water bodies;
- (b) waste from aquaculture activities;
- (c) diseases that are likely to become or have reached epidemic proportions; and
- (d) effluent that might affect transboundary aquatic ecosystems.

### **74. Regulations for Aquaculture**

(1) The Cabinet Secretary may make Regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Regulations shall include—

- (a) fish hatchery standards;
- (b) qualifications of persons authorized to offer aquaculture extension services;
- (c) the mode of establishment of fish cages or any such form of aquaculture establishment in Kenya fishery waters;
- (d) aquaculture extension systems;
- (e) fish disease surveillance, control and management in aquaculture establishments;
- (f) the use of biotechnology to increase productivity;
- (g) codes of practice for fish farmers; or
- (h) any other measure that he deems necessary for the proper management of aquaculture.

## **PART IX – INFORMATION, DATA AND RECORDS**

### **75. Information, data and records**

(1) The Director-General may, for purposes of this Act, require any person to keep and furnish in such manner and form and at such time as the Director may specify—

- (a) any information and data, including information relating to fishing, fisheries, aquaculture, landing, research, storage, food safety, processing, buying, selling, exports and other related transactions;
- (b) accounts, records, returns, documents; and

- (c) any other information in relation to activities falling within the scope of this Act additional to that specified under this Act.

(2) The following categories of persons shall keep such accounts, records, documents, and furnish such returns, data and other information, in accordance with the requirements under this Act—

- (a) holders of licences or authorizations issued under this Act;
- (b) owners, operators, legal representatives, and masters of vessels licensed or authorized under this Act;
- (c) owners and persons in charge of any premises where fish or fish products are received, bought, stored, transported, processed, sold, or otherwise disposed of;
- (d) persons who engage in the receiving, buying, selling, transporting, processing, storage, export, import or disposal of fish or fish products;
- (e) persons who engage in commercial aquaculture activities;
- (f) persons engaged in recreational fishing;
- (g) persons engaged in fishing otherwise than for the purpose of sale of the fish caught, including research; and
- (h) such other persons who may be required to do so by the Director-General pursuant to this Act.

(3) The Director-General may, for purposes of verification of accounts, records, documents, returns, or information required to be kept, furnished or communicated in any manner or form under subsection (1) or (2)—

- (a) audit or inspect any accounts, records, returns or other information or place where such information may be kept;
- (b) audit or inspect any vessel, processing plant aquaculture establishment or other facility operating under the scope of this Act; and
- (c) require from any person further information, clarification or explanation regarding any accounts, returns or information kept, furnished or communicated under this section in accordance with such time limits as may be specified or prescribed.

(4) A person who—

- (a) is required pursuant to subsections (1), (2) or (3) to keep, furnish, provide or communicate any accounts, records, returns or other data or information and does not do so as lawfully requested or required; or
- (b) does not facilitate, assist or comply with the requirements for an audit or inspection undertaken pursuant to subsection (3),

commits an offence and shall be liable on conviction to a fine of three hundred thousand shillings or to a term of imprisonment not exceeding five years or to both, and any licence issued pursuant to this Act which is held by such person shall be revoked.

## **76. Ownership of information**

Ownership of all information required to be reported, notified or otherwise given to the Government and all information generated by automatic location communicators or similar device that is part of a vessel monitoring system under this Act is vested in the Government.

**77. Information in partnership agreements between vessel agents and vessel owners**

(1) True copies of all agreements setting out the terms of partnership, association or other contractual obligations of agents to vessel owners shall be deposited in their full and unabridged form with the Ministry upon the application in respect of a foreign fishing vessel for any licence or authorization under this Act.

(2) In cases where an agreement contains information of a significantly sensitive commercial nature, such information may be concealed provided that it is declared, certified and legally notarised as such.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of one million thousand shillings or to a term of imprisonment not exceeding three years or to both.

(4) Any person who, not being party to the partnership, association or other contractual obligation referred to in subsection (1), divulges information of a confidential nature or conceals information which is not of a significantly sensitive commercial nature, commits an offence and shall be liable on conviction to a fine of three hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

**78. Information on labels of containers, etc. containing fish harvested in Kenya fishery waters**

(1) The labels of any container or packaging materials containing fish harvested in the Kenya fishery waters shall clearly indicate—

- (a) that the fish were harvested in the Kenya fishery waters, irrespective of the flag State of the vessel or nationality of any person involved in the production of such fish, and shall not indicate in any way that such fish is the product of any State other than Kenya;
- (b) the name of the fishing vessel that harvested the fish;
- (c) the name of the company that is the owner or operator of the fishing vessel; and
- (d) such other information that may be prescribed.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of three hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

**79. Information to be true, complete and correct**

(1) Any information given, furnished or maintained or required to be given, furnished or maintained under this Act shall be true, complete and accurate.

(2) A person who keeps, furnishes or communicates any accounts, records, returns or information by or under this Act, and gives, furnishes, or maintains information which is false, misleading or inaccurate in contravention of subsection (1) in any material respect, commits an offence and shall be liable on conviction to a fine of three hundred and fifty thousand shillings or to a term of imprisonment not exceeding three years or to both, and any relevant licence issued pursuant to this Act which is held by such person may be revoked.

**80. Confidential information**

(1) No person carrying out duties or responsibilities under this Act, including the Cabinet Secretary, Board members and Director-General shall, unless authorized or otherwise provided or directed in accordance with this Act, reveal information or

other data of a confidential nature or designated as confidential in accordance with this Act, acquired by virtue of their said authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.

(2) The Cabinet Secretary in consultation with the Director-General may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.

(3) The Director-General may authorise in writing any person to—

- (a) receive or access confidential information;
- (b) access or restrict access to such premises holding confidential information as he/she may designate.

(4) Notwithstanding subsection (2), the following information shall be confidential unless the Cabinet Secretary in consultation with the Director-General otherwise directs—

- (a) any information or data of a commercial nature provided in records, returns, or other documents required under this Act;
- (b) any information or data supplied by a vessel monitoring system or part thereof in accordance with this Act;
- (c) such raw data from scientific research as may be designated by the Cabinet Secretary in consultation with the Director-General; and
- (d) such other information or data as may be required by the Cabinet Secretary in consultation with the Director-General.

(5) Information may be disclosed to the extent—

- (a) that disclosure is authorized or required under this Act or any other law;
- (b) that the person providing the information authorized its disclosure;
- (c) necessary to enable the Director-General to publish statistical information relating to the fisheries sector;
- (d) necessary for enforcement of Kenya laws by other Ministries and agencies of the Government of Kenya;
- (e) necessary to discharge regional or international obligations or to promote regional and international cooperation or coordination in monitoring, control and surveillance of relevant activities; and
- (f) necessary to enable advice to be given to the Cabinet Secretary.

(6) The Cabinet Secretary in consultation with the Director-General may authorise the release of any information—

- (a) relating to the real-time or other position of any vessel, upon request, to the responsible authority for purposes including surveillance, search and rescue and other emergency;
- (b) for purposes he or she deems would be supportive of the objectives and enforcement of this Act, including reasonable transparency in decision-making; or
- (c) designated as confidential for such purposes as the Cabinet Secretary may approve or as may be prescribed.

(7) Any information designated as confidential shall maintain such classification for a period of five years from the time of such designation, and at the expiry of five years, the Cabinet Secretary in consultation with the Director-General may extend

such classification for a further period of up to five years or more as they may deem necessary for purposes relating to the objectives and enforcement of this Act.

(8) A person who does not comply with the requirements of subsection (1), except where disclosure is authorized pursuant to subsection (3), (5) or (6) commits an offence and shall be liable on conviction to a fine of one million shillings.

#### **81. Registers of licences and authorizations**

(1) The Director-General shall establish and maintain a national register of licences and authorizations issued under this Act in accordance with such requirements as may be prescribed or required by the Cabinet Secretary.

(2) The register established under subsection (1) shall include—

- (a) information on applications for licences and authorizations under this Act;
- (b) information on each licence and authorization issued, renewed, suspended or cancelled under this Act, including the activity, date and duration;
- (c) information on each licensed or authorized person;
- (d) information on the relevant vessel, facility, and/or licensed or authorized activity;
- (e) any record of non-compliance with the licence or authorization;
- (f) any record of action taken as a result of non-compliance;
- (g) the requirements of any relevant international conservation and management measures of an organization of which Kenya is a member or cooperating non-member; and
- (h) such other information that may be prescribed or required by the Director-General.

(3) The register established under subsection (1) shall contain information relating to fishing vessels licensed or authorized for fishing or fishing related activities—

- (a) within areas under national jurisdiction; and
- (b) in areas beyond national jurisdiction.

(4) The Director-General shall, in respect of information contained in the register in accordance with subsection (2), provide access to such information on request by directly interested Government bodies, regional fishery bodies including regional fisheries management organizations, international organizations and foreign States or entities, taking into account any applicable laws regarding the confidentiality or release of such information.

(5) The Director-General shall ensure that the information on each license and authorization in the database is sufficient for purposes of fisheries management and monitoring, control and surveillance, and to implement the international and regional agreements to which Kenya is party or cooperating non-party.

(6) The Director-General shall ensure that, where appropriate, information is released from the database and communicated to other States and regional and international organizations in a timely manner to ensure the discharge of the regional and international obligations of Kenya including as a flag State and as a member of regional fisheries management organizations.

(7) Registration of a licence or authorization in the national register shall not be considered a licence or authorization for the purposes of this Act.

(8) A person may, upon payment of such fee as may be prescribed, access any non-confidential information from the register.

## **82. Information on legal and administrative action taken in respect of violations of the Act**

The Director-General shall maintain and make publicly available a record of the outcome of any legal or administrative action taken in respect of any violation against this Act that results in a judgment or administrative determination.

## **83. Information available to public**

The Director-General shall make information available to the public and as necessary disseminate relevant information to stakeholders for purposes of fisheries conservation, management and development, including regional and international organizations, except for such information that may be designated confidential in accordance with section 82.

# **PART X – LICENSING AND REGISTRATION**

## **Licences, authorizations and registration**

## **84. Licences and authorizations required**

(1) A valid and applicable licence issued in accordance with section 92(3) shall be required for—

- (a) using an industrial fishing vessel for fishing or fishing related activities in the Kenya fishery waters;
- (b) using a semi-industrial fishing vessel for fishing or related activities in the Kenya fishery waters;
- (c) using an artisanal fishing vessel for commercial purposes;
- (d) commercial aquaculture; and
- (e) such other activity or activities within the scope of this Act for which a licence or authorization may be required by the management measures in an applicable Fisheries Management Plan adopted in accordance with the requirements in this Act, or as may be prescribed from time to time.

(2) The respective county governments shall be responsible for issuing licenses with respect to—

- (a) using any vessel for recreational fishing in the Kenya fishery waters; and
- (b) operating a fish processing establishment within the respective county.

(3) The Cabinet Secretary shall prescribe the standards for the registration of vessels and grant, renewal and revocation of licences by a county government under subsection (2).

(4) Each County Government may enact county specific legislation setting out the—

- (a) criteria for the registration of a vessel and issuance of a licence to an applicant for a licence under subsection (2);

- (b) information required to be submitted by an applicant for registration or issuance of a licence;
- (c) process of determination of an application;
- (d) conditions for the issuance or renewal of a licence under this Act;
- (e) grounds for the rejection of an application or cancellation of a licence issued under this Act;
- (f) process of application for the renewal of licences, de-registration of a vessel and revocation of a licence issued to an applicant by the county government; and
- (g) appointment of inspectors or such other authorised officers to carry out such inspections as the county executive committee member responsible for fisheries may consider necessary for the implementation of this Act.

(5) A valid and applicable written authorization issued in accordance with section 88 and 89 shall be required for—

- (a) using a Kenyan fishing vessel in areas outside the Kenyan fishery waters;
- (b) each transshipment, including the transfer of fish from a fishing vessel to a carrier vessel or a shore based facility for the purpose of export;
- (c) using any vessel for marine scientific research or test fishing;
- (d) using any foreign fishing vessel to enter a port in Kenya; and
- (e) deployment and maintenance of any fish aggregating device in the Kenya fishery waters.

#### **85. Subsistence exemption from licence requirements**

(1) Any person fishing only for purposes of non-commercial subsistence, intended to result in consumption of the fish caught, shall be exempt from the requirement for a licence but shall require to apply to the respective county government for registration.

(2) The Cabinet Secretary may by order published in the *Gazette* determine the quantity of fish which may be deemed to be fish for own consumption under subsection (1), and different quantities may be determined for different areas of Kenya.

(3) Subsection (1) shall not apply to a person employed by a licensee, or, subject to section 23 of the Penal Code (Cap. 63), to a company which is a licensee, in respect of any act done by the person or company as such licensee.

#### **86. Grant, renewal and issuance of licences and authorizations**

(1) The Board, on the recommendation of the Director-General may approve the grant or renewal of licences or authorizations for any purpose specified in section 87 after all inspections, verifications and other pre-licensing requirements under this Act have been discharged and each licence or authorization shall be issued or renewed upon the written endorsement of the Cabinet Secretary.

(2) A licence or authorization shall not have legal force or effect unless it has been approved and endorsed as required in subsection (1).

(3) The Director-General shall, in approving or renewing a licence under subsection (1), act in accordance with the procedures required pursuant to this Act



and such other transparent and accountable standards as may be determined and published.

(4) The Director-General shall promptly issue such licences or authorizations when all required conditions under this Act have been met and the Cabinet Secretary has endorsed such licence or authorization.

(5) Where the Director-General declines to approve, issue or renew a licence or authorization, the Director-General shall state in writing reasons for the decision, and promptly transmit them to the applicant.

#### **87. Standards for approval, renewal and issuance of licences and authorizations**

(1) In approving or renewing licences and authorizations pursuant to this Act, and in setting the level of any performance bond required pursuant to section 134, the Director-General shall take into account the extent to which the relevant fishing vessel, including its operator or other relevant person, as appropriate, has—

- (a) the ability to comply with, or has complied with this Act, relevant laws of Kenya and any applicable licensing terms and conditions or Fisheries Management Plan and such other standards as may be required in writing by the Director-General;
- (b) complied, and has the ability to further comply with other applicable regional and international obligations of Kenya;
- (c) complied with all applicable vessel registration requirements;
- (d) complied with all applicable requirements for pre—licensing inspections and related procedures, including as appropriate the full payment of costs for inspections;
- (e) provided all required data and information;
- (f) in the case of an operator or person, complied with applicable laws of other States and international conservation and management measures;
- (g) where the applicant has been convicted of any offence under this Act or any other law relevant to the activity for which application was made, the requirements of the judgment have been fully met; and
- (h) complied with other relevant laws of Kenya including any applicable requirements of the Merchant Shipping Act (Cap. 389).

(2) In approving or renewing licences and authorizations in respect of any fishing vessel other than a Kenya fishing vessel pursuant to this Act, and in setting the level of any performance bond required pursuant to section 134, the Director-General shall take into account the ability of the relevant flag State to ensure compliance by its fishing vessels with the laws of Kenya.

(3) An industrial or semi-industrial fishing licence shall not be issued or have legal force or effect unless the relevant vessel submits to inspection at the port of Mombasa or such other port as may be required by the Director-General, at the expense of such vessel, and it is established in writing by an inspector, or in the case of a port outside Kenya a person duly authorized by the relevant government agency to carry out the duties of an inspector, that all required licence conditions have been met, including that all gear on board is authorized pursuant to the licence.

(4) A fish processing licence shall not be issued or have legal force or effect unless the county executive committee member responsible for fisheries in the respective county in consultation with the Director-General is satisfied that the fish processing establishment or any other operation complies with all such safety and sanitary standards as this Act, other laws of Kenya and conditions as the Cabinet Secretary by notice in the *Gazette* may require.

#### **88. Denial of licences and authorizations**

(1) A licence or authorization shall not be approved, endorsed, issued or renewed where—

- (a) a relevant vessel is not intended for use as a fishing vessel;
- (b) a relevant vessel does not hold a valid and applicable registration, or holds more than one registration;
- (c) a relevant vessel is not a Kenya vessel and does not have a valid and applicable authorization or licence from its flag State to fish in areas beyond national jurisdiction, including in Kenya fishery waters;
- (d) the issuance of a licence would be contrary to any applicable fisheries management plan or an aquaculture development plan;
- (e) the applicant for a commercial aquaculture licence has not undertaken an environmental impact assessment as required in respect of an aquaculture licence, or that such an assessment concludes that a licence should not be approved, endorsed, issued or renewed;
- (f) the species of fish that the applicant for a commercial aquaculture licence proposes to farm, the method of aquaculture that the applicant proposes to employ or the proposed site for aquaculture do not meet standards or requirements that may be prescribed or publicly notified for aquaculture;
- (g) within the previous six years, the applicant, or a vessel or person closely connected with the applicant in respect of activities falling within the scope of this Act, has been convicted of a serious offence pursuant to this Act or any international agreement and has not complied with a judgment or administrative determination unless, in respect of a vessel there has been a change of ownership of the vessel and there is no connection between the former owner(s) and the new owner(s), and the new owner(s) do not have a history of engaging in illegal, unreported or unregulated fishing;
- (h) the applicant, vessel, or associated person has been charged with an offence pursuant to this Act more than three times and has—
  - (i) not submitted to judicial or administrative procedures; or,
  - (ii) has submitted to judicial or administrative procedures but has not fully complied with the final decision or determination;
- (i) the issuance of the licence or authorization would be inconsistent with an international agreement to which Kenya is party;
- (j) the operator of the fishing vessel has not provided a performance bond if so required pursuant to section 134;
- (k) the activity is likely to threaten the sustainability of a fishery resource;
- (l) in the case of a foreign fishing vessel, an agent has not been appointed; or

- (m) the vessel in respect of which the licence is sought has been included on a list of illegal, unreported and unregulated fishing vessels established and maintained by a competent regional fishery body in accordance with its rules and procedures.

(2) A licence or authorization shall not be approved, issued or renewed for any fishing vessel if that vessel was previously licensed or authorized by a foreign State for fishing within or in areas beyond national jurisdiction and was convicted of a violation under national law or undermined the effectiveness of international conservation and management measures, and, as a consequence—

- (a) the foreign State suspended such licence or authorization because of illegal, unreported or unregulated fishing activities by the vessel, and the suspension has not expired; or
- (b) the foreign State within the last three years preceding the application for a licence under this Act withdrew such licence or authorization for illegal, unreported or unregulated fishing activities.

(3) The restriction in subsection (2) does not apply if the ownership of the vessel has changed since the vessel undermined international conservation and management measures, and the new owner has provided sufficient evidence to the Director-General demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in the vessel.

(4) For the purpose of subsection (1) (e) the term 'associated' shall include situations where the same legal or beneficial owner, or agent is shared.

#### **89. Application for the grant or renewal of licences or authorizations**

(1) Except where otherwise prescribed, an application for a licence or authorization under this Act shall—

- (a) contain such information as may be required in this Act or in writing by the Director-General or as may be prescribed;
- (b) be in such form as may be prescribed or such other form as may be approved by the Director-General;
- (c) in the case of industrial fishing vessels, be accompanied by an International Tonnage Certificate showing the gross tonnage issued under the International Tonnage Rules;
- (d) be accompanied by a fishing plan which shall specify for each month of the full period of validity of a licence or authorization, a fishing plan including the—
  - (i) fishing gear to be used;
  - (ii) species to be targeted for fishing, and expected quantity;
  - (iii) species that will constitute bycatch and expected quantity; and
  - (iv) area in which fishing or fishing will take place; and
- (e) be made in accordance with such procedures and other requirements as may be approved by the Director General.

(2) A non-refundable application fee as may be prescribed shall be payable and shall accompany every application for a licence or authorization required pursuant to this Act or the renewal of such licence or authorization.

(3) Where—

- (a) the Director-General considers that an application has been made for an inappropriate class of licence;
- (b) there is insufficient evidence or information accompanying the application upon which to make a recommendation regarding the application;
- (c) the information accompanying the application appears to be false, misleading or inaccurate; or
- (d) upon such other grounds as may be approved by the Board, the Director-General shall return the application to the applicant with details of her/his reasons for returning the application, and the applicant may submit a revised application with such additional evidence or information as may be appropriate.

(4) If the information on an application is found to be false, misleading or inaccurate the Director-General may decline to grant the licence or authorization, or if such information is discovered to be false, misleading or inaccurate after the grant of the licence or authorization, the Director-General may suspend or cancel the licence or authorization.

#### **90. Terms and conditions of licences and authorizations**

(1) A licence or authorization granted under this Act—

- (a) shall be subject to the terms and conditions, requirements and endorsements as are provided in this Act or as may be otherwise prescribed or required by the Director-General by Public Notice from time to time;
- (b) subject to subsection (2), shall enter into force on the date specified in it; and
- (c) unless sooner revoked or suspended in accordance with this Act, remains in force until the date on which it expires in accordance with the period approved by the Director-General from time to time for the class of licence or authorization to which it belongs.

(2) No licence or authorization shall be issued unless—

- (a) the approved fee and other required charges have been paid at the required time; and
- (b) where applicable—
  - (i) a performance bond has been issued as required pursuant to section 134 and notified to the Director-General; and
  - (ii) any access fee or other charges or levies payable under any relevant access agreement or arrangement, right or licence have been paid.

(3) The holder of a licence or authorization issued pursuant to this Act shall—

- (a) comply with this Act, the laws of Kenya, any applicable access agreement, fisheries management plan, and international conservation and management measures;
- (b) comply with all relevant provisions of national law relating to navigational standards and the safety of vessels at sea; standards relating to work conditions on board fishing vessels; and

- (c) not engage in fishing or fishing related activities, operate a fish processing establishment or engage in commercial aquaculture except as stated in the licence or authorization.

(4) The holder of a licence or authorization in respect of a fishing vessel shall ensure that the licence or authorization, or a certified copy thereof is carried on board any relevant vessel at all times during the period of validity and the master shall upon request, produce it to an authorized officer or inspector or other person authorized under this Act to inspect it, provided that the Director-General may authorise a true copy of a licence to be temporarily carried in circumstances where it has not been reasonably practical for the original to be placed on board a vessel.

(5) The holder of a licence or authorization issued pursuant to this Act, other than for a fishing vessel, shall display the licence or authorization or a certified copy thereof in the registered business office, and produce it upon request to an authorized officer or inspector or other person authorized under this Act to inspect it.

(6) A person who contravenes subsection (3), (4) or (5) commits an offence and shall be liable on conviction to a fine not exceeding three hundred and fifty or to a term of imprisonment not exceeding three years or to both.

#### **91. Preference for employment of citizens of Kenya**

(1) Where commercial employment is foreseen in relation to the activity for which the licence or authorization is sought, it shall be a condition of the licence or authorization is sought, it shall be a condition of the licence or authorization that citizens of Kenya possessing the necessary qualifications and experience shall be given preference for employment, and such employment shall be in accordance with the Employment Act (Cap. 226).

(2) A licensee shall not—

- (a) import unskilled labour; or
- (b) in any case use child labour,

for the carrying out of any of its operations undertaken under the terms of the applicable licence or authorization.

(3) Where the applicant for a licence or authorization is partly or wholly a foreign citizen or company, or where an applicable fisheries access agreement, arrangement, right, licence or authorization has been entered into pursuant to section 89 and 90, such applicant shall be required, to the extent possible and in such manner as the Director-General may in consultation with the Cabinet Secretary approve, to contribute to the training and employment of Kenya citizens taking into account the requirements of safety and the need to maintain acceptable standards of efficiency in the conduct of the operations.

(4) A person who contravenes subsection (2) or who does not fulfil requirements made by the Director-General under subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings.

#### **92. Period of validity of licences and authorizations**

A licence or authorization issued pursuant to this Act shall, unless otherwise provided, be valid for a maximum period of one year and may be renewable, subject to any fisheries management decision taken in accordance with this Act and the terms and conditions set out in the licence or authorization.

**93. Fees, charges or levies**

(1) A licence or authorization granted under this Act shall be subject to payment of—

- (a) such licence fee prescribed for that class of licence as may be prescribed; and
- (b) such other fees, charges or levies as are set out in this Act, or as may be prescribed or required by the Director General by public notice.

(2) The Director-General may, as a component of the licence or authorization fee for any fishing vessels, charge for the costs relating to observers described in section 148 (b) of this Act, and shall deposit such component into a designated account in the Fund established in section 27 and use such component solely for the purposes of the observer programme set out in section 147 and to pay the observer costs identified in section 152.

(3) The Director-General may charge licence holders for the costs of services, including inspection services, in accordance with such policy and at such levels as the Cabinet Secretary may establish by Public Notice.

(4) Unless otherwise prescribed or required, the amounts payable pursuant to subsections (1), (2) and (3) shall be paid as a condition of the issuance of a licence and no licence shall be issued unless they have been paid in full.

**94. Suspension or cancellation of licence or authorization**

(1) The Director-General may, by written notice to the holder of a licence or authorization or that person's agent, suspend or cancel any licence or authorization issued pursuant to this Act for any of the following reasons—

- (a) there has been a contravention of the licence or authorization, this Act, an applicable international agreement or international conservation and management measures or relevant applicable law of a third country in respect of which the licence or authorization was given, and—
  - (i) any applicable law or international agreement providing for such suspension or cancellation;
  - (ii) the relevant person or persons involved in such contravention has or have not submitted to the legal or administrative process, or complied with the requirements of an applicable fine, penalty or other determination; or
  - (iii) the Director-General, having regard to the nature and seriousness of the contravention, considers it appropriate to suspend or cancel the licence or authorization;
- (b) there has been a failure to maintain or comply with, or there has been any material change or change in circumstances affecting the eligibility criteria for the licence or authorization, in the—
  - (i) registration of a company or a vessel;
  - (ii) ownership or beneficial ownership or control of a company or vessel since the time of licence approval; or
  - (iii) characteristics, identification markings, or gear of any licensed industrial fishing vessel;

- (c) the licence or authorization holder has furnished information which is untrue, incomplete or misleading in connection with the licence application;
- (d) where a licence or authorization may be transferred, this has been done without the written approval of the Director-General and endorsement by the Cabinet Secretary;
- (e) any fees, charges or levies required to be paid after the issuance of the licence or authorization have not been paid as required;
- (f) it is necessary to do so to implement conservation and management measures under this Act, in accordance with its objective and principles;
- (g) in the case of a commercial aquaculture licence, the licence holder fails to establish the aquaculture operation within the time specified by the Director-General; or
- (h) such other reasons as may be prescribed or provided in relevant laws of Kenya.

(2) The Director-General shall suspend or cancel a licence or authorization in accordance with such procedures as may be prescribed, where—

- (a) this Act, a fisheries management plan, aquaculture development plan or any international agreement so requires; and
- (b) such suspension or cancellation is endorsed by the Cabinet Secretary.

(3) Where a licence or authorization has been suspended or cancelled in accordance with subsection (2), the Director-General shall notify the applicant of the reasons.

(4) There shall be no refund of fees paid in respect of a licence or authorization suspended or cancelled under this Act.

(5) No person shall engage in any activity for which the relevant licence or authorization was issued after a notice of suspension or cancellation given pursuant to subsection (3) has been received by the holder.

(6) A person who contravenes subsection (5) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

## **95. Termination of licences and authorizations**

(1) A licence or authorization issued pursuant to this Act shall automatically terminate—

- (a) upon the expiration of the period for which it was valid;
- (b) where a vessel changes the country of registration, becomes registered in more than one country or is de-registered; or
- (c) where the master, owner or charterer of the fishing vessel to which the licence or authorization relates is convicted of an offence under this Act and a decision to terminate the licence or authorization has been taken by the relevant judicial or administrative proceedings.

(2) There shall be no refund for a licence or authorization terminated pursuant to this Act.

(3) No person shall engage in any activity for which the relevant licence or authorization was issued after it has automatically terminated in accordance with conditions specified under subsection (1)(a), (b) or (c).

(4) A person who contravenes subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

#### **96. Transfer of licences and authorizations**

(1) Any licence or authorization issued pursuant to this Act shall be—

- (a) issued to a specific fishing vessel or activity; and
- (b) personal to the holder of that licence.

(2) Notwithstanding subsection (1), a licence issued to an industrial fishing vessel may be transferred to another industrial fishing vessel with the same characteristics and under the same agency with written authorization by the Director-General and endorsement by the Cabinet Secretary.

#### **97. Right of appeal**

An applicant for a licence who is aggrieved by a decision not to grant or renew any licence or authorization under this Act, or to a person who holds a licence or authorization who is aggrieved by a decision to suspend or cancel such licence or authorization may appeal to the Board within thirty days of receiving notification of such decision, and may further appeal to the Cabinet Secretary within thirty days of receiving notification of the Board's decision.

### **Fishing, transshipment and fish aggregating devices**

#### **98. Conditions for fishing for industrial or semi-industrial fishing vessel**

(1) Fishing licences issued for industrial or semi-industrial fishing vessels for fishing or fishing activities shall include the following conditions—

- (a) the fishing vessel shall clearly display at all times such markings as may be prescribed and shall not change such markings without written permission from the Director-General;
- (b) the fishing vessel shall at all times fly the flag of the State of which it is national;
- (c) the operator shall hold a valid registration in respect of the fishing vessel as may be required by the flag State or entity for that type of vessel and issued by such flag State or entity;
- (d) the operator shall hold only one valid registration in respect of the fishing vessel and shall not at the same time hold more than one such registration;
- (e) the operator shall comply at all times with such requirements for trawling gear as may be prescribed;
- (f) the operator shall not carry on board the fishing vessel any fishing gear that has not been approved for fishing activities pursuant to the fishing licence or authorization;
- (g) the operator shall not carry firearms aboard unless authorized by the Director-General;
- (h) unless otherwise authorized by the Director-General, the operator shall ensure that at least forty five percent of the crew members on board each fishing vessel are citizens of Kenya;



- (i) the operator shall comply with all relevant provisions of national law relating to navigational standards, standards relating to work conditions on board fishing vessels and the safety of vessels at sea;
- (j) the operator shall comply with any direction given by the Director-General for inspection of the vessel prior to departing from the Kenya fishery waters; and
- (k) such other conditions that are required pursuant to this Act, or that may be required by the Cabinet Secretary by notice in the *Gazette* or as may be prescribed.

(2) A person who contravenes any condition in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding fifty million shillings or to a term of imprisonment not exceeding five years or to both.

#### **99. Conditions for industrial fishing vessels**

(1) In addition to the conditions specified in section 90, licences issued to industrial fishing vessels for fishing or fishing related activities shall be subject to the following conditions—

- (a) the operator shall maintain fishing and navigational logbooks at all times in the English language with such information and in the format as may be prescribed or required by the Cabinet Secretary;
- (b) the operator shall install, maintain and operate, in accordance with the requirements of this Act, an automatic location communicator or such other equipment integral to a vessel monitoring system as the Cabinet Secretary may require;
- (c) the operator shall carry on board an observer designated by the Director-General and comply with all requirements relating to observers set out in this Act;
- (d) the operator shall report in writing the vessel's position, catch and such other information that may be required by the Director-General to the Kenya Fisheries Service every twenty-four hours while in the Kenya fishery waters;
- (e) the operator shall continually monitor the international distress and call frequency and the international safety and calling frequency;
- (f) the operator shall ensure that a recent and up-to-date copy of the International Code of Signals be carried on board and accessible at all times;
- (g) the operator shall ensure that a recent and up-to-date set of charts showing the Kenya fishery waters is carried on board at all times;
- (h) the operator shall not at any time, except for purposes of steaming directly into port with all gear stowed, cause or allow the fishing vessel to enter, be present in, engage in fishing for or take or carry on board or possess fish taken from the territorial sea or other area closed to fishing;
- (i) the operator shall not at any time cause or allow the fishing vessel to engage in fishing for or take or carry on board or possess fish taken from a closed area or from any marine protected area declared pursuant to this Act where such fish are protected;

- (j) the operator shall retain no more than thirty percent of the bycatch, or such other amount as maybe prescribed and the remaining portion of the bycatch shall be landed as required pursuant to subparagraph (k);
- (k) except where transshipment has been authorized, all catch, or a designated portion, shall be landed for sale in the local market at such places as may be designated in the licence or directed in writing by the Director-General, and unless otherwise prescribed shall include the following landing obligations for each designated class of vessel in respect of the total fish catch taken from Kenya's Economic Exclusive Zone on a yearly basis—
  - (i) purse seiners: 30%
  - (ii) long liners 30%
  - (iii) shrimp trawlers: 70% of the bycatch  
5% of the shrimp
- (l) no person shall use a Kenya fishing vessel, being an industrial fishing vessel, except with a valid and applicable authorization issued pursuant to an application made in accordance with such form as may be prescribed, for fishing or fishing related activities—
  - (i) on the high seas;
  - (ii) in areas under the national jurisdiction of any other State except in accordance with the laws of that State; or
  - (iii) that do not comply with an applicable international agreement or undermine the effectiveness of international conservation and management measures;
- (m) no person shall use a Kenya fishing vessel, being an industrial fishing vessel, during the period of validity of the licence—
  - (i) for fishing or fishing related activities on the high seas for fishing related activities in areas subject to international conservation and management measures unless the licence or authorization has been endorsed to authorise such fishing;
  - (ii) in areas of national jurisdiction of other States except in accordance with a licence or authorization and the laws of that State; or
  - (iii) to engage in any activity on the high seas or in areas of national jurisdiction of other States which does not comply with an applicable international agreement or undermines the effectiveness of international conservation and management measures in an area to which such measures apply;
- (n) unless the Director-General otherwise directs in writing or unless the master of the fishing vessel is able to communicate effectively in English, the operator shall ensure that the fishing vessel has on board at all times while in the Kenya fishery waters a person who is able to communicate effectively in English and in the language of the master; and
- (o) such other conditions that may be required by Public Notice by the Cabinet Secretary or prescribed in accordance with this Act.

(2) A person who contravenes any condition in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding fifty million shillings or to a term of imprisonment not exceeding five years or to both.

#### **100. Reporting requirements for industrial fishing vessels**

(1) In addition to the conditions described in sections 90 and 101, the operator of each industrial fishing vessel shall make such reports as may be prescribed or required by the Director-General as a condition of licence or authorization, which shall include—

- (a) maintaining a fishing log for each fishing trip in the area to which the relevant licence applies in the English language or other language approved by the Director-General, which shall include—
  - (i) the gear type used;
  - (ii) the noon position of the vessel and, where applicable, the set position of the fishing gear and soak time or the number of hooks and the sea surface temperature;
  - (iii) the total number of hauls per day, aggregate time for each haul and total number of days fished per fishing trip;
  - (iv) the species of fish taken and the size and quantity of each species by weight or number as may be specified in the relevant reporting form;
  - (v) the species of fish returned from the vessel to the sea, the reason for the discard, the quantity of each species by weight or number; and
  - (vi) such other information as may be prescribed or as the Director-General may require.
- (b) reporting information as may be prescribed or required approved by the Director-General relating to the position of, and the catch on board, the vessel and such other information that may be required by this Act or the Director-General at the following times—
  - (i) at least twenty four hours prior to the estimated time of entry into and departure from the Kenya fishery waters;
  - (ii) each day while the vessel is in the Kenya fishery waters;
  - (iii) at least twenty four hours prior to the estimated time of entry or departure from port; and
  - (iv) upon entry into or departure from a closed area or marine protected area.
- (c) ensuring that any information or data which may be required to be transmitted by radio communication, a transponder, automatic location communicator or other component of a vessel monitoring system is transmitted continuously, accurately and effectively to the designated receiver;
  - (i) providing such daily information as and in the form the Cabinet Secretary may require to give effect to its duty under international agreements and law; and
  - (ii) certifying that all information provided pursuant to subparagraphs (a), (b), (c) and (d) is true, complete and correct.

(2) A person who contravenes any condition in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

#### **101. Conditions for semi-industrial fishing vessels**

(1) In addition to the conditions described in section 98, licences issued to semi-industrial fishing vessels for fishing or related activities shall be subject to the following conditions—

- (a) no person shall use a semi-industrial fishing vessel during the period of validity of the licence—
  - (i) for fishing or fishing related activities in areas under the national jurisdiction of other States unless the licence or authorization has been endorsed to authorise such fishing or fishing, related activities; or
  - (ii) in areas of national jurisdiction of any other State except in accordance with laws of that State;
- (b) every semi-industrial fishing vessel shall be marked with a registration number and such other identification markings as may be prescribed or required in writing by the Director-General.
- (c) on receipt of an application for registration of a semi-industrial fishing vessel made under this Act, the Director-General shall, as soon as practicable, cause the vessel to which the application refers to be inspected and if, upon such inspection, the vessel is found to be fit for fishing and meets the prescribed safety standards, the Director-General shall assign identification markings to the vessel and on payment by the applicant of the prescribed registration fee, issue to the owner of the vessel a certificate of registration.
- (d) except where transshipment has been authorized, all catch, or such portion as may be prescribed or required by the Cabinet Secretary, shall be landed for sale in the local market at such places as may be designated in the licence or directed in writing by the Cabinet Secretary, and shall include the following landing obligations for each designated class of vessel in respect of the total fish catch for each fishing trip, unless otherwise prescribed:
  - (i) undecked semi-industrial fishing vessels: 100%; and
  - (ii) decked semi-industrial fishing vessels: 50%.
- (e) no person using an undecked semi-industrial fishing vessel shall carry gear that exceeds such amount and dimensions as may be prescribed.

(2) A person who contravenes any condition in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

#### **102. Reporting requirements for semi-industrial fishing vessels**

(1) In addition to the conditions described in section 98 and 106 the operator of each semi-industrial fishing vessel shall make such reports as may be prescribed or required by the Director-General, monthly or at such earlier time as may be required by the Director-General, as a condition of licence or authorization, which shall include—

- (a) maintaining a fishing log for each fishing trip in the area to which the relevant licence applies, in the English language or other language approved by the Director-General, which shall include—
  - (i) the date of fishing;
  - (ii) the gear type used;
  - (iii) the species of fish taken and the size and quantity of each species by weight or number as may be prescribed or the Director-General may require; and
  - (iv) the species of fish returned from the vessel to the sea, the reason for the discard, the quantity of each species by weight or number;
- (b) the place of landing or transshipment;
- (c) such other information as may be prescribed or as the Cabinet Secretary may require; and
- (d) certifying that information provided pursuant to subparagraphs (a), (b) and (c) is true, complete and correct.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to a term of imprisonment not exceeding three years or to both.

### **103. Registration of artisanal fishing vessels**

(1) No person shall use an artisanal fishing vessel for fishing in the Kenya fishery waters without—

- (a) a valid and applicable registration number; and
- (b) displaying such registration number in accordance with the requirements in such form as may be prescribed.

(2) The owner of each artisanal fishing vessel shall apply for a registration number on such form as may be prescribed or as the Director-General may require.

(3) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

### **104. Registration of vessels**

(1) Subject to subsection (2) and in addition to the provisions of section 124, no fishing vessel shall be operated in the Kenya fishery waters, and no Kenyan fishing vessel shall be used in or outside the Kenya fishery waters for fishing or fishing related activity, unless such fishing vessel has been registered by the Board in accordance with this section, notwithstanding that it holds a valid and applicable registration as may be required under any other law of Kenya.

(2) The County executive committee member may, by notice in the *Gazette*, exempt any local fishing vessel used only for recreational fishing other than for reward or profit from the requirements of subsection (1).

(3) An application for registration of a fishing vessel shall be made to the Director-General in the prescribed form.

(4) On receipt of an application under subsection (3) the Director-General shall cause the vessel to be inspected and may thereafter register the vessel.

(5) The Director-General shall maintain or cause to be maintained of Fishing Vessels Register in which shall be entered the following information in respect of the vessel—

- (a) the name, street address, telephone number, fax number and email address of the owner and, where applicable, the previous owner;
- (b) the name and any previous name of the vessel;
- (c) the year and place of manufacture;
- (d) the flag country and previous flag country if any;
- (e) type of gear used;
- (f) radio call sign;
- (g) vessel tonnage;
- (h) vessel length;
- (i) fish hold volume;
- (j) fish carrying capacity;
- (k) IMO number as applicable;
- (l) vessel identifier issued by an RFMO as applicable; and
- (m) national registration number.

(6) The Director-General may subject to approval by the Board, where he is satisfied that a fishing vessel inspected under this section is fit for fishing and meets the prescribed safety and hygiene standards, issue a certificate of registration respect of that vessel upon payment of the prescribed fee by applicant.

(7) In any judicial or administrative proceedings brought under this Act, the entry in respect of a vessel in the Register of Fishing Vessels, or any other register maintained by the Director-General under this section, shall be prima face evidence of the ownership of the vessel.

(8) Where a fishing vessel is operated in contravention of subsection (1), the master, owner and charterer of the vessel each commit an offence and shall each be liable upon conviction to a fine not exceeding three hundred thousand shillings or imprisonment for a term not exceeding one year, or to both.

(9) The requirements under this section are in addition to and not in derogation from any requirement for registration under any other law relating to vessels.

#### **105. Applications for licences, etc**

Unless otherwise provided, an application for a licence, authorization or registration under this Act shall be made in the prescribed form.

#### **106. Conditions for recreational fishing vessels.**

(1) Licences issued to recreational fishing vessels for fishing or fishing related activities shall be subject to the following conditions—

- (a) the vessel shall be duly registered in accordance with this Act, and the registration number shall be prominently displayed thereon in a manner and format prescribed by the Director-General.
- (b) on receipt of an application for registration of a recreational fishing vessel, the Director-General, shall as soon as practicable, cause the vessel to which the application refers to be inspected, and if, upon such inspection, the vessel is found to be fit for fishing and meets the prescribed safety standards, the Director-General shall

assign identification markings to the vessel and upon payment by the applicant of such registration fee as may be prescribed, issue to the owner of the vessel a certificate of registration; and

- (c) such other requirements as may be prescribed or required by the Director-General.

(2) A person who contravenes any condition prescribed under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

#### **107. Requirements for transhipment**

(1) The operator of any vessel in the Kenya fishery waters and Kenyan flagged vessel operating in the high seas intending to take on board any fish by transhipment or any other means, shall—

- (a) only tranship—
  - (i) at the port of Mombasa or such other port in Kenya that may be designated by the Director-General;
  - (ii) at the time and date authorized for transhipment; and
  - (iii) pursuant to a valid and applicable authorization issued pursuant to this Act and on such terms and conditions that may be required by the Cabinet Secretary; and
- (b) notify the Director-General of such intention not less than seventy-two hours prior to the intended transhipment.

(2) Notification given under subsection (1)(b) shall include—

- (a) the vessel's name, radio call sign and fishing licence number where applicable;
- (b) full details of any catch on board the vessel;
- (c) the intended place, date and time of the transhipment;
- (d) the intended species and quantity of fish to be transhipped; and
- (e) the intended date and arrival time in Mombasa in order that supervisory arrangements can be made.

(3) Not less than seventy-two hours prior to transhipment, the operator shall apply to the Director-General for a transhipment or loading authorization as the case may be in accordance with the conditions and in such form as may be prescribed and prior to the issuance of such authorization shall pay the required fee.

(4) The transhipment or loading authorization shall specify when and where transhipment or loading shall take place and shall be subject to such conditions as the Cabinet Secretary may endorse.

(5) The operator of a fishing vessel shall—

- (a) not tranship at sea under any circumstances unless authorized by the Director-General;
- (b) only tranship at the time and port or other place authorized by the Director-General for transhipment;
- (c) cause the fish being loaded to be accurately weighed and recorded by species on board the vessel, and furnish the Director-General with daily copies of these records; and

- (d) during the transshipment operation give every assistance to any authorized officer, inspector or other person designated by the Ministry in the performance of official duties, including verification of the species and weight of the fish and determining when the transshipment operation has been completed.

(6) During transshipment in the Kenya fishery waters the operator of each fishing vessel shall comply with all applicable laws of Kenya relating to protection of the marine environment.

(7) Upon completion of the transshipment operation, the operator of each fishing vessel shall submit to the Director-General within seventy-two hours of the transshipment or before departing the Kenya fishery waters, whichever is earlier, a full transshipment report on each transshipment completed in the Kenya fishery waters on such form as may be prescribed and such other form or information which may be prescribed or otherwise required by the Director-General.

(8) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding fifty million shillings or to a term of imprisonment not exceeding five years or to both

#### **108. Deployment and maintenance of a fish aggregating device**

(1) No person shall deploy or maintain a fish aggregating device in the Kenya fishery waters except with the authorization by the Director-General and in accordance with such conditions as the Director-General may specify or as are otherwise specified in this Act.

(2) Conditions imposed under subsection (1) may include—

- (a) the method of use of the fish aggregating device;
- (b) its location;
- (c) the times during which it may be used; and
- (d) the markings or colourings to be adopted.

(3) No fish aggregating device shall be placed in such a way as to hinder or block marine traffic or be a hazard to navigation at sea.

(4) The authorization by the Director-General under this Act shall be in writing and may be in electronic form whether as a condition of licence or otherwise.

(5) Unless otherwise provided under this Act or specified by the Director-General, authority to place a fish aggregating device shall not confer any exclusive right to fish in the vicinity of the device.

(6) The master of any vessel placing a fish aggregating device shall notify the Director-General within twenty-four hours of such placement and of the nature and location of the device.

(7) Any person who contravenes subsection (1), (3) or (6) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

#### **109. Designated fish aggregating device**

(1) The Director-General may, by notice published in the *Gazette*, declare any fish aggregating device to be a designated fish aggregating device for the purposes of this Act.



(2) Subject to subsection (3), no person shall fish within a radius of one nautical mile from a designated fish aggregating device except with the permission of the Director-General and in accordance with such conditions as he/she may specify.

(3) The Cabinet Secretary may, by Public Notice, declare that any class of persons who are Kenya nationals may fish within a specified radius of a designated fish aggregating device or a class of designated fish aggregating devices.

(4) Any person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

#### **110. Markings, equipment for fish aggregating devices**

(1) No person, being the operator of a fishing vessel or any other person in apparent control of a fish aggregating device shall deploy a fish aggregating device unless it—

- (a) is clearly marked with the name of the owner and of the vessel from which such device was placed; and
- (b) is equipped with a radar reflector and such lights as are clearly visible at night from a distance of one nautical mile,

and has such other equipment or markings as the Director-General may from time to time require.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

#### **111. Disposal of unauthorized fish aggregating devices**

(1) No person shall use or dispose of a fish aggregating device in a manner other than in accordance with this Act or as may be required by the Cabinet Secretary.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to a term of imprisonment not exceeding one year or to both.

### **Fish processing and marketing**

#### **112. Conditions for fish processing licence**

(1) Each licence to operate a fish processing establishment shall be subject to the following conditions in addition to any other conditions required pursuant to this Act—

- (a) the fish processed shall not exceed the total amount permitted for that operation, including such limits on species and quantity as the respective county executive committee member responsible for fisheries may, in consultation with Director-General may set;
- (b) the operator of the fish processing facility shall ensure that—
  - (i) all relevant health, hygiene and environmental laws and standards of Kenya are complied with; and
  - (ii) no fish is accepted for processing which has been caught in illegal, unreported or unregulated fishing operations.
- (c) any change in the information submitted in the application form shall be notified to the respective county executive committee member

responsible for fisheries as soon as practicable and in any case not later than three working days from the date of change; and

- (d) each licensee shall comply with the requirements of applicable laws in Kenya relating to food safety.

(2) Each licence to engage in fish processing operations shall be posted in a conspicuous location and produced for inspection at the request of an officer or inspector authorized to carry out an inspection by the county executive committee member responsible for fisheries.

(3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

### **113. Period of validity, renewal, additional conditions and suspension of fish processing licence**

(1) The period of validity of each fish processing licence shall not exceed one year, and shall be subject to renewal on an annual basis.

(2) A fish processing licence may not be renewed where grounds for denial of a licence described in section 93 exist or where the licensee has not complied with any applicable requirement under the laws of Kenya, and shall not be renewed where the applicant has been convicted of any offence under this Act or any other law relevant to the operation of a fish processing operation and the requirements of the judgment have been fully met.

(3) Additional fees, terms and conditions may be amended or added during the period of validity.

(4) Notwithstanding any other provision of this Act, a fish processing licence may be suspended or terminated where there has been non-compliance with this Act, the conditions of the licence or any other law of Kenya and the cause of such non-compliance has not been rectified and any fine, penalty, damages or determination made under the law have not been duly paid.

### **114. Inspectors to request information and keep records**

(1) An inspector appointed under this Act shall request such information and keep such records in relation to fish processing operations as may be authorized under this Act or required by the Director-General or the county executive committee member responsible for fisheries, as the case may be.

(2) Information requested and records kept by an inspector in relation to fish marketing may include, inter alia, the following—

- (a) name of the seller;
- (b) name of the County;
- (c) name of the village the seller is from;
- (d) species of fish being sold;
- (e) number of fish being sold;
- (f) type of product being sold;
- (g) destination of the shipment;
- (h) name of the buyer;
- (i) date of sale;
- (j) date of shipment;

- (k) total weight of species being sold;
- (l) price per kilogram;
- (m) price of shipment;
- (n) means of transportation;
- (o) name of ship or plane;
- (p) number of flight or voyage; and
- (q) customs requirements.

(3) Any person to whom a request for information is made by an inspector shall promptly furnish such information.

(4) Each inspector shall, after inspection of a fish processing establishment, promptly provide the Director-General or the county executive committee member responsible for fisheries, as the case may be with a certificate of inspection.

(5) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

#### **115. Returns**

(1) For purposes of fishery conservation and management, the Director-General may require data returns from the sellers or buyers of such species the Director-General during such period species the Director-General specify, including information relating to the—

- (a) quantity of fish bought or sold;
- (b) name of the buyer or seller; and
- (c) origin of species sold or bought.

(2) Any person to whom a request for data returns is made by the Director-General pursuant to subsection (1) shall promptly furnish such information.

(3) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

### **Aquaculture**

#### **116. Establishment and operation of aquaculture**

(1) No person shall establish or operate a commercial aquaculture establishment otherwise than under the authority of, and in accordance with the conditions of, an aquaculture licence granted by the Director-General under section 122.

(2) Any person who—

- (a) establishes or operates an aquaculture establishment in contravention of subsection (1); or
- (b) harvests the products of such an establishment without the authority of the owner thereof commits an offence and shall be liable, for a first offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

(3) This section shall apply to such aquaculture establishments as the Director-General may by notice in the *Gazette*, prescribe.

#### **117. Registration of Aquaculture Establishment, notice of transfer**

(1) The owner or lessee of an aquaculture establishment shall register such establishment with the Director-General and shall, for the purposes of the registration, provide to the Director-General—

- (a) a full description of the establishment;
- (b) the name of the operator; and
- (c) such other particulars as the Director-General may require.

(2) A person who is a buyer or transferee of an aquaculture establishment shall, within fourteen days after the sale or transfer, give notice of the sale or transfer to the Director-General.

#### **118. Aquaculture permits**

(1) An application for an aquaculture permit shall be made to the Director-General in the prescribed form.

(2) An aquaculture permit shall—

- (a) confer on the holder exclusive rights to harvest the products of the aquaculture establishment within the area specified in the permit;
- (b) be subject to such conditions as appear to the Director-General to be necessary or expedient for the regulation of aquaculture, the management of fisheries or for the economic benefit of Kenya and, without prejudice to the generality of the foregoing, may contain conditions relating to—
  - (i) the siting, design and materials used in the construction of the aquaculture establishment;
  - (ii) sanitary conditions for fish and fish products;
  - (iii) measures for the prevention of the escape of fish farmed for aquaculture;
  - (iv) measures for the prevention of fish diseases;
  - (v) the marketing of the fish and fish products of the aquaculture establishment; and
  - (vi) measures to be taken to minimize the escape of waste products and the pollution of land and water.

(3) An aquaculture permit shall not be transferred without the prior written consent of the Director-General.

(4) The Director-General may approve the application subject to the applicant being granted, where applicable, an environment impact assessment licence under the Environmental Management and Co-ordination Act (Cap. 387).

#### **119. Application for an aquaculture licence**

(1) An application for an aquaculture licence shall be made to the Director-General in such form as may be prescribed or required by the Director-General and be accompanied by such documents and information as the Director-General may require, including proof that the applicant is legally entitled to use the land or other area designated as the proposed site.

(2) After receipt of an application pursuant to subsection (1), the Director-General shall ensure that any relevant environmental standards for the proposed aquaculture project are being met, including requirements for siting, emissions and other relevant matters under the Environmental Management and Coordination Act (Cap. 387) and may, in consultation with the relevant County, determine whether the applicant is required to submit an environmental assessment of the proposed aquaculture project.

(3) If the applicant is required to undertake an environmental impact assessment under the Environmental Management and Co-ordination Act (Cap. 387) the application shall be accompanied by a copy of any environmental impact assessment report and the recommendations of any body responsible for reviewing the environmental impact assessment report.

(4) The applicant shall give notice of the application, in such manner as may be prescribed and at the applicant expense, to such person or persons, including the public in general, as the Director-General may determine, and such notice shall invite all those to whom it is addressed to submit in writing to the Director-General, within thirty days from the date of the notice, any objections to or representations in connection with the application.

(5) If, before a licence is issued, there is any change in the particulars submitted under subsection (1) or, where an environmental assessment is required, any change in the information on which the environmental assessment is based, the applicant shall immediately communicate such change or changes in writing to the Director-General.

(6) A person who contravenes subsection (1), (4) or (5) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand only or to a term of imprisonment not exceeding one year or to both.

#### **120. Standards for approval of aquaculture licence**

(1) When considering an application submitted pursuant to section 122, the Director-General may have regard to—

- (a) the technical and financial ability of the applicant to exercise the rights sought in the application in a satisfactory manner;
- (b) the species of fish that the applicant proposes to farm and the method of aquaculture that the applicant proposes to employ; and
- (c) any other matters applicable to the licence that, in the opinion of the Director-General, are relevant.

(2) Where more than one person applies for a licence covering all or part of the same site, preference in relation to that site shall be given to the applicant who, in the opinion of the Director-General in consultation with the relevant County, is the best overall applicant based on the information contained in the applications.

#### **121. Inspection of proposed site**

(1) The Director-General may require an authorized officer to inspect any site proposed by a licence applicant for the establishment of an aquaculture establishment to determine the suitability or otherwise of such site for use as an aquaculture establishment.

(2) The Director-General may require an applicant to pay such fee for the inspection carried out pursuant to subsection (1) as may be prescribed.

**122. Conditions for aquaculture licences**

(1) The period of validity of each commercial aquaculture licence shall not exceed ten years, and shall be subject to renewal on an annual basis.

(2) The Director-General may issue an aquaculture licence subject to any conditions the Director considers appropriate, including conditions relating to—

- (a) the siting, design, equipment and materials to be used in the construction of the aquaculture establishment;
- (b) the control of species of aquatic life that may be introduced into such facility;
- (c) the promotion of sanitary conditions in the handling of fish and in the preparation and processing of fisheries and aquaculture products;
- (d) preventing the escape of fish from an aquaculture establishment;
- (e) preventing and controlling the spread of diseases to fish;
- (f) marketing of fish and fisheries products of an aquaculture establishment;
- (g) the disposal of dead fish or waste from an aquaculture establishment operated by the licensee including relevant consents and notifications required;
- (h) the control and monitoring of water quality in the aquaculture area;
- (i) the use of any chemicals or pharmaceuticals, drugs, antibiotics or other chemicals;
- (j) pollution in the proposed area of operation;
- (k) employment of a reasonable number of Kenya citizens;
- (l) the composition of the feed which may be used;
- (m) the types of manures or fertilizers which may be used;
- (n) the use of hormones for controlling reproduction or promoting growth;
- (o) the disposal of dead or diseased aquaculture products, material or waste resulting from aquaculture;
- (p) the keeping of records;
- (q) compliance with conditions under other relevant legislation in Kenya; and
- (r) such other conditions as may be required or prescribed.

(3) The Director-General may require as a condition of licence that—

- (a) such licence for aquaculture automatically terminate if the facility is not developed within the period of time specified on the licence.
- (b) the cost of any destruction or damage during the licensing period that is caused by the negligence or malpractice of the licence holder, including the endemic spread of diseases, shall be borne by the licence holder.

(4) A person who contravenes any condition issued under subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand or to a term of imprisonment not exceeding three years or to both.

**123. Exclusive rights**

An aquaculture licence shall confer on the holder exclusive rights to harvest the products of the relevant aquaculture establishment within the area specified in the licence.

**PART XI – COMPLIANCE WITH, LICENCES, AUTHORIZATIONS  
AND REQUIREMENTS FOR FISHING VESSELS**

**124. Unlicensed activities prohibited**

(1) No person shall, except under the authority of and in accordance with a valid and applicable licence or authorization issued pursuant to this Act—

- (a) on the person's own account or in any other capacity, engage in any activity;
- (b) cause or permit a person acting on their behalf to engage in any activity; or
- (c) use or permit a vessel to engage in fishing or a related activity of a kind or type, or at a time, or in a place or manner, for which a licence or authorization is required under this Act.

(2) For the purposes of this Act, where a vessel is used in the commission of an offence, the owner, operator, master and charterer shall each be deemed to have committed the offence.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand or to a term of imprisonment not exceeding five years or to both.

**125. Foreign fishing vessels**

Where a foreign fishing vessel—

- (a) enters the Kenyan fishery waters except for a purpose recognised by international law or relevant law of Kenya;
- (b) fishes within the territorial sea of Kenya, or
- (c) is used for fishing or fishing-related activities in the fisheries waters, except pursuant to the requirements of this Act,

the operator and master each commits an offence and shall each be liable on conviction to a fine not exceeding fifty million shillings or to an imprisonment of a term of more than one year or to both.

**126. Stowage of fishing gear**

(1) The operator and master of a—

- (a) a semi-industrial or industrial fishing vessel in any place in the Kenyan fishery waters; or
- (b) Kenya fishing vessel—
  - (i) navigating through an area under the jurisdiction of another State where it does not have a licence to fish; or
  - (ii) at all times when navigating in an area of the high seas to which international conservation and management measures apply where it has not been authorized to fish in that area pursuant to this Act,

shall ensure that all fishing gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing unless the vessel is authorized to engage in fishing in that area of the Kenyan fishery waters or the high seas in accordance with an international agreement, international conservation and management measures or authorization of another State recognized by Kenya as being applicable to the relevant area.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not less than five million shillings or to imprisonment for a term not less than five years or to both.

#### **127. Transshipment at sea prohibited**

(1) Except as otherwise provided pursuant to this Act, no person shall engage in transshipment activities at sea.

(2) Any person including the operator of a vessel used for transshipment, who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not less than ten million shillings or to a term of imprisonment not less than ten years or to both.

### **PART XII – REQUIREMENTS FOR FOREIGN FISHING VESSELS OR VESSELS FISHING UNDER CHARTER ARRANGEMENTS**

#### **128. Fisheries access**

(1) The Cabinet Secretary may, on behalf of the Government of Kenya and in accordance with the provisions of this Act, any applicable international agreement and national policies and strategies, and taking into account the advice of the Fisheries Advisory Council established under section 6, permit access by foreign fishing vessels to the fishery waters for fishing or fishing related activities.

(2) Permission under subsection (1) may be given pursuant to—

- (a) such international agreement, fisheries partnership agreement, joint venture or other written agreement or arrangement setting out the terms and conditions of fisheries access as are required pursuant to this Act and additional terms and conditions as may be recommended by the Director-General, with—
  - (i) States or regional economic integration organisations;
  - (ii) any fishing association or similar body;
  - (iii) a publicly incorporated company; or
  - (iv) such other persons or bodies as the Cabinet Secretary considers appropriate; and/or
- (b) an access right granted by the Cabinet Secretary, taking into account the provisions of subsections (1) and (2) and in consultation with the Director-General, in accordance with such conditions as he may require and as may be prescribed, including the—
  - (i) maximum number of such rights to be granted for a given period of time;
  - (ii) maximum period of time during which such right can be held;
  - (iii) fishery or fisheries to which rights-based access applies;
  - (iv) qualifications of applicants for such rights;
  - (v) procedures for application for such rights;



- (vi) criteria for the grant of such rights;
- (vii) conditions for the use of such rights;
- (viii) transferability of such rights; and
- (ix) conditions for the cancellation or revocation of such rights; or
- (c) a determination by the Cabinet Secretary, on the recommendation of the Director-General, that each vessel meets the requirements under this Act for licence issuance, including the standards for licence approval in section 90 and such other requirements that may be prescribed or required by national policy or by notice in the *Gazette* and—
  - (i) the vessel, its operator, master and beneficial owner have not engaged in or were not reasonably suspected to have engaged in illegal, unreported or unregulated fishing in any place during the five-year period prior to application for the license; and
  - (ii) the Cabinet Secretary determines there are clear benefits to Kenya for issuing such a licence.

(3) Fisheries access granted pursuant to subsection (2) shall be subject to this Act and such other terms and conditions as may be required by the Cabinet Secretary on the advice of the Director-General.

(4) The Director-General shall, in respect of each proposed arrangement, right and licence for fisheries access determine—

- (a) the estimated value of the fisheries to the other party; and
- (b) the designated area, an access fee and other required benefits to Kenya, except that such fee or benefits shall not include development assistance or benefits that are unrelated to the value of the fisheries access.

(5) Fisheries access shall be permitted solely for purposes of fishing or fishing related activities in the exclusive economic zone or at a designated port, and shall not be permitted for any activity in the territorial sea except for navigating directly through it to port.

(6) No licence or other authorization for fishing or fishing related activities shall be issued to a foreign fishing vessel unless fisheries access has been granted in accordance with this Act.

#### **129. Fisheries access requirements**

In addition to any other terms or conditions for fisheries access that may be prescribed or required, each agreement, arrangement, right, licence and authorization for fisheries access shall require—

- (a) the operator to comply with all laws of Kenya;
- (b) the operator to hold, in respect of the vessel, a valid and applicable licence or authorization from the State in which it is registered to carry out fishing or fishing related activities in the fisheries waters;
- (c) the operator to hold, in respect of the vessel, a valid and applicable license for fishing or fishing related activities issued in Kenya;
- (d) that the vessel is included on a list of authorized vessels maintained by any competent regional fishery body to which Kenya is a party or a cooperating non-party in accordance with the rules of that body;

- (e) that the vessel is not included on a list of illegal, unreported or unregulated fishing vessels maintained by any competent regional fishery body to which Kenya is a party or a cooperating non-party in accordance with the rules of that body, and that access shall automatically terminate should the vessel be included on such a list;
- (f) the other party to take all measures required to ensure compliance with the requirements for fisheries access and otherwise pursuant to this Act, including by posting a performance bond in accordance with section 134 if required;
- (g) where fisheries access is agreed with a corporation, association or other body acting on behalf of its members or other persons, it shall be liable for the undischarged liabilities of its members or other persons arising out of any operations under the agreement and the agreement itself, including fees;
- (h) that any trade-related undertakings are consistent with the rules of the World Trade Organization;
- (i) the flag States of the vessels to fully comply with their duties and responsibilities as flag States under international law and standards as reflected in international fisheries instruments;
- (j) fees, levies and other charges to be fully paid at the required time, and all other undertakings are discharged within a stated time, or access will automatically terminate should this not be done; and
- (k) such other requirements that may be made in accordance with the principles and objectives of this Act and as appropriate to implement any international obligation or undertaking of Kenya.

### **130. Fisheries access review**

(1) Fisheries access shall, if agreed for more than one year, be subject to annual renewal based on a review which shall assess, inter alia—

- (a) the compliance by the other party with the laws of Kenya and the terms of the access agreement, arrangement, right, licence or authorization;
- (b) the realized benefits to Kenya under the access agreement or arrangement for the preceding year;
- (c) the estimated value of the continuing fisheries access provided; and
- (d) such other matters as may be prescribed or required by the Cabinet Secretary in accordance with this Act.

(2) Fisheries access may be terminated or suspended at any time by the Cabinet Secretary on the advice of the Advisory Council and Director-General—

- (a) according to its terms or upon material non-compliance by the other party with this Act or any other requirement for fisheries access, and the other party shall be given reasonable notice of such termination or suspension to ensure the prompt termination of fishing or fishing related activities; or
- (b) that continued fishing at current levels would pose a risk to the fish stocks based on a precautionary approach, or on such other ground for suspension or limitation as may be specified in this Act.

(3) Suspension of fisheries access or fishing in accordance with subsection (2) or (3) may be for such time or until such conditions are met as the Cabinet Secretary may require.

**131. Requirements for joint venture and charter agreements, rights and vessel licensing for foreign fishing vessels.**

(1) No agreement governing joint ventures, or the chartering of any foreign fishing vessel for fishing or fishing related activities within or beyond the Kenya fishery waters, whether or not it involves changing the registration of the vessel, shall be valid unless and until it is approved by the Cabinet Secretary on the advice of the Director-General.

(2) A joint venture or charter agreement may be approved only where the following requirements are fully met—

- (a) a charter agreement vests operational control of the foreign fishing vessel in a Kenya citizen, resident or registered company;
- (b) the joint venture or charter agreement provides clearly identifiable benefits with no adverse effects to Kenya, its fisheries or its marine environment, including—
  - (i) development of the Kenya fishing industry;
  - (ii) training of Kenya citizens;
  - (iii) foreign exchange earnings for Kenya;
  - (iv) investment in Kenya;
  - (v) landing and domestic distribution activities; and
  - (vi) development of export activities;
- (c) establishment of a company under the Companies Act (Cap. 486), with specified ownership, control and equity by Kenya citizens;
- (d) the joint venture, charter agreement, right or vessel approved under this Act, is in full compliance with all applicable laws in Kenya;

**132. Agents or companies to designated for purposes of legal process, information**

(1) The operator of each foreign fishing vessel licensed pursuant to section 131 shall designate an agent in accordance with the terms of such agreement authorised to accept on behalf of the company service of process and any notices required to be served on the company and to provide such information as may be required under this Act with respect to the vessel and its activities, operator, master and crew members.

(2) Notwithstanding subsection (1), where a company has been established under the Companies Act for purposes of obtaining a licence for fishing or fishing related activities under this Act, such company shall designate in writing to the Director-General promptly upon its incorporation—

- (a) the full address of the registered or principal office of the company and their principal place of business in Kenya;
- (b) the present name and any former forename or surname, address and occupation of the person authorised to manage the company in Kenya;

- (c) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company; and
- (d) the names and addresses of one or more persons continuously resident in Kenya authorised to accept on behalf of the company service of process and any notices required to be served on the company and to provide such information as may be required under this Act with respect to the vessel and its activities, operator, master and crew members,

(3) In the event of any alteration being made in the instrument or in the address or in the directors or managers or in the names or addresses of such persons, the company shall promptly deliver to the Director-General a notice of the alteration.

(4) Each agent designated pursuant to subsections (1) and (2) shall—

- (a) be continuously resident in Kenya;
- (b) have no record of conviction;
- (c) have no record of association with illegal, unreported or unregulated fishing activities;
- (d) where relevant carry out duties as required pursuant to the Companies Act, and other laws in Kenya relating to agents;
- (e) provide such information as may be required pursuant to this Act in relation to the relevant foreign fishing vessel, subject to the section 85 on rules of confidentiality in this Act;
- (f) receive and respond to legal process with respect to the vessel and its activities, operator, master and crew members;
- (g) comply with all laws of Kenya;
- (h) not exceed the authority as an agent; or
- (i) not engage in any activity that constitutes or is likely to constitute a conflict of interest with his or her duties and responsibilities of the agent under this Act and the laws of Kenya.

(5) The operator of each foreign fishing vessel required to designate an agent pursuant to subsection (1) or (2) shall ensure that the agent—

- (a) has full legal authority and is sufficiently informed at all times in order to carry out assigned responsibilities pursuant to this Act including the requirements in subsection (3); and
- (b) complies with all requirements in subsection (3).

(6) No licence shall be issued to a foreign fishing vessel unless an agent has been designated in accordance with this section.

(7) Where any operator does not comply with subsection (4), the licence may be—

- (a) suspended for such period as the Director-General, in consultation with the Cabinet Secretary, thinks fit, but not less than one month; or
- (b) revoked, and the operator shall fully disclose information regarding the agreement between the operator and the agent in addition to the requirements of section 102 of this Act.

(8) A person who contravenes the requirements of subsections (1), (2), (3) or (4) of this section commits an offence and shall be liable on conviction to a fine

not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

### **133. Preference for Kenya products**

The holder of a licence issued for purposes of fisheries access pursuant to this Part shall, in the conduct of all relevant activities, give preference to:

- (a) materials and products made in Kenya;
- (b) service agencies located in Kenya and owned by—
  - (i) Kenya citizens;
  - (ii) companies or partnerships incorporated or registered in Kenya; and
  - (iii) public corporations.

### **134. Performance bond**

(1) The Cabinet Secretary may require either as a precondition of issuing a licence to any fishing vessel other than a Kenya fishing vessel, or at any time during the licensing period, that a performance bond be provided by the applicant in accordance with such procedures and in such form as may be prescribed.

(2) Performance bonds prescribed under subsection (1) shall serve as a financial assurance for the fulfilment of all obligations arising out of the licence and this Act, including potential costs relating to rescue, recovery of other costs and fines, penalties or compensation for violations against this Act, and shall be drawn upon in such manner as may be prescribed.

(3) The amount of financial assurance provided under this section shall be determined by the Director-General in consultation with the Board and having regard to any applicable fishery management plan and the value of the relevant fishery—

(4) The forms of financial assurance acceptable under this section may be any or a combination of the following—

- (a) surety bond;
- (b) trust fund with pay-in period;
- (c) insurance policy;
- (d) cash deposit;
- (e) annuities.

(5) Where a licence-holder is obligated to provide a financial assurance under this section and fails to do so, the Director-General shall—

- (a) cause a notice of demand to be served on the licence-holder a notice of demand; and
- (b) cause a note of the service of the notice to be registered in a Magistrate's Court.

(6) If by the end of the period specified in the notice of demand under subsection (5) the financial assurance required from the licence-holder under this section—

- (a) has been provided, the notice shall thereupon cease to have effect, and the Director-General shall cause the registry endorsement to be cancelled; or
- (b) has not been provided, the applicable licence shall be liable to cancellation by the Cabinet Secretary.

**135. Force majeure or distress**

A foreign fishing vessel may be permitted entry into port for reasons of force majeure or distress exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

**PART XIII – MONITORING, CONTROL AND SURVEILLANCE****Powers of authorized officers****136. Authority and general powers of authorized officers**

(1) An authorized officer may do all such acts and things and give such directions as are reasonably necessary for the purposes of exercising any of his/her powers under this Act.

(2) An authorized officer may use such force as may be reasonably necessary to enable the exercise of his or her powers under this Act.

(3) An authorized officer bringing or ordering a vessel to a place in Kenya in accordance with this Act, or in other circumstances where the need for assistance in enforcing this Act is immediate and overwhelming, may require any person to assist him or her, and that person shall be deemed to be an authorized officer for the purposes for and time during which the authorized officer is required to act.

(4) Where an authorized officer is required to undertake duties in areas beyond national jurisdiction, unless provided otherwise in an international agreement or arrangement, the provisions of this Act are applicable as if the duties were performed within areas under national jurisdiction.

(5) Where an authorized officer has been appointed in accordance with section 18 or is otherwise serving under the authority of another State where such State is party to an applicable international agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or cooperatively with the Government of Kenya, he or she shall make such reports to the Director-General as may be required pursuant to the terms of such international agreement or arrangement.

(6) Monitoring Control and Surveillance (MCS) in this section means "the mechanism for implementation of agreed policies, plans or strategies for oceans and fisheries management and includes collection, measurement and analysis of data and information on fishing activities and using the same to specify the terms and conditions under which fisheries resources can be harvested; checking and supervising fishing activities to ensure all applicable laws and regulations are being observed by the fishers and all licence holders and the components include surveillance on land, air and the sea."

**137. Identification of authorized officers**

(1) An authorized officer in exercising any power conferred by this Act shall, upon request, identify himself or herself and produce evidence that he or she is an authorized officer.

(2) The production by any authorized officer of any identification document issued to him or her shall, until the contrary is proved, be sufficient authority for any such authorized officer to do anything which he or she is authorized by this Act to do.

**138. Declaration of boarding and inspection**

(1) Authorized officers, inspectors, observers and other personnel conducting boarding and inspection of fishing vessels shall certify their presence by signing such Declaration of Boarding and Inspection form as may be prescribed or required by the Director-General and promptly providing it to the Director-General.

(2) The Boarding and Inspection Form referred in subsection (1) shall be completed by an authorized officer or inspector who has participated in the boarding and inspection of a fishing vessel pursuant to this Act, other than a boarding and inspection in port, and such authorized officer or inspector shall promptly provide it to the Director-General.

**139. Powers of hot pursuit**

An authorized officer may, following hot pursuit from within the Kenya fishery waters in accordance with international law, stop board and search outside the fisheries waters any vessel which the authorized officer has reasonable grounds to believe has been used in the commission of an offence under this Act, exercise any powers conferred by this Act and bring such vessel and all persons and things aboard back into the Kenya fishery waters.

**140. Powers of entry and search of authorized officers**

(1) An authorized officer may, in the performance of his functions under this Act, without a warrant at any reasonable time—

- (a) stop, enter, board, stay on board, examine and search any vessel, vehicle or aircraft, including—
  - (i) any Kenya vessel outside the fisheries waters; and
  - (ii) any other vessel to which this Act or any international agreement applies;
- (b) enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, or which are part of or attached to a dwelling house, which the authorized officer reasonably suspects are used for activities falling within the scope of this Act and —
  - (i) in or on which he has reason to suspect that evidence of an offence against this Act may be found; or
  - (ii) which it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with;
- (c) stop any person and examine any record, article, container, gear, apparatus, device, or fish in the possession of that person; and
- (d) pass across any land, and may examine and search any document, record, article, container, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.

(2) An authorized officer may detain any person, vessel, vehicle, or aircraft, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable the authorized officer to carry out an examination or search under this section.

(3) An authorized officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this section with a warrant issued by a court of competent jurisdiction.

**141. Power to take, detain, remove and secure information and evidence**

(1) An authorized officer may, for purposes and activities falling within the scope of this Act—

- (a) inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;
- (b) make or take copies of any record, and for this purpose may take possession of and remove from the place where they are kept any such records, for such period of time as is reasonable in the circumstances;
- (c) if necessary, require a person to reproduce, or assist the authorized officer to produce in a useable form, information recorded or stored in a document;
- (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this Act, to provide such information as may be reasonably required for the monitoring or enforcement of this Act; and
- (e) otherwise remove and secure any item that may reasonably be considered to be evidence of an offence against this Act.

(2) Where an authorized officer is questioning a person pursuant to subsection (1), among other things—

- (a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, buying, trade, import, export or possession of any fish; and
- (b) require that person or any other person to produce any permit, authority, approval, permission, licence, certificate or other document issued in relation to any vessel or person.

**142. Power of arrest**

(1) An authorized officer may, arrest any person—

- (a) whom he believes, on reasonable grounds, is committing or has committed an offence under this Act;
- (b) who assault him or any other authorised officer, inspector, observer or fishery dock observer in the exercise of his powers or performance of his functions under this Act, or

(2) If an authorized officer arrests a person under subsection (1) the authorized officer shall cause the person to be delivered into the custody of a member of the Kenya Police Force as soon as practicable and that person shall thereafter be dealt with in accordance with the relevant law or laws.

**143. Power to give direction**

(1) An authorized officer may, if he believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any license, authorization, authority, approval, permission, registration or certificate issued or otherwise effected under this Act—



- (a) order the vessel as soon as reasonably practicable to the nearest available port in Kenya or such port as may be agreed between the master and the authorized officer; and
- (b) remain in control of the vessel at such port for such period as may be reasonably necessary for the purpose of the authorized officer to exercise any other powers under this Act, until the authorized officer permits the master to depart from that place, provided that the period shall not exceed seventy-two hours in total where there are no reasonable grounds to suspect contravention of this Act.

(2) After an authorized officer has given a direction under subsection (1), the authorized officer may also give to the master or any other person on board the vessel any reasonable direction in respect of any activity, method, procedure, item, gear, document, fish, property or thing while the vessel is proceeding to or remains in port.

#### **144. Seizure of vessels, etc**

(1) For the purposes of this section—

- (a) a vessel's equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel;
- (b) aircraft operating independently of a vessel shall be subject to this section; and
- (c) "Court" means the High Court.

(2) An authorized officer may seize:

- (a) any vessel or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment or thing which the authorized officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act;
- (b) any fish which the authorized officer believes on reasonable grounds is being, or has been taken, killed, transported, bought, sold or found in the possession of any person in contravention of this Act and any other fish with which such fish is intermixed;
- (c) any article, record or thing which the authorized officer believes on reasonable grounds may be or may contain evidence of an offence against this Act;
- (d) retain any passport and seaman's book—
  - (i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;
  - (ii) of any person arrested, until that person is brought before a court; or
  - (iii) pursuant to any order of the Court; and
- (e) any other item which the authorized officer has reasonable grounds to believe—
  - (i) has been or is being used in the commission of an offence against this Act;
  - (ii) has been seized or forfeited under this Act; or
  - (iii) has been unlawfully removed from the custody under this Act.

(3) Anything seized pursuant to subsection (1) shall be delivered into the custody of the Director-General.

(4) The authorized officer shall supply a written notice of seizure stating the reasons thereof to the person from whom any article or thing is seized or any person whom the authorized officer believes is the owner or is otherwise entitled to possession of the article or thing seized.

#### **145. Removal of parts from seized vessels, etc**

(1) An authorized officer may remove any part from the vessel seized pursuant to this Act for the purpose of immobilizing that vessel where the operator is in co-operative but in any event, the authorized officer shall take reasonable measures to ensure that such removal shall not cause a permanent or material damage to the vessel.

(2) Any part or parts removed under subsection (1) shall be kept safely and returned to the master or owner of the vessel upon release.

(3) No person shall, otherwise than an authorized acting under the authority of the Director-General—

- (a) hold or arrange to obtain any part or parts removed under subsection (1);
- (b) hold or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or
- (c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilised pursuant to this Act.

(4) A person who contravenes subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

#### **146. Authority of authorized officer or inspector in relation to abandoned fishing vessels, fishing gear, fish or fish products**

(1) Where an authorized officer has reason to believe that any fishing vessel, fishing gear, fish or fish product has been abandoned for the purpose of avoiding prosecution, he shall apply to the Court for an Order to dispose of the fishing vessel, fishing gear, fish or fish product.

(2) Where a fishing vessel or fishing gear or fish product is abandoned, and an authorized officer or inspector believes that any person is liable to be investigated, searched or arrested in connection with a commission of an offence under this Act, or that such person has absconded to any place within or outside Kenya, or has concealed himself so that he cannot be searched, arrested or otherwise investigated, the authorized officer or inspector may cause investigation measures to be taken in relation to the area or premises and property previously in possession, occupation or under control of the suspect.

#### **Appointment and functions of observers and inspectors**

#### **147. Observer programme**

(1) There shall be established an observer programme Board for the purpose of collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including, among other things—

- (a) the species, quantity, size, age, and condition of fish taken;

- (b) the methods by which, the areas in which, and the depths at which, fish are taken;
- (c) the effects of fishing methods on fish, and the environment;
- (d) all aspects of the operation of any vessel;
- (e) processing, transportation, transshipment, storage, or disposal of any fish;
- (f) monitoring the implementation of management measures and applicable international conservation and management measures; and
- (g) any other matter that may assist the Director-General to obtain, analyse, or verify information for fisheries scientific, management, and compliance purposes.

(2) Observers may be deployed as may be directed by the Director-General in accordance with this Act, or any applicable international agreement or arrangements, including an agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or in co-operation with the Government of Kenya, or any international conservation and management measures on any vessel used for fishing, transshipment, transportation or landing of fish within and beyond the Kenyan fishery waters and such other uses as may fall within the scope of this Act.

#### **148. Appointment of, and identification by inspectors and observers**

(1) The Director-General may, in writing, appoint—

- (a) inspectors for purposes of monitoring compliance and management and auditing, including inspections of vessels, premises and facilities and aquaculture establishments to gather information, and report on the fulfilment of pre-licensing requirements and any obligations pursuant to this Act; and
- (b) observers for purposes of the observer programme established under section 147, in accordance with such standards and procedures as may be prescribed or approved by the Board.

(2) An inspector or observer shall on request identify himself and produce proof of identification as an inspector or observer.

#### **149. Application of Act to observers in areas beyond national jurisdiction**

Any observer who performs duties in areas beyond national jurisdiction in accordance with this Act, any international agreement or international conservation and management measures shall, unless the contrary is provided, continue to be subject to all provisions of this Act, and all proof of identification as an operators, crew members or other relevant persons towards such observer under this Act shall be fully applicable.

#### **150. Requirements for monitoring of off loading**

(1) The operator of any fishing vessel required as a condition of licence granted to it to land all or part of its catch in Kenya shall cause such landings to take place only where an observer or inspector is present to monitor the offloading and otherwise perform his/her functions pursuant to this Act.

(2) An operator who does not comply with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand

shillings, and in addition the applicable licence shall be cancelled and no further licence shall be issued for at least one year from the time of the offence in respect of the vessel or operator.

**151. Duties of operators. etc, to inspectors and observers**

(1) The operator and each crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed or to which an inspector or fishery dock observer has been assigned, shall allow and assist the inspector, observer or fishery dock observer, in the performance of his official duties, and shall allow the inspector, observer or dock observer to—

- (a) board such vessel at such time and place as the Director-General may require;
- (b) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;
- (c) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as he may have taken or used on board the vessel;
- (d) gather such information relating to fisheries as may be required for purposes of carrying out the objectives of this Act; and
- (e) disembark at such time and place as the Director-General may require or in accordance with an applicable access agreement, provided it is in accordance with the safe operation of the vessel.

(2) The provisions of subsection (1) shall apply—

- (a) when the vessel is at any place in the fisheries waters or such other place where fish taken from the fisheries waters is unloaded or transhipped as may be required in the applicable licence, access agreement or international conservation and management measures, or as may be otherwise authorized under any applicable access or other agreement, or in the applicable licence; and
- (b) in the case of a Kenya fishing vessel operating under an authorization to fish in the high seas in areas subject to international conservation and management measures, when the vessel is on the high seas in an area subject to such international conservation and management measures or otherwise in accordance with such measures or the applicable license or authorization.

(3) An operator and crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed or an inspector is assigned in accordance with this Act who does not comply with subsection (1) commits an offence and shall be liable on conviction to a fine not less than ten million shillings or to a term of imprisonment not less than five years or to both.

**152. Conditions for observers**

(1) The operator and licence holder in respect of any vessel on which an observer is placed shall—

- (a) provide full board, accommodation and access to any (cooking and toilet) facilities and amenities at officer level or similar standard approved in writing by the Director-General and free of charge at all times;

- (b) provide a safe work area adjacent to the sample collection site, for sampling and storage of fish to be sampled, of 4.5 square meters, including the observer's sampling table and which permits the observer to stand upright and have a work area at least 0.9 m deep in the area front of the table and scale;
- (c) notify the observer at least fifteen minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer;
- (d) collect bycatch when requested by an observer;
- (e) collect and carry baskets of fish when requested by an observer;
- (f) allow an observer to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch;
- (g) take measurements, including of decks, codends, and holding bins; and
- (h) ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of any observer involved.

(2) An operator or licence holder of a vessel who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding three years or to both, and in addition the applicable licence or authorization may be suspended or cancelled.

### **Protection of and duties owed to authorized persons**

#### **153. Authorized persons**

For the purposes of this portion, "authorized person" includes any authorized officer, inspector or observer appointed pursuant to this Act.

#### **154. Protection of authorized persons from liability**

(1) No liability shall attach to the Service and its officers, employees or other persons acting under the authority of the Service, including persons with delegated authority and any person assisting an authorized officer pursuant to section 19, for any damage sustained by any person as a result of any act or omission done or made in good faith in performance of their duties under this Act or any other law relating to fisheries.

(2) Where a vessel is being brought to a place in Kenya in accordance with this Act,

- (a) and the master is required to remain in control the master shall be responsible for the safety of the vessel and each person on board the vessel until the vessel arrives at the designated place; and
- (b) no claim may be made against any authorized person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.

(3) The State shall not be held directly or indirectly liable for an act or omission of any authorized person or person assisting an authorized officer, unless such person would incur liability for the act or omission.

**155. Insurance for authorized persons**

The Service shall ensure full group insurance coverage for all authorized persons.

**156. Obstruction, etc of authorized persons**

(1) For the purposes of this section "fail" includes any effort which does not result in meeting the specified requirement.

(2) No person being the operator or a crew member of a vessel—

- (a) fail or refuse to allow and assist any person identified as an authorized person—
  - (i) to safe board the vessel;
  - (ii) to have full access to and use of all facilities, gear and equipment on board which such authorized person may determine are necessary to carry out his duties, including full access to the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish; that are not of a specified size or dimension;
  - (iii) to have full access to the vessel's records including its logs, charts and documentation and other information relating to fishing, whether required to be carried and maintained under this Act or otherwise, for purposes of carrying out functions and exercising powers under this Act, including records inspection and copying;
  - (iv) to have access to all navigational and communications equipment;
  - (v) to take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes;
  - (vi) where such person is forced by circumstances to stay on board the vessel for a prolonged period of time, provide him, while on board the vessel, with food, accommodation and medical facilities equivalent to that accorded to officers of the vessel, at the expense of the operator; and
  - (vii) to safe disembark from the vessel;
- (b) fail or refuse to allow an audit, inspection, examination or search which is authorized by or under this Act to be made or impedes the conduct of such audit examination or search;
- (c) in respect of any premises, facility, including those used for aquaculture, cold storage, export and processing, landing site or other place where person(s) engage in activities within the scope of this Act fail or refuse to facilitate by all reasonable means the entry into and inspection by an authorized person in accordance with this Act of—
  - (i) the entire premises, facility, landing site or other place including storage areas; and
  - (ii) any fish or fish product, fishing gear, equipment or records;
- (d) fail, refuse or neglect to immediately and fully comply with every lawful instructions or directions given by an authorized person;

- (e) deny a request by an authorized person made in the course of exercising his duties and powers under this Act, including requests for access to records, documents, areas, gear and navigation and communication equipment, and that the equipment be turned on for his or her use;
- (f) when lawfully required to state his name, date of birth and place of abode to an authorized person fail or refuse to do so, or state a false name, date of birth or place of abode to the authorized person;
- (g) when lawfully required by an authorized person to give information, give information which is false, incorrect or misleading in any material respect;
- (h) resist lawful arrest for any act prohibited by this Act;
- (i) aid, incite or encourage another person to assault, resist, intimidate or obstruct an authorized person who is carrying out his/her duties or exercising his powers under this Act, or any person lawfully acting under a authorized officer's instructions or in his/her aid;
- (j) interfere with, delay or prevent by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act in contravention of this Act;
- (k) fail or refuse to allow an authorized person to carry out all duties safely, or to take all reasonable measures to ensure the safety of an authorized person as appropriate in the performance of his duties;
- (l) impersonate or falsely represent himself or herself to be an authorized officer, or to be a person lawfully acting under the Director-General's instructions or in his aid;
- (m) impersonate or falsely represent himself to be the master or an officer, or not to be the master or an officer, of a fishing vessel;
- (n) where the vessel is seized by an authorized person, fail to sail such vessel to a place in Kenya designated by the authorized officer or fail to ensure the safety of all those on board;
- (o) bribe or attempt to bribe an authorized person;
- (p) interfere with an authorized person in the performance of his duties; or in any other way obstruct or hinder an authorized person in the exercise of his powers, duties or functions under this Act;
- (q) use abusive or threatening language or insulting gestures or behave in a threatening or insulting manner towards an authorized person who is carrying out his duties or exercising his/her powers under this Act, or towards any person lawfully acting under the authorized officer's instructions or in his aid; or
- (r) obstruct, resist, delay, refuse boarding to, intimidate, or kidnap an authorized person who is performing his duties or exercising his powers under this Act, or any person lawfully acting under a authorized officer's instructions or in his aid; or
- (s) breach any other duty to an authorized person as required under this Act.

(3) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not less than fifty million shillings or to a term of

imprisonment not exceeding ten years or to both, and in addition the applicable licence may be suspended or cancelled.

### **Requirements for vessel monitoring systems**

#### **157. Vessel Monitoring Systems**

(1) The Director-General may establish and operate vessel monitoring systems for purposes of monitoring, control and surveillance, and managing the operations of fishing vessels under this Act.

(2) The Director-General may require the operator of any fishing vessel, as a condition of licence or otherwise, to install, maintain and operate in accordance with such conditions as may be prescribed and such other conditions that may be required by the Director-General, a mobile transceiver unit or other device or equipment that is an integral component of a vessel monitoring system at all times while the fishing vessel is in the fishery waters or, in respect of a Kenya fishing vessel, in areas beyond national jurisdiction or such other area as may be prescribed or agreed in an international agreement or international conservation and management measures.

(3) The operator of each fishing vessel shall comply with all licence conditions and requirements imposed pursuant to subsection (2) and shall, where the mobile transceiver unit or other device or equipment ceases to operate, immediately—

- (a) notify the Director-General when the mobile transceiver unit or other device ceases to operate in accordance with such requirements; and
- (b) cause the vessel to cease fishing except as otherwise authorized by the Director-General.

(4) Where the mobile transceiver unit or other device ceases to operate as required, the operator shall immediately notify the Director-General and submit to him a report of the vessel's name, call sign, position expressed in latitude and longitudes to the minutes of arc and the date and time of the report at intervals of four hours or such other period as the Director-General may notify the operator, and—

- (a) cause the vessel to cease fishing except as otherwise authorized by the Director-General; or
- (b) cause the vessel to immediately return to the port of Mombasa, Lamu and Shimoni.

(5) The operator shall comply with such other conditions that may be prescribed and such additional conditions that may be required by the Director-General, including:

- (a) the type of vessel monitoring system equipment to be used;
- (b) installation procedures;
- (c) operational requirements;
- (d) information requirements;
- (e) confidentiality; and
- (f) reports.

(6) No person shall—

- (a) without lawful excuse render inoperative or otherwise interfere with a mobile transceiver unit or other device installed pursuant to this Act so



that it fails to operate accurately or in accordance with any prescribed conditions;

- (b) whether within, or in areas beyond, national jurisdiction, intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any part of mobile transceiver unit or vessel monitoring system aboard a vessel licensed pursuant to this Act, or intentionally feed or input into that system information or data which is not officially required or is meaningless; or
- (c) intentionally, recklessly or negligently divulge information or data obtained from a vessel monitoring system or a system of reporting or recording required or permitted under this Act, other than in the course of duty and to a person or persons entitled to receive that information or data.

(7) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not less than ten million shillings or to imprisonment for a term less than ten years or to both, and in addition the applicable licence may be suspended or cancelled.

#### *Requirements for use of ports*

### **158. Use of port without authorization prohibited**

(1) No foreign fishing vessel shall use a port in Kenya for landing, transshipping, packaging, or processing of fish or for other port services including, *inter alia*, refuelling and resupplying, maintenance and dry docking, unless—

- (a) the port has been designated for use by foreign fishing vessels;
- (b) the operator has given at least forty-eight hours' advance notice or such other notice as may be prescribed or required by the Director-General;
- (c) the operator has provided to the Director-General such information as may be prescribed or required;
- (d) in the case of a foreign fishing vessel, a written authorization for the use of such port has been issued by the Director-General; and
- (e) where the Director-General has authorized entry of such vessel into port, the master of the vessel or, in the case of a foreign fishing vessel, the vessel's representative presents the authorization for entry into the port to an authorized officer or other competent officer upon the vessel's arrival at Port.

(2) The operator, master and charterer of a vessel which contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

### **159. Vessels may be prohibited from entering port**

(1) Authorization to enter a port shall be denied where there is sufficient proof that a vessel seeking entry into port has engaged in illegal, unreported and unregulated fishing, or in fishing-related activities in support of illegal, unreported and unregulated fishing, or appears on a list of vessels which have engaged in such fishing or fishing related activities adopted by a regional fisheries management organization in which Kenya is a member or cooperating non-

member, in accordance with the rules and procedures of such organization and in conformity with international law.

(2) Without prejudice to subsection (1), authorization for a vessel to enter a port may be given exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring or eliminating illegal, unreported and unregulated fishing and fishing-related activities in support of illegal, unreported and unregulated fishing.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not less than fifty million shillings or to imprisonment for a term not less than ten years or to both.

#### **160. Denial of the use of port to a foreign fishing vessel**

(1) Where a foreign fishing vessel has entered one of its ports, the Director-General shall deny that vessel the use of the port for the landing, transshipping, packaging or processing of fish which have not been previously landed, or for refuelling, resupplying, maintenance, dry-docking and other port services where—

- (a) the vessel does not have a valid and applicable authorization to engage in fishing or fishing-related activities required by its flag State;
- (b) the vessel has not been granted a valid and applicable licence to engage in fishing or fishing related activities required under this Act;
- (c) there is clear evidence that the fish on board was taken in contravention of applicable requirements of any coastal State in respect of areas under the national jurisdiction of that coastal State;
- (d) the flag State of any foreign fishing vessel does not confirm within a reasonable period of time on the request of the Director-General that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
- (e) there are reasonable grounds to believe that the vessel was otherwise engaged in illegal, unreported or unregulated fishing or fishing-related activities in support thereof unless the operator of the vessel can establish—
  - (i) that it was acting in a manner consistent with relevant conservation and management measures; or
  - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not at the time of provisioning a vessel referred to in subparagraph (e);

(2) Notwithstanding subsection (1), a vessel shall not be denied the use of port services essential to the safety and health of the crew and the safety of the vessel, provided these needs are duly proven, or, where appropriate, for the scrapping of the vessel.

(3) The operator of a vessel which uses a port where such use has been denied pursuant to subsection (1) commits an offence and shall be liable on conviction to a fine not less than fifty million shillings or to imprisonment for a term not less than ten years or to both.

(4) Any person who, knowing or having reasonable cause to believe which a vessel has been denied the use of port, takes any action in assisting such vessel

to use the port, or to provide it with goods or services which have been denied, commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years or to both.

#### **161. Inspection of foreign fishing vessels in port**

(1) In carrying out inspections of fishing vessels in port, authorized officers shall follow such procedures as may be prescribed or the Director-General may require to the extent possible, and—

- (a) present to the master of the vessel an identification document prior to an inspection;
- (b) in case of appropriate arrangements with the flag State of a foreign fishing vessel, invite that State to participate in the inspection;
- (c) not interfere with the ability of the master of a foreign fishing vessel, in conformity with international law, to communicate with the authorities of the flag State;
- (d) make all possible efforts to—
  - (i) avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of authorized officers on board, and to avoid action that would adversely affect the quality of the fish on board;
  - (ii) facilitate communication with the master or senior crew members of the vessel; and
- (e) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel.

(2) A report of the inspection shall promptly be provided to the Director-General in such form as may be prescribed or as the Director-General may require.

### **PART XIV – REQUIREMENTS FOR ARRESTED PERSONS AND SEIZED ITEMS**

#### **162. Arrest or detention and release of foreign fishing vessels, crew members**

(1) In cases of arrest or detention of foreign fishing vessels for a contravention of this Act, the Director-General shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

(2) Any foreign fishing vessel and its crew arrested for the contravention of any provision of this Act that governs any act of fishing or fishing-related activity shall be promptly released upon the posting of a reasonable bond or other security.

(3) In the absence of any agreement to the contrary with the State of which the vessel or its crew are nationals, penalties for violations of this Act in the Kenya Exclusive Economic Zone shall not include imprisonment or any form of corporal punishment.

#### **163. Prompt judicial or administrative proceedings for arrested persons**

(1) A person arrested under this Act shall promptly be brought before the Court of applicable jurisdiction or be subject to administrative proceedings in accordance with this Act.

(2) Where a person is released without being charged or where prosecution is not instituted within thirty days after a person is charged, all items seized shall be returned to the person.

(3) Where a person does not appear to answer a charge within ninety days after her arrest, any item seized from that person shall be forfeited to the State.

#### **164. Conditions for bail**

If the master of a fishing vessel is granted bail for an offence under this Act, the court granting bail may, if it thinks it necessary or desirable in the circumstances of the case, impose a condition whereby, pending the conclusion of the case, the accused is denied access to the vessel or is allowed access only on conditions determined by the Court.

#### **165. Delivery and notice for seized items**

(1) Any item seized pursuant to this Act shall be delivered into the custody of the Director-General.

(2) A written notice shall be given to the person from whom any article or item was seized or to any other person whom the fisheries inspector believes is the owner or person otherwise entitled to possession of the article or item seized and the grounds for such seizure shall be stated in the receipt.

#### **166. Disposal of perishable items**

(1) Any fish or fish products seized by an authorized officer under this Act may, at the direction of the Director-General, be sold and the proceeds of the sale held and dealt with pursuant to this Act.

(2) If any fish or other thing of a perishable nature is seized under this Act, the Director-General may, notwithstanding any other provision of this Act—

- (a) return the fish or other thing to the person from whom it was seized on receiving adequate cash security equivalent to the value of the fish or thing; or
- (b) cause the sale of the fish or other thing at a price which is reasonable in the circumstances, and, if court proceedings are instituted, pay the proceeds of the sale into a suspense account of the Service pending a court order in respect of the forfeiture of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized:

Provided that if, after making all reasonable efforts, the Director-General is unable to sell the fish or other thing, or where such fish or other things are unfit for sale, he may dispose of the same in such other manner as he deems fit, including by destruction.

(3) Where any fish or fish products are sold or otherwise disposed of pursuant to this section, the fisheries inspector shall—

- (a) give the person from whom such fish or perishable goods was 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 realized; and
- (b) pay the proceeds of sale into Court.

(4) The proceeds of any sale under subsection (3) shall be dealt with by the Court according to law.

**167. Notice of detainment or seizure of property**

(1) Upon seizure of a vessel, vehicle, aircraft or other item, reasonable efforts shall be made to notify the owner or owners of the property seized or detained pursuant to this Act of the seizure or detention of that property.

(2) A notice under the section shall—

- (a) enumerate the reasons for the seizure and/or detention;
- (b) describe the steps required for reclamation of the seized and or detained property; and
- (c) make the owner or owners aware of any deadlines and potential forfeiture of property pursuant to this Act.

**168. Treatment of items detained or seized**

(1) If any vessel, vehicle, aircraft or item has been seized pursuant to this Act, and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within ninety days of the service or attempted service of notice pursuant to this Act, the Director may apply for the items to be forfeited to the State and the Court shall make such order as it shall deem fit.

(2) If the lawful owner of a vessel, vehicle, aircraft or item seized pursuant to this Act cannot be traced within ninety days of the service or attempted service of notice pursuant to this Act, the seized item shall be forfeited to the State.

(3) If the owner of a vessel, vehicle, aircraft or thing or the person having the possession, care or control of it at the time of its seizure or detention is convicted of an offence in terms of this Act and a fine is imposed, the vessel, vehicle aircraft or thing may be detained until all fines, orders for costs and penalties imposed in terms of this Act are paid.

**169. Release of seized goods**

(1) The Court may, on application, order the release of any fishing vessel, vehicle, aircraft or other item seized under this Act on receipt of such bond or other form of security as it may determine.

(2) In determining the value of the bond or other form of security in respect of a foreign fishing vessel or a fishing vessel which is not a Kenyan fishing vessel, the Court shall have regard to—

- (a) the aggregate amount of the fair market value of the property to be released;
- (b) an estimated total fine or other penalty provided for the offence or offences charged or likely to be charged;
- (c) the costs the prosecution would be likely to recover if a conviction were entered;
- (d) and any damages and costs assessed as a consequence of the offence or offences charged or likely to be charged, and may set the value at such aggregate amount.

(3) Notwithstanding the provisions of subsection (2), the amount determined by the Court under this Act shall not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offence charged, whichever is greater.

(4) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1), the Court shall

in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.

(5) The release of any bond or other form of security under this Act shall be conditional upon—

- (a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or in connected with in the commission of an offence under this Act; or
- (b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or in connection with the commission of an offence under this Act—
  - (i) payment in full within thirty days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and
  - (ii) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(6) Nothing in subsection (1) shall require a Court to release any vessel, vehicle, aircraft or other item if it may be required as an exhibit in court proceedings or is reasonably required for any further investigations of offences against this Act.

#### **170. Application of bond, etc**

Any bond, security or net proceeds of sale held in respect of any vessel, vehicle, aircraft or other item shall be applied as follows—

- (a) the discharge of any forfeiture ordered under this Act; and
- (b) the payment of all fines or penalties for offences under this Act or penalties imposed under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item.

#### **171. Unlawful removal of seized goods**

(1) No person shall remove a vessel, vehicle, aircraft or other item held under this Act and which is in the custody of the Government whether or not the person knew that the vessel, vehicle, aircraft or other item was held in the custody of the Government.

(2) Where any vessel, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of the Government, the vessel, vehicle, aircraft or other item shall be liable to seizure anywhere at any time within the jurisdiction of Kenya.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to a term of imprisonment not exceeding five years or to both.

#### **172. Liability for loss, damage or deterioration of things in custody**

The State shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other item while in the custody of the State pursuant to this Act, provided that the State takes reasonable care given the circumstances.

## PART XV – EVIDENCE

**173. Certificate evidence**

The Director-General or any person designated in writing by him may give a certificate stating that—

- (a) a specified vessel was or was not on a specified date or dates a Kenyan fishing vessel or a foreign fishing vessel;
- (b) a person was or was not on a specified date or dates the holder of any specified license, authorization or registration;
- (c) a specified fishing vessel was not on a specified date or dates the subject to a specified license, authorization or registration;
- (d) an appended document is a true copy of the licence or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
- (e) a particular location or area of water was on a specified date or dates within the Kenya fishery waters or a closed, limited, restricted or in any other way controlled area of the Kenya fishery waters, or an area of the Kenya fishery waters subject to specified conditions;
- (f) an appended chart shows the boundaries on a specified date or dates of the Kenya fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
- (g) a particular item or piece of equipment is fishing gear;
- (h) the cause and manner of death of or injury to any fish;
- (i) an appended document is a true copy of an approved charter agreement or an access agreement;
- (j) a call sign, name, or number is that of or allotted to a particular vessel under any system of naming or numbering of vessels;
- (k) an appended position or catch report was given for a specified vessel;
- (l) specified fishing vessel is included on a list of illegal, unreported and unregulated fishing vessels or authorized fishing vessels established by a regional fisheries management organization or pursuant to an international agreement; or
- (m) a certificate as to the condition of fish given under this Act was made in accordance with this Act and was made by the person who is signatory to the certificate.

**174. Validity and procedure for certificate**

(1) Unless the contrary is proved, a document purporting to be a certificate issued under section 175 shall be deemed to be such a certificate and to have been duly issued.

(2) Where a certificate is served on a defendant seven or more days before its production in court in any proceedings under this Act, the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(3) Where a certificate is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing on the prosecutor, then the certificate shall, unless the Court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(4) Where any objection is notified under subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(5) Any certificate shall be titled "Certificate made under section 175, Fisheries Management and Development Act" and no such certificate may be used as conclusive proof of the facts averred therein unless it is served with a copy of sections 175 and 177 of this Act.

(6) Any omission from or mistake made in any certificate issued under section 175 shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced by it.

(7) Where in any proceedings a certificate made under section 175 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.

(8) In this section "certificate" means a certificate issued under section 175.

#### **175. Certificate as to the location of a vessel**

(1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence committed, then a place or area stated in a certificate by an authorized officer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(2) An authorized officer shall in a certificate made under subsection (1) state—

- (a) his name, address, official position, country of appointment and provision under which he is appointed;
- (b) the name, if known, and call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits;
- (f) a declaration that the authorized officer checked the position-fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
- (g) where a position fixing instrument which is not judicially noticed as being accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 172 shall apply to a certificate given under this section as if it had been a certificate issued under section 146.

(4) For the purposes of this section "authorized officer" shall include surveillance officers and those charged with similar responsibilities in other countries.

#### **176. Electronic location device**

(1) The readings of any mobile transceiver unit or other electronic location device integral to a vessel monitoring system shall be admissible as evidence and may be used as *prima facie* evidence of the facts that they aver.



(2) The readings of the devices referred to in subsection (1) may be made from a printout or as observed from a visual display unit.

(3) Any electronic location device shall be required to be capable either wholly or partially in itself of producing the readings concerned and not merely be a receiver of information or data.

#### **177. Photographic evidence**

(1) Where a photograph is taken of any fishing or fishing related activity and the date and time on and position from which the photograph is taken are simultaneously superimposed upon the photograph, the date and time shall be *prima facie* evidence that the photograph was taken on the date, at the time and in the position so appearing.

(2) The provisions of this section shall apply only when—

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
- (b) the instruments which provide the date, time and position are commonly recognised as being accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.

(3) The provisions of this section shall not affect the admissibility of photographic evidence in any way.

#### **178. Presumptions**

(1) All fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall unless the contrary is proved, be presumed to have been caught during the commission of that offence.

(2) All fish found on board any fishing vessel in respect of which false or misleading information or no information has been provided prior to the vessel's entry into port as required pursuant to this Act, shall unless the contrary is proved, be presumed to have been caught during the commission of an offence or during illegal, unreported or unregulated fishing activities.

(3) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place.

(4) The production of a written copy or extract of the entry certified by a fisheries inspector as a true copy of the accurate extract shall be *prima facie* evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.

(5) Where in any legal proceedings relating to an offence under this Act—

- (a) an authorized officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters or taken by the use of illegal gear, and
- (b) the Court considers that, having regard to that evidence the grounds are reasonable,

all the fish shall be presumed to have been so taken, unless the contrary is proved.

(6) Where any information is given for a fishing vessel under this Act or an access agreement in relation to any fishing activity of a fishing vessel, it shall be presumed to have been given by the master, owner or charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.

(7) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel, unless proven otherwise.

(8) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.

(9) For the purposes of subsection (6), a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any global positioning system.

(10) The readings from any vessel monitoring, communications or navigation equipment required under this Act, either made from a printout or observed from a visual display unit, and which are capable either wholly or partly of producing the readings concerned and are not merely receivers of information or data, when checked for correct working and read by a competent operator, shall, unless the contrary is proved, be presumed to give accurate readings within the manufacturers specified limits.

(11) Unless the contrary is proved, any person who is found in possession of any illegal fishing gear, including explosives, poison or any device capable of producing an electric shock on or near the fishery waters shall be presumed to be undertaking an unlawful activity contrary to this Act.

#### **179. Onus of proof**

(1) Where, in proceedings under this Act, a person is charged with having committed an offence involving an act for which a license, authorization or other permission is required, the onus shall be on that person to prove that at the relevant time, the requisite license or authorization or other permission was held by that person.

(2) Where a person is charged with the contravention of section 127, the onus shall be on that person to prove that his entry into the fishery waters was for a purpose recognized by international law.

(3) Where a person is charged with the contravention of section 80, the onus shall be on that person to prove that the information given was true, complete and correct.

#### **180. Interference with evidence and avoidance of seizure**

(1) No person shall, being on board any vessel being pursued, about to be boarded or notified that it shall be boarded by an authorized officer, whether in the Kenya fishery waters or beyond areas under national jurisdiction, who throws overboard or destroys any fish, equipment, document, explosive, noxious substance or other item with intent to avoid its seizure or the detection of any offence against this Act.

(2) No person shall destroy or abandon any fish, fishing gear, net or any other fishing appliance, electric shock device, explosive, poison or any other noxious substance, or any other thing with intent to avoid their seizure or the detection of an offence against this Act.

(3) No person shall remove from legal custody any vessel, fish, equipment or other item, or do any act or omission by which a vessel, fish, equipment or other item held in legal custody may be so removed, whether or not he knew that the vessel, fish, equipment and other item was being held in custody.

(4) No person shall intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any premises or licensed aquaculture establishment.

(5) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

**181. Tampering with item, etc. that may be used in evidence of non-compliance with the Act**

(1) No person shall tamper with any item, document or thing that may be used in evidence of non-compliance with this Act, including evidence relating to the catching, loading, landing, handling, transshipping, transporting, processing, possession, aquaculture and disposal of fish.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both.

**PART XVI – SUMMARY ADMINISTRATIVE PROCEEDINGS**

**182. Decision to proceed administratively**

(1) The Director-General may, after consultation with the Cabinet Secretary and the written consent of the Attorney-General, proceed administratively against any person who has been charged with a contravention of this Act.

(2) The Director-General shall promptly notify the person charged that the person may, within twenty four hours of receiving such notification, consent to the compounding of the offence under this section.

(3) An offence shall be compounded under this section where the person charged, admits in writing to the offence; and—

(a) consent to compounding proceed after being fully informed about these proceedings.

(4) Where a person consents to the compounding of an offence, the person shall—

(a) not engage in any activity within the scope of this Act until the penalty has been paid in full; and

(b) be deemed to have consented to any seizure in accordance with this Act in relation to the offence, and to have waived any right to a hearing in the judicial process.

(5) Upon receiving the written consent under subsection (4), the Director-General or his designee may handle the matter in accordance with this Part, in consultation with the Director-General of Public Prosecutions.

(6) Where the person fails to respond to the Director-General's written notice within twenty-four hours, the Director-General shall refer the matter to prosecution.

**183. Summary administrative proceedings**

(1) The Director-General may, where the person charged has fulfilled the conditions of section 182 (4), dispose of such violation by causing a compounding

agreement to be drawn up by the Director of Public Prosecutions to formalise the terms and conditions for the Director-General to accept on behalf of the Government from such person an administrative penalty, the amount of which shall —

- (a) not exceed the maximum fine or penalty prescribed under this Act, for the offence being compounded, in addition to the fair market value of any fish caught illegally;
- (b) not be less than the minimum level of fine calculated in conformity with the guidelines required pursuant to section 189; and
- (c) where the person charged has committed the same or a similar offence in the past, an amount not less than the fine previously set plus an additional ten per cent.

(2) The compounding of an offence under this section shall be binding on the payment of the penalty and the notification in writing upon payment, under the signature of both parties, to the appropriate Court.

(3) The compounding procedure shall be null and void if the full amount of the penalty as determined under subsection (1) is not paid within three working days of the notification of the assessment of the penalty assessment to the person charged and the matter shall immediately be referred to the Court.

(4) When the penalty is paid in full under this section, the Director-General may order the release of any article, items, fish or fish products seized under this Act or proceeds of sale of such items, fish or fish products on such conditions as he or she may determine.

(5) Where the person is unable to pay the determination in full, that person may enter into an agreement for payment in instalments with the Director-General and Attorney-General.

(6) In any proceedings brought against any person for an offence against this Act, it shall be a defence if such person proves that the offence for which he is charged has been compounded under this section.

(7) The Director-General may confiscate any fishing gear or other appliance used for illegal fishing connected with the vessel.

(8) Any person aggrieved by a decision of the Director-General under this section may appeal to the High Court within thirty days of the Director-General's decision.

## PART XVII – JURISDICTION, PROSECUTION, FORFEITURE, LIABILITIES AND OTHER ACTIONS

### **184. Jurisdiction of the Court**

(1) Any act or omission in contravention of any provision of this Act committed—

- (a) by a person or in respect of a vessel within the Kenya fishery waters;
- (b) outside the Kenya fishery waters by any Kenya citizen, or in respect of a vessel or by person ordinarily resident in Kenya;
- (c) outside the Kenya fishery waters by any person or vessel in contravention of section 104; or
- (d) by any person on board any Kenya fishing vessel,

shall be dealt with in a court determined by the Chief Justice, but where a foreign fishing vessel is involved, the matter shall be dealt with by the High Court and the

judicial proceedings shall be taken as if the act or omission had taken place within the of Kenyan fishery waters.

(2) Where an authorized officer is exercising any powers conferred on him outside the Kenya fishery waters in accordance with this Act, any act or omission of any person in contravention of a provision of this Act shall be deemed to have been committed within the Kenya fishery waters.

(3) Notwithstanding any provision of any other law, an information or charge in respect of any offence against this Act may be laid at any time within one year of the commission of the offence.

#### **185. Conduct of prosecutions**

Any authorized officer may, subject to the direction of the Director of Public Prosecutions, conduct any prosecution for any offence under this Act or the regulations made thereunder, and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code (Cap. 75).

#### **186. Forfeiture**

(1) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, the Court may order the forfeiture of any of the following—

- (a) any fish, fish product, fishing vessel (including its gear, furniture, appurtenances, stores, cargo and aircraft), vehicle, aircraft, gear, equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;
- (b) where a fishing vessel, vehicle or aircraft was used in the commission of an offence, any fish on board such vessel, vehicle or aircraft at the time of the offence;
- (c) where a storage facility was used in the commission of the offence, any fish or fish products in the facility at the time of the commission of the offence; or
- (d) where any fish has been sold under section 166, the proceeds of the sale of the fish.

(2) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, in the commission of which a foreign fishing vessel was used or was otherwise involved, the Court may order the forfeiture of—

- (a) the fishing vessel;
- (b) any gear and other equipment that was on the vessel concerned at the time of the offence; and
- (c) all fish or fish products on board the vessel at the time of the offence, or where the fish products have been sold, the proceeds of sale.

#### **187. Disposition of forfeited property**

(1) Any vessel or other property or security forfeited under this Act becomes the property of the State.

(2) Any vessel or other property forfeited under this Act may be—

- (a) retained;
- (b) leased; or

- (c) sold by the State by tender or by agreement approved by the Director-General and endorsed by the Cabinet Secretary,

Provided that if such forfeited property is sold by the State, the owner or apparent owner prior to forfeiture shall be afforded a reasonable opportunity to bid on or purchase such property.

(3) The Director-General or any person acting on his behalf shall not be liable in any way of any costs incurred or damages sustained as of a decision taken under subsection (2).

#### **188. Deprivation of monetary benefits**

(1) A Court convicting a person of an offence under this Act may summarily and without pleadings inquire into the pecuniary benefit acquired or saved by the person as a result of the commission of the offence, and may, upon reliable expert evidence otherwise admissible in a court of law and in addition to any other penalty imposed, impose a fine equal to the Court's estimation of that pecuniary benefit, despite any maximum penalty elsewhere provided.

(2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.

#### **189. Costs incurred by State**

(1) The operator and charterer of a vessel shall jointly and severally bear the cost or expenditure incurred by the Government, upon application by the State and as determined by the Court upon conviction, in connection with—

- (a) the seizure of a fishing vessel, vehicle or aircraft or other an offence against this Act, including any relevant costs of pursuit of the vessel, vehicle or aircraft;
- (b) the prosecution for an offence in accordance with this Act; and
- (c) the repatriation of the master or crew of any vessel seized under this Act.

(2) The amount of any costs or expenditure by the Court under subsection (1) may be recovered in the same manner as a fine and shall be imposed in addition to any fine or penalty that may be ordered by the Court.

(3) Nothing in subsection (1) shall be deemed to allow for the recovery of any cost or expenditure that has already been recovered pursuant to any other order made under this Act.

(4) If it intends to apply for pursuit costs in accordance with subsection (1), the Government shall, fourteen (14) days prior to a trial related to the offence, serve the defendant with written details of those costs.

#### **190. Liability for non-payment of pecuniary penalties**

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the State as the nominal plaintiff.

#### **191. Liability for loss or damage**

(1) A person who commits an offence against this Act shall, upon conviction, be liable for any loss or damage caused by the offence and the amount of the loss

of such damage may be awarded by the Court as restitution in addition to, and recovered in the same manner as a fine.

(2) The loss or any damage caused by the offence referred to in subsection (1) shall include, as may be applicable, any costs incurred in—

- (a) detecting, apprehending, investigating or prosecuting the offence; and
- (b) detaining or seizing any property, fish, article or thing in respect of that offence.

#### **192. Civil liability of officers of companies**

(1) Subject to subsection (2), in this section, each officer of a partnership, corporation, firm, company or any other business enterprise engaged in activities governed by this Act shall be personally liable for any violation of or offence committed under this title by any member or employee.

(2) It shall be a defence to liability under this section for the officer referred to in subsection (1) to prove that he or she used due diligence to secure compliance with this Act or that the violation or offence was committed without that officer's knowledge, consent, collusion or collaboration.

#### **193. Liability of operators**

In any proceedings under this Act, the act or omission of a crew member of a fishing vessel or in association with a fishing vessel shall unless otherwise expressly provided, be deemed to be that of the operator of the vessel.

#### **194. Continuing offences and repeat offenders.**

(1) Each day of a continuing offence shall be considered a separate offence.

(2) Where the person charged has committed a similar offence in the past, a fine of an amount not less than that previously penalized plus an additional ten percent shall be charged.

#### **195. Banning order**

Where a person has been convicted of an offence against this Act, the Court may in addition to any other penalty or forfeiture, order that for a period not exceeding five years that person be banned from going on or remaining aboard any fishing vessel in the Kenyan fishery waters.

#### **196. Citizen suits and civil enforcement**

A person who incurs loss or damage as a result of harmed by a violation of any provision of this Act or the accompanying regulations may bring a civil action in a court of competent jurisdiction against any responsible person, (except the Government and its employees).

#### **197. Injunctions**

A court of competent jurisdiction may issue an injunction to enforce any provision of this Act against any person including the Ministry.

### **PART XVIII – ESTABLISHMENT OF FISH MARKETING AUTHORITY**

#### **198. Establishment of Fish Marketing Authority**

(1) There is established a body to be known as the Kenya Fish Marketing Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing and disposing of movable and immovable property; and
- (c) doing such other things necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Fish Marketing Authority shall be in Nairobi.

### **199. Objects and purpose**

The object and purpose of the Fish Marketing Authority shall be to market fish and fisheries products from Kenya.

### **200. Functions of the Fish Marketing Authority**

The functions of the Fish Marketing Authority shall be to—

- (a) develop, implement and co-ordinate a national fish marketing strategy;
- (b) ensure that fish and fishery products from Kenya enjoy market access at local, national, regional and international levels as premier products and, to this end, that the products and markets are developed and diversified;
- (c) promote the sustainable use of fish by preventing, deterring and eliminating to the extent possible trade in illegal, unreported and unregulated fishing;
- (d) enforce national fisheries trade laws and international fisheries related trade rules;
- (e) identify fish market needs and trends and advise fisheries stakeholders accordingly;
- (f) organize stakeholders to ensure smooth marketing of fish and fishery products;
- (g) collaborate with national and international trade related bodies;
- (h) advice the Cabinet Secretary on issues related to national and international trade trends; and
- (i) perform any other functions that are ancillary to the object and purpose for which the Fish Marketing Authority is established.

### **201. Board of Directors**

(1) There shall be a Board of Directors of the Fish Marketing Authority which shall consists of—

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to fisheries or his representative;
- (c) the Principal Secretary of the ministry for the time being responsible for matters relating to finance or his representative;
- (d) The Principal Secretary for the time being responsible for matters related to Trade and Industry;



- (e) The Principal Secretary in the ministry for the time being responsible for planning and economic development, or his representative;
- (f) one person, who has knowledge and experience in matters relating to fisheries, nominated by the Council of Governors;
- (g) the Chief Executive Officer of the Fund;
- (h) the Chief Executive Officer of the Fish Marketing Authority, who shall be the secretary; and
- (i) four other members nominated or selected through a competitive process taking into consideration regional balance and gender parity and appointed by the Cabinet Secretary, of whom—
  - (i) two shall be nominated by the registered national fisheries associations; and
  - (ii) two shall be persons with knowledge or experience in matters relating to international fisheries, finance, business administration, law, marketing or a related discipline.

(2) The names of persons proposed for appointment under subsection (1)(a) and (h) shall, before they are appointed, be laid before the National Assembly for approval.

(3) The members of the Board of Directors shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The Board of Directors shall ensure the proper and effective performance of the functions of the Fish Marketing Authority.

(5) The Board of Directors may enter into partnership with other body or organization within or outside Kenya as it may consider appropriate, in furtherance of the objects of the Fish Marketing Authority.

(6) The members of the Board of Directors shall be paid remuneration and allowances determined by the Cabinet Secretary, in consultation with the Cabinet Secretary responsible for matters relating to finance.

## **202. Tenure of office and vacation of office**

(1) A member of the Board of Directors appointed under section 201(1)(a) and (f) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) A member of the Board of Directors, other than an *ex officio* member may, at any time, resign from office by giving notice, in writing, addressed to the appointing authority

(3) A member of the Board of Directors, other than an *ex officio* member, who is absent from three consecutive meetings of the Board of Directors without sufficient cause shall cease to be a member of the Board of Directors.

(4) Where a member of the Board of Directors is, for sufficient cause, unable to act as a member, the Cabinet Secretary shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

- (a) under subsection (2) or (3) or section 35(2); or
- (b) as a result of declaration under subsection (4); or

- (c) by reason of the death of a member, the Cabinet Secretary shall appoint another person in accordance with the provisions of section 201(1) to fill that vacancy.

### **203. Conduct of meeting of the Authority**

The conduct of the meetings of the Board of Directors shall be in accordance with the Third Schedule.

### **204. Disclosure of interest**

(1) A member of the Board of Directors who has an interest in a matter for consideration by the Board of Directors shall disclose, in writing, the nature of that interest and shall be disqualified from participating in any deliberations of the Board of Directors relating to that matter.

(2) A member who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Board of Directors.

### **205. Delegation of functions**

Subject to this Act, the Board of Directors may, by resolution either generally or in any particular case, delegate to any committee of the Board of Directors or to any member, officer, employee or agent of the Fish Marketing Authority, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of Directors under this Act.

### **206. Appointment of chief executive and other staff**

(1) The Cabinet Secretary shall, in consultation with the Board of Directors and subject to subsection (2), through a competitive process, appoint a person to be the Chief Executive Officer of the Fish Marketing Board.

(2) A person shall not be qualified for appointment as the Chief Executive Officer under subsection (1) unless that person has an advanced degree in marketing, business administration or related discipline and has at least ten years' experience at a senior management level in matters relating to Fisheries, marketing or other related sector.

(3) The chief executive officer shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(4) The Board of Directors may appoint such officers and other staff as may be necessary for the proper and effective performance of the functions of the Fish Marketing Authority.

### **207. Funds of the Fish Marketing Authority**

(1) There shall be a general fund of the Fish Marketing Authority which shall vest in the Board of Directors and into which shall be paid—

- (a) monies appropriated by Parliament for the purposes of the Fish Marketing Authority;
- (b) monies that may accrue to or vest in the Fish Marketing Authority in the course of the performance of its functions under this Act or any other law and approved by Parliament;
- (c) monies provided to the Fish Marketing Authority from the Fund;
- (d) donations, grants and gifts made to the Fish Marketing Authority, and
- (e) monies from any other source approved by the Cabinet Secretary for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the Fish Marketing Authority any expenditure incurred by the Fish Marketing Authority in the exercise of its powers or the performance of its functions under this Act.

(3) The Fish Marketing Authority may, subject to the approval of the Cabinet Secretary for the time being responsible for finance, invest funds not immediately required for its purposes.

## PART XIX – MISCELLANEOUS

### **208. Regulations**

(1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations for any or all of the following purposes—

- (a) prescribing the conditions to be fulfilled by foreign participation in fisheries, including conditions of licensing foreign fishing vessels;
- (b) establishing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (c) prescribing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (d) regulating the handling, storage and processing of fish by prescribing methods of handling, storage and processing of fish;
- (e) prescribing requirements for governing the safety and quality of fish, fish products and fish feed;
- (f) providing for the management and control of fishing ports and fishing waters;
- (g) the licensing of any person to engage in any form of fishing, or of handling, transporting, processing or selling of fish products;
- (h) organizing and regulating the marketing and distribution of fish;
- (i) providing for the registration of private marks to be used to distinguish the ownership of fishing gear;
- (j) prohibiting or controlling the importation, exportation and introduction into Kenya of live fish of any kind or species;
- (k) promoting and regulating or controlling the development of aquaculture establishments;
- (l) controlling the exploitation of the Exclusive Economic Zone;
- (m) development of recreational and ornamental fisheries and establishment of fishing camps;
- (n) providing for fishing by Kenyan ships in the high seas;
- (o) providing for the management and exploitation of inland, dam and riverine fisheries;
- (p) providing for the management and exploitation of coastal fisheries;
- (q) providing for control of the manufacture, importation, marketing and introduction in Kenya fishery waters of fishing gears;
- (r) prescribing the forms to be used for various matters under the act;

- (s) any other thing he may deem necessary for the promotion of fisheries in Kenya.

## **209. Suprecession**

Where any conflict arises between the provisions of this Act and any other law in matters relating to fisheries, the provisions of this Act shall prevail.

## **PART XX – REPEALS AND TRANSITIONAL**

### **210. Repeals and transitional provisions**

- (1) The following Acts are repealed—
  - (a) the Fisheries Act (Cap. 378);
  - (b) the Trout Ordinance (Cap. 380);
  - (c) the Fisheries Protection Act (Cap. 379).
- (2) Notwithstanding subsection (1), the following transitional provisions shall apply—
  - (a) any licences or permits granted under those Acts and in force immediately before the commencement of this Act shall, with the approval of the Cabinet Secretary, be deemed to have been granted under the provisions of this Act, and shall remain in force until revoked in accordance with any terms in that regard set out in the licence, as the case may be, or renewed as a licence under this Act;
  - (b) all property, except such property as the Cabinet Secretary may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Fisheries Department, shall with approval of the Cabinet Secretary, and, upon the taking effect of a notice by the Cabinet Secretary published in the *Gazette*, and without further assurance, vest in the Service, subject to all interests, liabilities, charges, obligations and trusts affecting such property;
  - (c) except as otherwise provided in paragraph (b) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the Fisheries Department immediately before the commencement of this Act shall, with the approval of the Cabinet Secretary, remain vested in the Government and may be enforced by or against the Government;
  - (d) all persons, being public officers, who, immediately before the commencement of this Act, are employed by the Government for the purposes of the activities of the Fisheries Department, shall at the commencement of this Act be, deemed to be on secondment to the Service in accordance with this Act, or their deemed secondment otherwise ceases in accordance with the terms of such secondment;
  - (e) where, at the commencement of this Act, any penalty, other than dismissal, has been imposed on any employee of the Fisheries Department pursuant to disciplinary proceedings against such employee, and the penalty has not been or remains to be served by such employee, such employee shall, on his transfer to the Service, serve or continue to serve such penalty to its full term as if it had been imposed by the Service.

211.

[Spent]

## FIRST SCHEDULE

[s. 10(2)]

## STAFF OF THE SERVICE

## Part A - FISHERIES OFFICERS

**(a) Professional Cadre**

Director-General of Fisheries

Director of Fisheries

Deputy Director of Fisheries

Senior Assistant Director of Fisheries

Assistant Director of Fisheries

Principal Fisheries Officer

Chief Fisheries Officer

Senior Fisheries Officer

Fisheries Officer I

**(b) Technical Cadre**

Principal Assistant Fisheries Officer

Chief Assistant Fisheries Officer

Senior Assistant Fisheries Officer

Assistant Fisheries Officer I

Assistant Fisheries Officer II

Assistant Fisheries Officer III

**B — DISCIPLINED OFFICERS CADRE**

1. Commandant
2. Deputy Commandant
3. Assistant Commandant
4. Senior Superintendent Fisheries Guard
5. Superintendent Fisheries Guard
6. Chief Inspector Fisheries Guard
7. Inspector Fisheries Guard
8. Sergeant Fisheries Guard
9. Corporal Fisheries Guard
10. Constable Fisheries Guard
11. Fisheries Guard Recruit

**OATH OF ALLEGIANCE**

Signature of Declarant .....

Personal Number: .....

Sworn/affirmed before me .....

On the .....

**D-Provisions relating to the officers of the Service**

- 1.(1) The officers of the Service shall, in the performance of the duties conferred upon them under this Act and any other written law, conform with any lawful instructions, directions or orders which may be given by the Director-General.
- (2) The Director-General may, with the consent of the Board, from time to time make and issue administrative orders to be called Service Standing Orders for the general control, direction and information of the officers of the Service.
- 2.(1) The Director-General shall, with the approval of the Board, issue a Disciplinary Code for Officers of the Service, which shall apply to the disciplined officers of the Service and which may provide for the following matters—
  - (a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceedings;
  - (b) disciplinary penalties; and
  - (c) any other related matters.
- (2) The following disciplinary penalties, or any combination thereof, may be included in the Disciplinary Code for infringement of the Code issued under subparagraph (1)—
  - (a) dismissal from the Service;
  - (b) reduction in rank;
  - (c) confinement for not more than fourteen days in a guard room or restriction to the confines of any.

**Part D - INTER-AGENCIES MCS UNITS**

[s. 21]

The Inter-agency Monitoring, Control and Surveillance Unit established under section 16 shall be composed of representatives of all of the agencies described as 1-7, and such agencies as the Cabinet Secretary may designate described as 8-16 below.

<b>Members</b>	<b>Designation</b>	<b>Status of Membership</b>
Director-General (Fisheries)	Chair	Permanent
Representative of Police/ Internal Security	Member	Permanent
Representative of Judiciary	Member	Permanent
Representative of County Government (County Director of Fisheries)	Member	Permanent
Representative of BMUs	Member	Permanent
Representatives of NEMA	Member	Permanent

Representative of Public Health Member and Sanitation		Permanent
Representative of Defence	Member	Co-opted
Representative of Cooperatives	Member	Co-opted
Representatives of Water	Member	Co-opted
Representatives of Immigration	Member	Co-opted
Representative of Kenya	Member	Co-opted
Revenue Authority		
Representative of Kenya Wildlife Service	Member	Co-opted
Representative Kenya Maritime Authority		Co-opted
Representative of Kenya Ports Authority	Member	Co-opted
Representative of East Africa Community/ Foreign Affairs	Member	Co-opted

## SECOND SCHEDULE

[s. 50(2)]

### DESIGNATED FISH LANDING STATIONS

#### 1. Indian Ocean

S/No.	Name of Landing site	District	Division/Location	County
	Shimoni	Msambweni	Vanga	Kwale
	Mkokoni	Lamu	Hindi	Lamu
	Mombasa	Mvita	Mvita	Mombasa

## THIRD SCHEDULE

[s. 203]

### CONDUCT OF THE AFFAIRS OF THE FISH MARKETING AUTHORITY BOARD

- (1) The Board of the Authority shall meet at least once in every three months to conduct the business of the Board of Authority.
- (2) The Chairperson may or upon request call a special meeting of the Board of the Authority at any time, where he or she considers it expedient for the transaction of the business of the Board of the Authority.
- (3) At the first meeting of the Board of Authority, the members shall elect a vice-Chairperson, not being an *ex officio* member, from among its members.
- (4) Other than a special meeting, or unless three quarters of members agree, at least twenty one days' written notice of every meeting of the Board of the Authority shall be given to every member of the Board of the Authority by the secretary.
- (5) The quorum at a meeting of the Board of the Authority shall be half of the members or a greater number determined by the Board of the Authority in respect of an important matter.

(6) The Chairperson shall preside at the meetings of the Board of the Authority and in the absence the vice-Chairperson, and in his absence, a member of the Board of the Authority elected by the members present from among their number shall preside.

(7) The matters of the Board of the Authority shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(8) The proceedings of the Board of the Authority shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(9) Subject to the provisions of this Schedule, the Board of the Authority may determine its own procedure and the procedure for any committee of the Board of the Authority and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

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#### FOURTH SCHEDULE

[s. 211]

*Spent*



