

Programme for the implementation of a Regional Fisheries Strategy for the
Eastern and Southern Africa and Indian Ocean Region

Programme pour la mise en oeuvre d'une stratégie de pêche pour la région
Afrique orientale-australe et Océan Indien



PREPARATION OF DRAFT KENYA FISHERIES MANAGEMENT AND DEVELOPMENT BILL

November 2011



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Implementation of a Regional Fisheries Strategy
For The Eastern-Southern Africa and India Ocean Region

Programme pour la mise en oeuvre d'une stratégie de pêche pour la
region Afrique orientale-australe et Océan indien

Preparation of Draft Kenya Fisheries Management and Development Bill

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EXECUTIVE SUMMARY

The consultant was tasked with a comprehensive review and provision of drafting recommendations and explanatory notes on the Draft Fisheries Management and Development Bill 2011 of Kenya. This was undertaken over a period of 15 days from 8 October to 30 November 2011. After a series of consultations on each Part of the initial draft Bill, including provision of successive drafts and explanatory notes for the amendments suggested in the form of comments in the text of each draft, the consultant provided a consolidated draft Bill on 26 October 2011. This was reviewed by officials in Kenya, and a final clean draft provided to the consultant for advice on 24 November. The consultant responded on 28 November with minimal final editorial and substantive recommendations. The revised draft Bill is significantly more comprehensive, and incorporates provisions of relevant international instruments and regional fisheries management organizations, as well as best practices of fisheries laws. Guidance for the preparation of Regulations is given

RESUMÉ EXECUTIF

Le consultant a été chargé d'un examen complet et de rédiger des recommandations et des notes explicatives sur le Draft Fisheries Management et le Development Bill 2011 du Kenya. Ceci a été entrepris sur une période de 15 jours, du 8 Octobre au 30 Novembre 2011. Après une série de consultations sur chaque partie du projet de loi initial, y compris la fourniture des versions successives et des notes explicatives pour les amendements suggérés sous forme de commentaires dans le texte de chaque projet, le consultant a fourni un projet de loi consolidée le 26 Octobre 2011. Cela a été examinées par des représentants du Kenya, et une ébauche finale a été remis au consultant le 24 Novembre pour des conseils. Le consultant a répondu le 28 Novembre avec un éditorial final minime et des recommandations concrètes. Le projet de loi révisé est nettement plus complet, et comporte des dispositions des instruments internationaux pertinents et les organisations régionales de gestion des pêches, ainsi que des lois concernant les bonnes pratiques pour la pêche. Des directives pour la préparation des règlements sont aussi indiquées.

1. INTRODUCTION

The Government of Kenya had taken initial steps to prepare a draft Fisheries Management Bill in 2010, but due to a revision of the Constitution it was necessary to revise the Bill in 2011.

Consultations were held and a revised draft Fisheries Management and Development Bill was agreed on 29 June 2011. However, it did not incorporate necessary provisions of international instruments, particularly those to which Kenya was party, nor updated best practices of fisheries laws.

The consultant was requested to carry out the following activities:

- comprehensive review and provision of drafting recommendations and explanatory notes on the Draft Fisheries Management and Development Bill 2011 of Kenya;
- consult with Kenyan Authorities on the recommendations and make such revisions as may be needed;
- serve as resource person to review comments received during such national stakeholder consultations or workshops as may be arranged by the Kenyan Authorities;
- provide a report outlining the assistance provided to the Kenyan Authorities.

These activities took place over fifteen days during the period from 8 October 2011 – 30 November 2011.

2. ACTIVITIES

The consultant undertook a thorough review of the draft Fisheries Management and Development Bill of 29 June 2011, shown in Appendix I. It consisted of 99 Sections, 13 Parts and three Schedules. The Parts were:

PART I	PRELIMINARY
PART II	KENYA FISHERIES SERVICE
PART III	FINANCIAL PROVISIONS
PART IV	FISHERIES DEVELOPMENT, MANAGEMENT AND CONSERVATION Development Measures Fisheries Management Measures Monitoring Control and surveillance
PART V	REGISTRATION AND LICENSING Licensing of locally-based foreign fishing vessel Foreign Fishing in Kenya Fishery Waters Other licenses
PART VI	ENFORCEMENT
PART VII	PROSECUTION, HANDLING OF SEIZED GOODS AND EVIDENCE
PART VIII	THE FISH LEVY
PART IX	AQUACULTURE DEVELOPMENT
PART X	FISH SAFETY AND QUALITY
PART XI	COMMUNITY PARTICIPATION
PART XII	MISCELLANEOUS
PART XIII	REPEALS AND TRANSITIONAL

In addition, the consultant took account of existing regulations, including the Fisheries (Beach Management Unit) Regulations, 2007 and the Fisheries (Foreign Fishing Craft) Regulations, 2009 and the Kenya Oceans and Fisheries Policy 2008.

The consultant then worked through each Part in order, sought clarifications where relevant, and made extensive recommendations as follows:

- drafting recommendations where enhancement of provisions which were unclear or required further elaboration;
- addition of draft provisions which should be included;
- addition of draft Parts which should be included;
- recommendations for alignment with other national legislation; and
- drafting recommendations for implementation of international instruments.

Because the time allowed under the contract for such a comprehensive task was very compressed, the most efficient way forward was for the consultant to make changes to the Kenya draft Bill with explanatory notes in the margin of the document, as well as many comments, questions and suggestions. In this regard, there was a wide range of issues arising from the provisions in the Kenya draft Bill that needed to be clarified by Kenya officials and, conversely, many issues not included in the draft Bill that needed to be explained by the consultant.

The procedure adopted was for the consultant to work through the Parts in order, and to send the review each Part as it was completed, with the marginal explanatory notes, etc., to Ms. Susan Imende, Assistant Director of Fisheries, Ministry of Fisheries Development, the Kenya contact point. Ms. Imende in turn arranged for the draft to be reviewed by the team in Kenya. In this way, ten ongoing and comprehensive exchanges took place between 13-26 October 2011, consisting of recommendations/questions from the consultant and responses, further questions and relevant information (e.g. related laws) from Kenya.

The consultant provided a consolidated draft revised Bill to Kenya on 26 October 2011. Kenya undertook a review of the draft and provided the outcome to the consultant for advice on 24 November. The consultant provided the advice on 28 November, together with explanatory notes, appended as Appendix 2 and 3 respectively, noting that she had made a number of editorial amendments and that there were just a few straightforward substantive issues left to be addressed in Kenya. The consultant remained available if further clarifications were sought but it was expected that this would not be necessary because of the nature of the issues and there has been no follow-up.

The new draft Bill is double the size of the initial draft and satisfactorily covers all of the necessary areas. The new draft Bill is arranged into the following Parts:

PART I	PRELIMINARY
PART II	THE KENYA FISHERIES SERVICE
PART III	FINANCIAL AND ADMINISTRATIVE PROVISIONS
PART IV	FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT
	<i>Division 1 - Fisheries Development Measures</i>
	<i>Division 2 – International fisheries conservation and management measures</i>
	<i>Division 3 –Coordination of fisheries management with Counties, shared fisheries management</i>
	<i>Division 4 – Fisheries Conservation and Management</i>
PART V	IMPORT, EXPORT AND TRADE AND MARKETING OF FISH AND FISH PRODUCTS
PART VI	FISH QUALITY AND SAFETY
PART VII	AQUACULTURE
PART VIII	INFORMATION, DATA AND RECORDS
PART IX	LICENSING AND REGISTRATION
	<i>Division 1- Licences, authorizations and registration</i>
	<i>Division 2 - Fishing, transshipment and fish aggregating devices</i>
	<i>Division 3- Fish processing and marketing</i>
	<i>Division 4- Aquaculture</i>
PART X	COMPLIANCE WITH ACT, LICENCES, AUTHORIZATIONS AND REQUIREMENTS FOR FISHING VESSELS ENTERING, NAVIGATING OR EXITING THE KENYA FISHERY WATERS
PART XI	REQUIREMENTS FOR FOREIGN FISHING VESSELS OR VESSELS FISHING UNDER CHARTER ARRANGEMENTS
PART XII	MONITORING, CONTROL AND SURVEILLANCE
	<i>Division 1 - Powers of authorized officers</i>
	<i>Division 2 - Appointment and functions of, and duties to, observers and inspectors</i>
	<i>Division 3- Protection of and duties owed to authorized persons</i>
	<i>Division 4 - Requirements for vessel monitoring systems</i>
	<i>Division 5 - Requirements for use of ports</i>
PART XIII	REQUIREMENTS FOR ARRESTED PERSONS AND SEIZED ITEMS

PART XIV	EVIDENCE
PART XV	SUMMARY ADMINISTRATIVE PROCEEDINGS
PART XVI	JURISDICTION, PROSECUTION, FORFEITURE, LIABILITIES AND OTHER ACTIONS
PART XVII	ESTABLISHMENT OF FISH MARKETING AUTHORITY
PART XVII	MISCELLANEOUS
PART XVIII	REPEALS AND TRANSITIONAL

Because of the compressed time period over which the activities were to be undertaken and the need for full attention to be given to the draft Bill, particularly considering that the Minister had expressed the wish to table a draft Bill as soon as possible, a regulatory framework was unable to be addressed at this time.

Another consideration is that it is standard practice to develop regulations based on an Act adopted by Parliament. This would take into account any changes made by Parliament in adopting a Bill.

It is recommended that, for future consideration, the following framework should provide a basis for the development of regulations:

1. Beach Management Unit Regulations, 2007. These Regulations are comprehensive and appear to be sound. In the absence of knowledge as to the effectiveness of the Regulations, no recommendations are made.
2. Fisheries (Foreign Fishing Craft) Regulations, 2009. Many of the provisions in these Regulations have been incorporated into the draft Bill. They should be reviewed and updated, also having regard to existing provisions in the laws of other countries and to information and communication requirements in international instruments to which Kenya is party and regional fisheries management bodies of which Kenya is a member such as the Indian Ocean Tuna Commission. In particular, they should include information requirements under the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
3. Generally, the Minister is empowered to make regulations in a wide range of areas. Priorities should be established and regulations prepared accordingly.
4. There are a number of requirements where certain forms should be included in regulations. Indicative forms that should be developed include the following:
 - Entry and exit reports for fishing vessels
 - Requirements for performance bonds
 - Licence application forms for all activities to be licenced under the Act, as shown in section 89
 - Licence forms for all activities to be licenced under the Act, as shown in section 89
 - Licence fees
 - Marking of fishing vessels
 - Requirements for gear (e.g. trawling), maximum dimensions of fishing nets
 - Vessel registration application form and registration fee (artisanal vessels/others as appropriate)
 - Vessel registration form
 - Marking of registration number on artisanal fishing vessel
 - Application for fish loading and transshipment authorization
 - Transshipment declaration

- Technical requirements for a vessel monitoring system
- Information to be provided in advance by vessels requesting port entry
- Procedures for inspection of fishing vessels in port
- Report of the results of the inspection at port
- Boarding and inspection report

3. SUMMARY OF OUTCOMES

The draft Bill has been considerably strengthened in many respects. Administrative provisions relating to the establishment of the Kenya Fisheries Service and financial and administrative provisions have been clarified and built upon with the result that the institutional structure has a tighter rules and greater transparency and accountability. The Parts relating to aquaculture, licensing and registration, foreign fishing vessel requirements and monitoring, control and surveillance have been expanded and strengthened. New Parts have been added which clarify and build upon provisions in the initial draft Bill, including import, export and trade and marketing of fish and fish products, fish quality and safety, information, data and records, compliance with the Act, etc., requirements for arrested persons and seized items, evidence, summary administrative proceedings, jurisdiction etc, and the establishment of a fish marketing authority.

APPENDIX 1

PART 1 PRELIMINARY

1. Citation and commencement
2. Application
3. Interpretation
4. Objects and Principles
5. Establishment of the Kenya oceans and Fisheries Advisory Council

PART II KENYA FISHERIES SERVICE

6. Establishment of the Service
7. Headquarters
8. Functions of Service
9. Board of Directors
10. Functions of the Board
11. Tenure of Office
12. Appointment of Director-General
13. Functions of Director –General
14. Other Staff of the service
15. Authorized Officers
16. Honorary Fisheries officers
17. Establishment of the Surveillance and Enforcement Unit

PART III FINANCIAL PROVISIONS

18. Funds of the service
19. Financial Year
20. Annual estimates
21. Accounts and audit
22. Fisheries Research and Development Fund

PART IV FISHERIES DEVELOPMENT, MANAGEMENT AND CONSERVATION

23. Fisheries vest in the State
 - Development Measures*
24. Fisheries development Measures
25. Notification by Director general
26. Implementation of International conservation and Management measures
27. Records and Information database
28. Information to public
29. Relation between National and County Governments
30. Fisheries Management Plans
 - Fisheries Management Measures*
31. Fisheries Management Measures
32. Fisheries Information
33. Transshipment by foreign fishing vessels
 - Monitoring Control and surveillance*
34. Minister prescribe Vessel monitoring devices (VMS)
35. Monitoring Control and Surveillance requirements

36. Inter-agency Monitoring control and Surveillance units
37. Appointment of Authorised Observer
38. Duties of authorised Observer
39. Notice of Intent to place an Observer
40. Fish Landing Stations
41. Limitation of fishing
42. Marine mammals
43. Prohibited methods of fishing
44. Pollution Prevention Zone
45. Discharge of Pollution Prohibited
46. Placing of live fish

PART V REGISTRATION AND LICENSING

47. Registration of vessels
48. Application for licenses. Permits or certificates
49. Requirements for license
50. Application for Local fishing vessels
51. Validity of fishing licenses
52. Cancellation or suspension of fishing licence
53. Appeals on cancellation or suspension
54. Fees and other charges
- Licensing of locally-based foreign fishing vessel***
55. Locally –Based Foreign Fishing Vessels
- Foreign Fishing in Kenya Fishery Waters***
56. Access agreements
57. Fishing and entry into Kenya water by foreign fishing vessels
58. Issue of foreign fishing vessel licence
59. Limitation of foreign fishing licence
- Other licences***
60. Other licences requirements
61. Sport fishing licence
62. Refusal of licence
63. Fishery scientific research and test fishing operations or surveys

PART VI ENFORCEMENT

64. Powers of authorised officers
65. seizure of vessel by authorised officer
66. Seizure of vehicle or aircraft by authorised officer
67. Immobilizing of seized vessel. Vehicle or aircraft
68. Powers of authorised officer to direct persons under his command
69. Duty to comply with instructions
70. Powers beyond Kenya fishery waters
71. Identification of authorised officers
72. Compounding of offences
73. Offences committees against an authorised officer
74. Impersonating an authorised officer
75. Destruction of evidence and avoidance of seizure
76. Receiving fish in respect of which offence has been committed

77. Importation of illegal fish

PART VII PROSECUTION, HANDLING OF SEIZED GOODS AND EVIDENCE

78. Conduct of prosecutions

79. Forfeiture and disposal of perishables

80. Treatment of seized goods

81. Application of security

82. Liability for loss, damage or deterioration of things in custody

83. Removal of custody

84. Forfeiture

85. Certificate of evidence

PART VIII THE FISH LEVY

86. Fish levy

87. Fish levy trust fund

PART IX AQUACULTURE DEVELOPMENT

88. Regulations for aquaculture

89. Establishment and operation of aquaculture

90. Aquaculture permits

91. Registration of fish farms

92. Cooperation with other bodies

PART X FISH SAFETY AND QUALITY

93. Competent Authority

94. Harmonization Of Fish Safety And Quality Standards

PART XI COMMUNITY PARTICIPATION

95. Establishment of Beach management Units

96. Promotion of fish production and marketing

PART XII MISCELANEOUS

97. Regulations

98. suprecession

PART XIII REPEALS AND TRANSITIONAL

99. Repeals and transitional provisions

SCHEDULES

FIRST SCHEDULE

Membership and conduct of the affairs of the Board

Tenure of office

Meetings of the Board

Disclosure of interest

Board may regulate procedure

SECOND SCHEDULE:

Staff of the service

Part A- fisheries Officers
Part B Disciplined Officers Cadre
Oath Of Allegiance
Part c Provision relating to officer of the service
Part D Inter- Agencies MCS Units

THIRD SCHEDULE

Designated Fish landing Stations

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL, 2011

A Bill for an Act of Parliament to provide for the conservation, management and development of fisheries and other aquatic resources; to establish the Kenya Fisheries Services; and for connected purposes ENACTED by the Parliament of Kenya as follows—

PART I — PRELIMINARY

Citation and commencement.

1. This Act may be cited as the Fisheries Management and Development Act, 2011, and shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint, and different dates may be appointed for the coming into operation of different provisions.

Application.

2. This Act shall apply in respect of all of Kenya fishery waters and to fishing vessels which-

- (a) being Kenyan fishing vessels operate outside such waters, or
- (b) commit offenses within Kenya fishery waters and are pursued by the Service to areas outside such waters

Interpretation.

3. In this Act, unless the context otherwise requires-

“aquaculture” means the cultivation of live fisheries resources for sale other than in circumstances prescribed under regulation-

“aquaculture establishment” means any area, enclosure, premise or structure set up or used on land or in water for the cultivation of fish, and includes any cage or raft or other;

“aquaculture fisheries resources” means live fish and marine plants cultivated under aquaculture;

“authorized officer” includes a fisheries officer, and any person appointed by the Board under section 14.

“Board” means the Fisheries Service Board established by section 7;

“buy” includes:-

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase; and
- (c) receive on account or consignment; and
- (d) receive in order to send, forward or deliver for sale; and
- (e) broker a sale; and

- (f) purchase or barter for future goods or for any consideration of value;
and
- (g) purchase or barter as an agent for another person,
- (h) and buyer has a corresponding meaning;

“ Cabinet Secretary” means Cabinet Secretary for the time being responsible for fisheries,

“crew member” means a person who is engaged or employed as a crew member in any capacity in connection with a vessel and in the business of the vessel, other than the master; or a pilot;

“dealing in fish” means collecting, transporting, storing, trans-shipping, exposing or offering fish or fish products for purposes of trade;

“designated fishing port” means a place declared as a designated port under subsection 33;

“Director-General” means the person appointed as such under section 11;

“fish” means the aquatic resources of the sea ,inland waters and the shores, including any aquatic plant or animal whether processed or not, whether piscine or not, and any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile or marine mammal, and includes any part thereof, and the spat, brood, fry, spawn, ova and the young thereof;

“fish trader” means any person other than a fisher who sells, barter or offers for sale any fish or fish product, and includes every person or body of persons, whether incorporate or incorporate, engaged in the buying, bartering, exposing for sale, preparing, processing, packing or storing, landing or transshipping, of any fish or fish products, but does not include a hotel, restaurant, cafeteria or other similar establishment declared by the Cabinet Secretary not to be a fish trader for the purposes of this Act;

“fisher” means a person who engages in fishing in the sea or inland waters;

“fisheries officer” means the Director-General and any employee of the Service above the rank of Assistant Fisheries Officer;

“fishing” means-

- (a) the catching or taking of fish searching for ,attracting, locating or harvesting;
- (b) any other related activity which can reasonably be expected to result in the catching or taking of fish; or
- (c) any operation on water in support of or in preparation for any activity described in paragraphs (a) and (b);

“fishing gear” means any instrument, equipment, net, cork, buoy or other article, including part thereof, used for purposes of finding, or congregating fish or for fishing;

“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;

“fish processing” means icing, freezing, 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 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;

“fishing vessel” means any boat, ship or any other vessel, of whatever size and in whatever way propelled, used in fishing operations or for the processing, storage or carriage of fish or for any fishing operations ancillary thereto, including transshipment;

“foreign fishing vessel” means a fishing vessel other than a local fishing vessel;

“international conservation and management measures” means measures to conserve or manage one or more species of living marine resources which are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention of the Law of the Sea, and which are recognised by the Republic of Kenya as notified in the Gazette in accordance with section 26

“Kenya fishery waters” means the inland waters, the territorial sea, and the exclusive economic zone as described in the Maritime Zones Act and any other waters over which Kenya exercises or claims jurisdiction or sovereign rights, and includes the bed and subsoil underlying those waters, except where exempted by the Cabinet Secretary under section 22;

“Kenya Marine and Fisheries Research Institute” means the institute established under the Science and Technology Act;

“local fishing vessel” means a fishing vessel which is-

- (a) wholly owned by a person who is a citizen of Kenya;
- (b) wholly owned by the Government of Kenya;
- (c) wholly owned by any company, society or other association of persons established under the laws of Kenya, and at least fifty-one

- per cent of voting shares of which are owned by the Government or persons who are citizens of Kenya; or
- (d) 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.

“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 Kenyan fisheries waters;
- (c) lands all of its catch or a substantial part of its catch in Kenya;

“master” in relation to a vessel, aircraft or vehicle the 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

“operator” means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer and master and includes the beneficiary of the economic or financial benefit of the vessel's operations

Cap. 250.

“related activity” means: any activity in support of fishing including -

- (a) trans-shipping fish to or from any vessel;
- (b) storing, processing or transporting fish taken from the fisheries waters up to the time it is first landed;
- (c) refuelling or supplying fishing vessels or performing other activities in support of fishing operations; or
- (d) exporting fish or fish products from the country
- (e) attempting or preparing to do any of the above;

“sale” includes-

- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter; and
- (b) disposition to an agent for sale on consignment; and
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale; and
- (d) disposition by way of raffle, lottery, or other game of chance, and “sell” and “sold” have a corresponding meaning

“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;

“territorial waters” shall have the meaning assigned to it under the Maritime Zones Act;

“transshipment of fish” includes the passing of fish from one fishing vessel to another, whether or not the fish has first been taken on board the vessel from which the fish is passed.

“vessel monitoring system” include a satellite based reporting system capable of monitoring fishing or related activities of fishing vessels

Cap. 371

Objects and principles.

4. (1) The objectives of this Act is to protect, manage, use and develop the aquatic resources in a manner that is consistent with ecologically sustainable development and to that effect the following principles shall apply-

- (a) Proper conservation and management measures shall be implemented in such a manner that will protect the aquatic resources from over exploitation and ensure that those resources are not endangered;
- (b) Access to the aquatic resources be allocated between users of the said resources in a manner that achieves optimum utilization, equitable distribution and long term sustainable development of aquatic resources to achieve economic growth, human resource development, employment creation and a sound ecological balance and generational equity;
- (c) Aquatic habitats are to be protected and conserved and aquatic ecosystems and genetic diversity are to be maintained and enhanced;
- (d) Recreational and ornamental fishing, aquaculture and commercial fishing activities are to be fostered for the benefit of the whole community;
- (e) Participation of users of the aquatic resources and of the community more generally, in the management of fisheries is to be encouraged;
- (f) Management measures to be based on best scientific knowledge and are designed to maintain or restore stocks at sustainable levels
- (g) Apply precautionary principle to management and development of the fisheries.
- (h) Aquatic resources of the Republic shall be managed in an efficient and cost effective manner and targets set for the recovery of management costs.

(2) The Principle set out in subsection (1) (a) has priority over other principles

(3) The Cabinet Secretary, the Service and other persons or bodies involved in the administration of this act and any other person or body required to consider the operations and applications of this Act or any other legislation, must act accordingly with, and seek to further the objects of this Act accordingly

5. (1) There shall be an advisory body to be known as the Kenya Oceans

Establishment of the Kenya Oceans and Fisheries Council.

and Fisheries Advisory Council which shall consist of the Cabinet Secretaries responsible for-

- (a) fisheries
- (b) internal Security;
- (c) defence;
- (d) public Health;
- (e) transport;
- (f) water;
- (g) trade;
- (h) environment and Mineral Resources;
- (i) wildlife;
- (j) finance ;
- (k) cooperatives;
- (l) energy;
- (m) lands;
- (n) science and technology;
- (o) east African community;
- (p) regional development; and
- (q) foreign affairs.

(2)The function of the Council shall be to examine and advise the Cabinet Secretary on-

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

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

PART II—THE KENYA FISHERIES SERVICE

Establishment

6. (1) There is established a Service to be known as the Kenya Fisheries Service.

(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.

Headquarters.

7. The headquarters of the Service shall be in Nairobi and shall give services at County levels.

Functions of Service.

8. The functions of the Service shall be to-

- (a) formulate policies regarding the conservation, management and utilization of all fisheries resources within Kenya's fisheries waters;
- (b) manage all Kenyan fishery waters;
- (c) prepare and implement fisheries-specific management plans for Kenya's fisheries waters;
- (d) provide fisheries conservation education and extension services to create public awareness and support for fisheries policies;
- (e) sustain fisheries resources to meet conservation and management goals;
- (f) collaborate in, and, in consultation with the Kenya Marine and Fisheries Research Institute, co-ordinate research activities in the field of fisheries conservation, management and aquaculture production;
- (g) identify manpower requirements and recruit manpower at all levels for the Service for fisheries conservation, management development and aquaculture production;
- (h) administer and co-ordinate international protocols, conventions and treaties regarding fisheries in all its aspects in consultation with the Cabinet Secretary;
- (i) solicit 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;
- (j) undertake the development of appropriate fisheries infrastructure, to facilitate investment in commercial fisheries, in collaboration with relevant agencies, including Government departments;
- (k) promote development and introduction of appropriate technologies in aquaculture production, processing and preservation in collaboration with relevant agencies and stakeholders;
- (l) identify and promote construction of any works deemed necessary for the sustainable development and economic utilization of fisheries resources;
- (m) identify opportunities and promote all aspects of fisheries marketing;
- (n) arrange and enter into joint ventures or any other forms of investment arrangement for purposes of performing any of its functions;
- (p) co-ordinate fish quality assurance and operations of the marine and coastal fisheries, and inland and riverine fisheries;
- (q) Coordinate and or undertake monitoring, control and surveillance of the fishery, and

- (r) perform such other functions not in consistent with the provisions of this Act as may promote the development of the fisheries of Kenya.

Board of Directors.

9. (1) The Service shall be managed by a Board which shall consist of-
- (a) a Chairman appointed by the President from among the members appointed under paragraph (d);
 - (b) the Principle Secretaries of the Ministries for the time being responsible for-
 - (i) fisheries;
 - (ii) defence;
 - (iii) finance;
 - (iv) natural resources; and
 - (v)...trade
 - (c) the Director of the Kenya Marine and Fisheries Research Institute;
 - (d) five other members, not being public officers, appointed by the Cabinet Secretary by virtue of their knowledge and experience in conservation and management of fisheries resources.;
- (2) The Director-General shall be the secretary to the Board.
- (3) The appointing authority shall in making appointments under subsection (1) have regard to the principle of gender parity.
- (4) A person shall be qualified to be appointed under subsection (1) (d) if such person holds a university degree or its equivalent in -
- (a) natural resource/ environment science;
 - (b) fisheries studies;
 - (c) marine affairs and port management;
 - (d) oceanography, or
 - (e) any other fields related to the functions of the Board.
- (5)Notwithstanding subsection (4), the Board may, with the prior approval of the Cabinet Secretary, co-opt into its membership not more than two other persons with not less than fifteen years' experience in fisheries conservation and management where it considers that such knowledge and experience may assist the Board in the performance of its functions

Functions of the Board.

10. The functions of the Board shall be to-
- (a) advise the Cabinet Secretary on all matters pertaining to the establishment, development, conservation and utilization of fisheries resources in Kenya;
 - (b) Overall policy and guidance of the fisheries sector
 - (c) administer the assets of the Service,

- (d) Resource mobilization, and
- (e) perform any other function which the Cabinet Secretary may by notice in the Gazette prescribe.

Tenure of office.

11. (1) The members of the Board appointed under subsection 7 (1) (a) and (d) shall hold office for a term of three years, and shall be eligible for reappointment for one further term.

(2) The First Schedule shall have effect with regard to the membership and the conduct of the affairs of the Board.

Appointment of the Director-General.

12. (1) There shall be a Director-General of the Service who shall be appointed by the Board 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) environmental science;
- (b) fisheries studies;
- (c) oceanography; or
- (d) management,
- (e) any other area which the Board is satisfied is relevant,

and has at least fifteen years' experience in a senior management position in a public institution.

Functions of the Director General.

13. (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) prepare and keep under review the management and development plans of the Service;
- (b) recommend to the Board the recruitment of competent human resources for the Service;
- (c) ensure efficient and effective administration of the Service;
- (d) identify marketing and investments 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 from time to time direct.

(3) The Director-General may with the approval of the Board, may in writing delegate the exercise of any of the powers and functions conferred on him by this Act to such authorized officers as he may deem appropriate.

Other staff of the Service.

- 14.** (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 Second Schedule; and
 - (b) such disciplined officers of the unit established under section 13 as are specified in Part B of the Second Schedule; and
 - (c) such other employees, agents or servants 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 Second Schedule.

(3) The provisions Part D of the Second 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.

Authorized officers

- 15.** (1) The Board may 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.

Honorary fisheries officers.

- 16.** (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.

Establishment of Surveillance and Enforcement Unit.

- 17.** (1) There shall be an enforcement unit to be known as the Surveillance and Enforcement Unit which shall be established by the Cabinet Secretary in consultation with the Cabinet Secretaries responsible for internal security and defence.

(2) The Unit shall consist of the officers specified in Part B of the Second Schedule and shall have the function of generally enforcing the provisions of this Act, by, among other things, management of the fish, fishery products and the

aquatic environment, including aquatic flora, and compliance with this Act.

- (3) 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 discharged of those duties;
 - (c) the regulation of matters relating to discipline in the Unit;
 - (d) the description and issue of arms, ammunition accouterments, uniforms and other necessary supplies to members of the Unit , and
 - (e) matters relating generally to the good order and administration of the Unit.

PART III-FINANCIAL PROVISIONS

Funds of the Service.

- 18.** (1)The funds of the Service shall consist of-
- (a) such monies as may be provided 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) There shall be paid out of the funds of the Service all sums required to defray the expenditure incurred by the Service in the exercise of its powers and the performance of its functions under this Act.

Financial Year.

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

Annual estimates.

- 20.** (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) or in

pursuance of the Board given with prior written approval of the Cabinet Secretary and the Permanent Secretary to the Treasury.

Accounts and audit.

21. (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, 2003.

No 12 of 2003.

Fisheries Research and development Fund.

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

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

PART IV- FISHERIES DEVELOPMENT MANAGEMENT AND CONSERVATION

Fisheries to vest in the State.

23. (1) All fisheries and fisheries resources in Kenya, except where these are owned by private persons, are a property and a heritage of the people of Kenya and are held in trust by the State, subject to any rights of user in respect thereof, which by or under this Act or other written law, are granted to any other person.

(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, such fisheries or fisheries resources as it has been the custom of that community to use, otherwise than for the purpose of sale.

Development Measures

Fisheries development measures

24. The Director-General may, in consultation with other appropriate agencies and other departments of Government, promote the development of traditional and industrial fisheries, fish culture and related industries through-

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

**Notification
by the
Director-General.**

- 25.** (1) The Director-General may by notice in the Gazette give notice on—
- (a) any global, regional, or sub-regional fisheries management agreement or arrangement to which Kenya is or becomes a party; and
 - (b) international conservation and management measures recognized by Kenya for the purposes of this Act.

(2) A notice under subsection (1) shall specify where a copy of the agreement or arrangement or international conservation and management measure, as the case may be, may be obtained.

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

- 26.** (1) The Director- General may with the approval of the Board, provide information to an international organization of which Kenya is a member on –
- (a) Implementation of international conservation and management measures; or
 - (b) any agreement to which Kenya is a party for the giving effect to such measures.

(2) If 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, the Director may-

- (a) provide to the appropriate authorities of the flag state and others of the vessel concerned, the information, including evidentiary material, relating to that contravention;
- (b) request immediate investigations by the flag state; or

- (c) when such foreign fishing vessel is voluntarily in a port in Kenya, promptly notify the appropriate authorities of the flag country of the vessel accordingly.

Records and information.

27. (1) Every person engaged in fishing or related activities or aquaculture production under a licence issued under this Act shall maintain such records and supply such information regarding such activities in a form prescribed in writing by the Director-General or the Regional Fisheries Management Organization require.

(2) all information received shall be for purposes of furthering the objects and principles of this Act.

Information to Public.

28. The Director-General shall ensure where necessary that information is disseminated to members of the public and regional fisheries management organisation for purposes of fisheries development and management.

Relation between National and county governments

29. (1) The Director-General shall ensure that all county governments are consulted and kept informed of management of fisheries under this Act and any other written laws regarding fisheries management.

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

(3) 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.

(4) Where the Cabinet Secretary after considering the report submitted under subsection (3)(b) is satisfied that the county government has mismanaged the functions related to the fisheries he may in the public interest and in consultation with the Cabinet Secretary responsible for the county government, direct that such functions be henceforth performed by the Director-General for a specified period, and shall direct the county government to take specified step to rectify the situation.

(5) The functions referred to in sub section (3) shall revert to the county government when the Cabinet Secretary is satisfied that the county government has complied with the directions given under that sub section.

Fisheries management plans.

- (6) ..The Service may delegate its powers to
 - (a) County government or any entity prescribed under a regulation
 - (b) an officer or employee of the Public Service

30. (1) The Director-General may in consultation with the Cabinet Secretary, by notice in the Gazette establish a management plan for each fishery in such form as he may deem appropriate.

(2) Prior to publication of the management plan under subsection (1) the Director-General shall cause a draft plan to be prepared and shall take reasonable steps to engage in consultation thereon with all interested persons.

(3) A management plan shall take effect upon approval by the Cabinet Secretary and its publication in the Gazette.

(4) A management plan for a fishery shall state-

- (a) a description of the fishery;
- (b) the known status of the fishery;
- (c) the objectives of the management plan;
- (d) how the objectives are to be achieved;
- (e) how the plan may be amended or repealed, including the consultation and other processes to be followed before amendment or repeal.

(5) The management plan may make provision about any provisions prescribed in this Act or any subsidiary regulations made thereunder.

Fisheries Management Measures

Fisheries Management Measures

31. (1)The Director-General may with the approval of the Cabinet Secretary, by notice in the Gazette, impose any of the following measures which may be necessary for the proper management and control of any fishery-

- (a) closed seasons for designated areas, species of fish or methods of fishing;
- (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 amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or traded;
- (e) regulate the landing of fish and provide for the management of fishing ports, including fish landing stations;
- (f) control of the introduction into, or harvesting or removal from, Kenya fishery waters of any aquatic plant;
- (g) define and identify fragile aquatic ecosystems and provide structures

- to enable collaborative protection; and
- (h) provide for the regulation of identification of trade in endangered species, and
- (i) any other measures pursuant to this Act.

(2) Where the use of any gear is prohibited in any area, the Director-General may also, by notice in the Gazette, prohibit the possession, trade or manufacture of the gear in that area.

(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 five hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

Fisheries information .

32. (1) 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 analyse statistical and other information on fisheries and forward the same to the Board.

(2) Every person engaged in fishing-
, or related activities or aquaculture shall supply such information regarding these activities in such form as the Director may require.

(3) No person who receives information pursuant to this section shall use or disclose it except for the purposes of this Act.

(4) The holder of any licence, authorization, certificate or permit issued under this Act or any Regulations made thereunder shall submit at such times as the Director-General may specify, data or information in respect of his business in the form prescribed by the Director-General.

(5) Any data collected under this section shall be maintained in a database in such form as the Director-General may determine.

(6) 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.

Transshipment by foreign fishing vessels

33. (1) Subject to subsection (2), the operator of a foreign fishing vessel shall not transship at sea.

(2) Notwithstanding sub section (1) an operator may, with prior notice and with such other information as the Director-General may require, transship at a designated port subject to such conditions as may be prescribed.

(3) Any vessel in respect of which this section is contravened shall be liable to forfeiture.

Monitoring Control and Surveillance

Cabinet Secretary may prescribe Vessel

34. (1) The Cabinet Secretary may, by notice in the Gazette, designate any device or machine or class of device or machine as an observation device for use in the monitoring and surveillance of fishing vessels.

(2) Monitoring and surveillance of vessels shall be carried out in such manner as the Cabinet Secretary may prescribe through regulations.

Monitoring devices (VMS).

35. (1) The operator of each foreign fishing vessel in respect of which a fishing licence is issued under this Act and such other fishing vessels or persons as the Director may require shall-

- (a) comply with monitoring, control and surveillance requirements for the operation of a vessel monitoring system in respect of the vessel and ensure that any information or data which may be required to be transmitted by an automatic location communicator is transmitted continuously, accurately and effectively to the designated receiver;
- (b) provide such information relating to fishing or related activities, and comply with the form, and manner of reporting pursuant to any fisheries management agreement or arrangement and cooperate in the conservation, management, and sustainable utilization and development of fisheries resources;
- (c) certify that information provided pursuant to subparagraphs (a) and (b) is true, complete and accurate; and
- (d) comply with such other requirements as may be prescribed.

Inter-agency Monitoring control and surveillance units.

36. (1) The Cabinet Secretary may make regulations establishing and assigning functions to an inter-agency monitoring control and surveillance unit.

(2) The Inter-agency monitoring control and surveillance unit's shall be to ensure a coordinated and effective inter-agency enforcement and compliance of the Act.

(3) The Director-General serve as the chair-person of the unit and shall be secretariat of the unit.

(4) Any person who contravenes the 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 of not exceeding two years or to both.

Appointment Of Authorized Observer.

37. (1) The Director-General may in writing appoint any person he considers suitable to be an authorised observer.

(2) An observer appointed under subsection (1) shall-

(3) For the purposes of-

- (a) an access agreement or arrangement entered into under section 44
- (b) a fisheries management agreement or arrangement entered into under section 45,

an observer appointed in accordance with such agreement or arrangement shall be deemed to be an observer appointed in accordance with this section, and this Part shall apply to such observer in the performance of his duties as if he were so appointed but subject to such terms, conditions or limitations as may be imposed by the Director-General by notice in the Gazette or in such other manner as may be prescribed.

Duties of authorised observers.

38. (1) Any person on board any vessel in respect of which a licence or other authorisation has been issued or recognised under this Act shall permit an authorised observer to board and remain on such vessel for the purposes of carrying out his duties.

(2) The master and each member of crew in the vessel referred to in subsection (1) shall allow and assist any observer to carry out his duties.

(3) The master and each member of the crew shall meet such other requirements in relation to the observer as may be prescribed or required in writing by Director-General.

(4) The master and each member of the crew of any fishing vessel shall immediately comply with every lawful instruction or direction given by an observer and facilitate safe boarding and inspection of the vessel, its fishing gear, equipment, records, and fish and fish products, and shall take all measures to ensure the safety of an observer in the performance of his duties.

(5) Any person who —

- (a) assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an observer in the performance of his duty;
- (b) fails to comply with any lawful instruction or direction given by an observer;
- (c) uses threatening language or behaves in a threatening manner or uses abusive language towards any observer while in the execution of his duties, or any person acting under the lawful instruction or direction of the observer or in his aid;
- (d) incites or encourages any other person to assault, obstruct, resist, delay, refuse boarding or entry, intimidate or otherwise interfere with any observer while carrying out his duties, or any person acting under the lawful instruction or direction of an observer or in his aid;
- (e) knowingly furnishes to any observer any particulars which are false or misleading in any respect;

- (f) impersonates or falsely represents himself to be the master or other officer of a fishing vessel;
- (g) impersonates or falsely represents himself to be an observer, or
- (h) is in breach of any duty to the observer required under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or imprisonment for a term not more than two years.

Notice of Intent to Place an Observer.

39. (1) The Director-General shall give the vessel owner or licence holder reasonable notice of the intent to place an observer on the vessel;

(2) Upon receipt of notice under subsection (1) no person shall cause or allow the vessel to sea without an observer on board.

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

Fish landing stations, etc.

40. (1) The Director-General may with the approval of the Cabinet Secretary establish suitable areas to be-

- (a) gazetted Fish Landing stations,
- (b) designated Fish Ports, or
- (c) protected fish breeding grounds.

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

(3) A fisheries officer may refuse entry to a designated fish port where to his knowledge-

- (a) an offence has been committed against this Act or any other law; or
- (b) a breach of an international fisheries conservation and management agreement has taken place, with respect that fishing vessel.

(4) A vessel to which subsection (3) applies shall not be entitled to receive any services at shore or at sea and any person who provides such services to such a vessel at sea commits an offence.

Limitation of fishing.

41. (1) Where proper management of fisheries requires limitation of the number of persons or of vessels, nets or areas or other means employed in a fishery, the Director-General may by notice in writing communicate in such manner as to bring it to the attention of persons affected thereby, and to advise them to effect the limitation.

(2) The Director-General may for the purposes of subsection (1) put in place such other measures as may be appropriate.

(3) The measures referred to in subsection (2) may include-

- (a) refusal to issue or renew licences;
- (b) imposition of special licence and catch fees; or
- (c) preferential licensing in other fisheries,

for a period specified in the notice.

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

Marine mammals.

42. (1) No person or vessel in Kenya fishery waters shall, without the prior written authority of the Cabinet Secretary, fish for marine mammals 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) Where any vessel is used in contravention of subsection (1), the master and owner thereof each commit an offence and shall be liable to a fine not exceeding three hundred and fifty thousand shillings or to imprisonment for a term not exceeding two years, or to both.

Prohibited methods of fishing.

43. (1) The use of the following fishing methods is prohibited-

- (a) explosives;
- (b) poisonous or noxious substances;
- (c) electric shock devices;
- (d) any other device used for the purpose of killing, stunning, or disabling fish so as to render them more easily caught.

(2) Any person who contravenes the provisions of 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.

PART V-REGISTRATION AND LICENSING

Registration of vessels

44. (1) Subject to subsection (2), no fishing vessel shall be operated in the Kenya fishery waters, and no local fishing vessel shall be used in or outside the Kenya fishery waters for fishing or related activity, unless such vessel or ship has been registered by the Board and issued with the appropriate licence.

(2) The Cabinet Secretary may, by notice in the Gazette, exempt any local fishing vessel used only for sport fishing other than for reward or profit from the requirements of subsection (1).

(3) An application to the Director-General for registration of a fishing vessel shall be made 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 a Fishing Vessels Register in which shall be entered the following details in respect of the vessel-

- (a) the name and particulars of the owner;
- (b) the name and year of manufacture;
- (c) the tonnage; and
- (d) the length.

(6) The Director – General may, 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 in respect of that vessel upon payment of the prescribed fee by the applicant.

(7) In any court proceedings brought under this Act, the entry in respect of a vessel in the Fishing Vessel Register, 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 (2), the master, owner and charterer of the vessel commit an offence and shall each be liable upon conviction to a fine not exceeding two 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.

**Applications
for licences,
permits
or certificates.**

**Requirement
for licence.**

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

46. (1) No person other than persons fishing for their own consumption shall catch or assist in catching fish in Kenya fishery waters otherwise than under and in accordance with the terms and conditions of a valid licence issued to him under this Act.

(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, to a company which is a licensee, in respect of any act done by the person or company as such licensee.

(4) Each licence issued under this Act shall be valid for such species of fish, type of fishing gear, method of fishing and area as may be specified in the licence.

(5) It shall be a general condition of any licence issued under this Act or regulations made thereunder that the licensee shall comply with such requirements as the Director-General may establish concerning the making of statistical returns and the collecting of information.

(6) Any person who catches fish in Kenya fishery waters without a licence, or in contravention of the conditions attached to a licence issued under this Act, commits an offence and shall be liable on conviction liable to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year.

Requirement for licence. Application for Local fishing vessels licence.

47. (1) An application for a licence for a local fishing vessel shall be made in the prescribed form to the officer designated by the Director-General to receive applications of that description, or, if no such officer has been so designated, to the Director-General.

(2) Upon receipt of an application under subsection (1) and on payment of the prescribed fee, the officer shall, subject to any instructions of the Director, issue a licence for the local fishing vessel.

(3) A licence issued under this section shall be subject to such conditions as may be prescribed by or under this Act or as may be endorsed thereon by the issuing officer.

Validity of fishing licences.

48. (1) Unless otherwise provided under this Act, any licence issued under this Act shall, unless earlier cancelled or suspended in accordance with section 48, expire on the 31st December of the year in which it is issued.

(2) Except as may be prescribed in connection with any scheme for limiting fishing effort in any fishery or for the purposes of participatory rights, no licence issued in respect of any fishing vessel under this Act shall be transferable to any other vessel except with the written permission of the Director-General, or, in the case of a foreign fishing licence, the Cabinet Secretary.

Cancellation or suspension of fishing licence.

49. (1) A fishing licence may be revoked or suspended where the Director-General is satisfied that-

- (a) it is necessary to do so in order to give effect to any licensing programme or participatory right, scheme or other effort control programme specified in the fishery management plan; or

- (b) the vessel in respect of which the licence has been issued has been used in contravention of this Act or any regulations made thereunder, or of any condition of the licence, or in breach of any applicable access agreement or arrangement.

(2) A foreign fishing vessel licence may be cancelled or suspended if it is in breach of the terms of any applicable agreement or arrangement entered into under sections 51.

(3) Where a fishing licence has been cancelled or suspended under subsection (1), the cancellation shall not take effect until the licensee has been notified accordingly.

(5) Any notification given under subsection (3) shall be in writing, except that in the case of a foreign fishing vessel, it may be given by electronic means or in such other form as the Cabinet Secretary may in writing direct.

Appeals on cancellation or suspension

50. Any person aggrieved by —

- (a) the refusal of the Director- General to issue or renew a licence; or
(b) the cancellation or suspension of a licence issued may within thirty days of the receipt of notification appeal to the Board.

Fees and other charges.

51. There shall be payable in respect of every licence issued under this Act such fees and other charges as may be prescribed and, in the case of foreign fishing vessels, such other charges as may be provided in any access agreement entered into under section 44 or as the Cabinet Secretary may otherwise determine in relation to an access agreement or arrangement.

Licensing of Locally- Based Foreign Fishing Vessels

Locally based foreign fishing vessel.

52. (1) No locally-based foreign fishing vessel shall be used for fishing or related activities in the Kenya fishery waters without a locally-based foreign fishing vessel licence issued by the Director-General.

(2) An application for a locally-based foreign fishing vessel licence shall be in the prescribed form and shall be made only in respect of a foreign fishing vessel which has been registered on the Fishing Vessel Register.

(3) A locally-based foreign fishing vessel licence shall be valid only for such areas, fisheries or methods of fishing, and type and quantity of fishing gear as shall be endorsed on the licence.

(4) Where a fishing vessel licensed as a locally-based foreign fishing vessel becomes a foreign fishing vessel, the locally based foreign fishing vessel licence shall be automatically terminated.

(5) Where a locally-based foreign fishing vessel is used in contravention of subsection (1) the master, owner and charterer of the vessel each commit an offence and shall each be liable conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years.

(6) Where a locally-based foreign fishing vessel is used in contravention of any condition of the licence issued under this section the master, owner and charterer of that vessel commits an offence and shall each be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or imprisonment for a term not exceeding two years.

(7) The Cabinet Secretary may, by regulations, prescribe different classes of locally-based foreign fishing vessels, and the areas or distances from the shore within which each class of locally-based foreign fishing vessel shall operate.

Foreign Fishing in Kenya Fishery Waters

Access agreements or arrangements.

53. (1) The Cabinet Secretary may with the advice of the Board enter into agreements with other States, intergovernmental organizations or associations representing foreign fishing vessel operators allocating fishing rights to vessels of those States, organizations or associations.

(2) The total fishing rights allocated by agreements made under this section shall not exceed the total resources or amount of fishing permitted to foreign fishing vessels by the applicable fisheries management and development plan.

(3) Any agreement made under this section shall include-

- (a) a provision establishing the responsibility of the other State, organization or association to take all necessary measures to ensure compliance by its vessels with the agreement and with the law relating to fishing in Kenya fishery waters; and
- (b) such other provisions as may be prescribed

Fishing and entry into Kenya fishery waters by foreign fishing vessels.

54. (1) No foreign fishing vessel shall be used for fishing or related activities in Kenyan waters unless a foreign fishing vessel licence has been issued to such vessel.

(2) Where any foreign fishing vessel enters Kenya fishery waters without a licence issued under subsection (1), such vessel shall not engage in any fishing or related activity, and any and all fishing gear of the vessel shall, at all times while it is in such waters, be kept stowed in such a manner not to be readily available .

(3) Subject to the provisions of this Act, the Director-General may issue a foreign fishing vessel licence in the prescribed form authorizing a foreign fishing vessel to be used in Kenya fishery waters, or any part thereof, for the fishing or related activities which may be determined in the licence.

(4) Subject to subsection (5), no foreign fishing vessel licence shall be issued to any foreign fishing vessel unless there is in force an arrangement with the

Government of the flag state of the vessel or with an association of which the owner or charterer is a member.

(5) Notwithstanding the provisions of subsection (4), the Director-General may issue a licence in respect of a foreign fishing vessel where the applicant provides sufficient financial and other guarantees relating to his or her fulfillment of all obligations arising in terms of this Act, as well as other conditions regarding insurance related to pollution and rescue, and the Director-General is satisfied that those guarantees are adequate for that purpose.

(6) If a fishing vessel is used in contravention of subsection (1) or of any condition of a foreign fishing vessel licence, the master, owner and charterer of that fishing vessel each commit an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years, or to both.

Issue of foreign fishing vessel licence.

55. (1) An application for a licence for a foreign fishing vessel shall be submitted to the Director-General in the prescribed form.

(2) The Director may issue a foreign fishing vessel licence where

- (a) he has determined the quantity of the surplus fish which may be harvested from the fishery waters; and
- (b) he has determined the quantity of the surplus fish which may be harvested by the applicant and indicates that quantity as a condition of the licence.

(3) A foreign fishing vessel licence shall be subject to a condition requiring it to comply with any management measures which may be in force from time to time under this Act and to the payment of prescribed fees, royalties or charges.

Limitation of foreign fishing licence

56. No license shall be issued under this Act for a foreign fishing vessel to fish within Kenya's territorial waters.

Other Licenses

Other licences requirements.

57. (1) The Cabinet Secretary may, in addition to issuing licences for fishing vessels, make regulations requiring a licence for any fishery activities, including sport fishing or the use of any gear or method of fishing, with or without the use of a vessel, or for fish processing or dealing in fish.

(2) Any person who engages in any activity, for which a licence is required by section (1) otherwise than under the authority of such a licence, commits an offence and shall be liable for a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months; and for a second or subsequent offence, to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year, or to both.

Sport fishing licence.

58. (1) No fishing vessel shall be used for sport fishing for hire or reward in the Kenya fisheries waters without a sport fishing vessel licence issued by the Director-General.

(2) The Director-General may issue a commercial sport fishing vessel licence to any vessel described in sub-section (3).

(3) A sport fishing vessel licence shall be valid only for such areas, methods of sport fishing, and type and quantity of sport fishing gear as may be endorsed on the licence.

(4) A sport fishing vessel licence, unless earlier cancelled or suspended in accordance with section 40, shall be valid for the period stated thereon.

(5) Where a fishing vessel is used in contravention of sub-section (1), the master, owner and charterer of that vessel commit an offence and shall each be liable upon 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.

(6) Where a fishing vessel is used in contravention of any condition of licence issued under this section the master, owner and charterer of that vessel commit an offence and shall each be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

(7) The Cabinet Secretary may prescribe different classes of sport fishing vessels, and the areas or distances from the shore within which each class of sport fishing shall operate.

Refusal of licence

59.(1) The director General with approval of the board may refuse to issue a licence where he consider that the applicant does not meet the requirement of this Act and shall inform the applicant accordingly of this refusal.

(2) any person aggrieved by a refusal under this section may appeal to the Cabinet Secretary in writing

Fishery Scientific Research and test fishing operations or surveys.

60.(1) The Director-General may, on the submission of an application accompanied by a satisfactory research or test fishing operations or survey plan, as the case may be, and subject to such other requirements as may be prescribed, authorise any vessel or person to undertake-

- (a) fishery scientific research; or
- (b) exploratory fishing
- (c) test fishing operations or surveys, in the Kenya fishery waters.

(2) The Director-General may impose such conditions as he deems fit to any authorization granted under subsection (1).

(3) Any person who undertakes or assists in any fishery scientific research or test fishing operations or surveys in the Kenya fisheries waters-

- (a) without authorization under subsection (1); or
- (b) contravention of any requirements or any conditions attached to the authorization under subsection (2),

commits an offence and shall be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or imprisonment for a term not exceeding two years or to both.

(4) Any authorization granted under this section shall be in writing and shall state all the terms and conditions of the authorization.

Powers of authorised officers.

61. (1) For the purpose of enforcing this Act and any regulations made thereunder, any authorised officer may, without a warrant —

- (a) stop, board and search any foreign fishing vessel in the Kenyan fisheries waters, and any locally based foreign vessel or local fishing vessel within or outside the fisheries waters;
- (b) require the master, fishing master or any crew member or other person aboard a fishing vessel to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer, fishing master or any crew member;
- (c) question the master, fishing master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel, vehicle or aircrafts;
- (d) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act or concerning the operation of any vessel;
- (e) make an entry dated and signed by him in any vessel's log;
- (f) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or expedient for any purpose specified in this Act or to provide for the compliance of the vessel or the master or any crew member thereof with the conditions of any licence;
- (g) stop, enter and search any vessel, vehicle or aircraft which, on reasonable grounds, he suspects is transporting fish or fish products or is being or has been used or involved in the commission of an offence against this Act or regulations made thereunder;
- (h) make such inspection or inquiry as may appear necessary to him concerning any place, premises, vessel, vehicle or aircraft in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
- (i) require to be produced, and examine, any fish, fishing net, fishing gear or explosive or other noxious thing whether on sea or on land;
- (j) at all reasonable times enter and inspect any fish processing establishment for which a licence is held or required or any other place or premises where a related activity is authorised or conducted or in respect of which

- a licence or other authorisation is issued or required under this Act; and
- (k) require to be shown or produced, and examine, any fish, fish product, fish processing device or equipment, or other thing used in fish processing or for or in connection with a related activity or such other activity for which a licence is issued or required under this Act.

(2) Any authorized officer may , where he has reasonable grounds to believe that an offence under this Act has been committed, without a warrant —

- (a) enter and search any vessel, vehicle, aircraft, place or premises, other than a place or premises used exclusively as a dwelling house, in which he believes the offence has been committed or where he believes that fish illegally taken or explosives for use contrary to section 65 are being stored;
- (b) take samples of any fish found in any vessel, vehicle, aircraft, place or premises searched under this section;
- (c) give directions to the person in charge of or otherwise responsible for operation of a place or premises and any persons in the place or premises entered under subsection (1) (j), as may be necessary or expedient for any purpose specified in this Act or to provide for the compliance by such person with the conditions of any licence or authorisation;
- (d) order the destruction of any fish or fish product kept in a fish processing establishment or a place or premises where a related activity is conducted or in relation to which a licence or other authorisation is issued or required under this Act, which the officer believes are processed or kept contrary to the requirements of this Act or are diseased;
- (e) order, in relation to a fish processing establishment or a place or premises in which a related activity or other activity for which a licence or authorisation is issued or required under this Act, the cessation of activities, which the officer believes are being undertaken contrary to the provisions of this Act;
- (f) order the suspension or cessation of fishing, related activity or any other activity that the officer believes is being conducted in contravention of the provisions of this Act;
- (g) seize —
 - (i) any vessel together with its fishing gear, equipment, stores and cargo, and any vehicle, aircraft or hovercraft which he believes has been or is being used in the commission of an offence, or which he knows or believes has been forfeited in accordance with any provision of this Act;
 - (ii) any explosive, poison or other noxious substance which he believes has been used or is being possessed or controlled in contravention of this Act;
 - (iii) any logs, charts or other documents required to be maintained by this Act or under the terms of any licence or authorisation or which

he believes show or tend to show the commission of an offence against this Act; and
 (iv) anything which he has reasonable grounds to believe might be used as an exhibit in any proceedings under this Act;

- (h) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act and, where it is impracticable immediately to bring that person before a magistrate or court of competent jurisdiction without unnecessary delay, detain him; and
- (i) arrest any person who assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of, or otherwise interferes with, an authorised officer in the performance of his duties, or fails to comply with any lawful order, requirement or request of an authorised officer or otherwise contravenes this section or section 59 and, where it is impracticable immediately to bring that person before a magistrate or court of competent jurisdiction without unnecessary delay, detain him.
- (j) a written receipt in a prescribed format, stating the grounds for seizure, shall be given for any article or thing seized under this section.

(3) An authorised officer may when exercising his powers under subsection (2) (a), (b), (h) and (i), use such force as is reasonably necessary in the circumstances.

Seizure of vessel by authorised officer.

62. (1) Where any vessel is seized at sea under this Act the master and crew shall take it to the nearest or most convenient port which the authorised officer may designate, where the vessel may be detained pending the outcome of any legal proceedings under this Act or until its lawful release, or until it is decided not to lay any charge.

(2) The master shall be responsible for the safety of the crew, vessel, himself and any other person on board while bringing the vessel to the port designated under subsection.

(3) An authorized officer may take a seized vessel to the port if the master fails or refuses to do so.

(4) When the vessel is brought to the designated port under the provisions of paragraph (3), no action shall lie against the authorised officer or the Service for any death, injury, loss or damage occurring while the vessel is being so brought, unless it arose from an act of the authorised officer that was outside his duties under this Act or was done maliciously.

Seizure of vehicle or aircraft by authorised officer.

63. (1) Where any vehicle or aircraft is seized under this Act the driver or pilot shall take it to the nearest or most convenient place for the holding of such vehicle or aircraft which the authorised officer may designate, where the vehicle or aircraft may be detained pending the outcome of any legal proceedings under this Act or until its lawful release, or until it is decided not to lay an information or charge.

(2) The driver of the vehicle or pilot of the aircraft shall be responsible for the safety of the vehicle or aircraft and for any crew, himself and any other person thereon or in while bringing the vehicle or aircraft to the designated place.

(3) An authorized officer may take the seized vehicle or aircraft to the designated place if the driver or pilot refuses to do so.

(4) When a vehicle or aircraft is brought to the designated place under the provisions of subsection (3), no action shall lie against the authorised officer or the Service for any death, injury, loss or damage occurring while the vehicle or aircraft is being so brought unless it arose from an act of the authorised officer that was outside his duties under this Act or was done maliciously.

Immobilizing of seized vessel, Vehicle or aircraft.

64. (1) An authorised officer may remove any part or parts of any vessel, vehicle or aircraft detained under the provisions of this Act for the purpose of immobilizing that vessel, vehicle or aircraft.

(2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft immediately upon any lawful release.

(3) Any person who –

- (a) possesses or arranges to obtain any part or parts removed under subsection (1);
- (b) possesses or arranges to obtain or make any replacement or substitute part or parts for those removed under paragraph (1);
- (c) fits or attempts to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft detained under the provisions of this Act with the intention of mobilizing the vessel, vehicle or aircraft,

commits an offence and shall be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or to imprisonment for a term not exceeding two years.

Power of authorised officer direct persons under his command.

65. (1) An authorised officer may, during the exercise of powers under this section, direct a person under his command to carry out such duties of an authorised officer and for such period as he may specify.

(2) A person who receives a direction under subsection (1) shall have, for the purpose of carrying out the specified duties, all the powers and protections accorded to an authorised officer under this Act.

Duty to comply with instructions.

66.(1) The master and all members of the crew of any fishing vessel, the driver and any passenger of any vehicle and the pilot and each member of the crew of any aircraft shall immediately comply with every lawful instruction or direction given by an authorised officer and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft, as the case may be, and of any fishing gear, equipment, records, fish and fish products, and shall take all measures to ensure the safety of

an authorised officer in the performance of his duties.

(2) The holder of a fish processing establishment licence or the holder of any licence or other authorisation issued under this Act to conduct a related activity or other activity required to be licenced or authorised under this Act, and all persons at the establishment or place where such activity is conducted, shall immediately comply with every instruction or direction given by an authorised officer and facilitate his safe entry and inspection of the establishment or place and take all measures to ensure the safety of any authorised officer in the performance of his duties.

Powers beyond fisheries waters.

67. (1) Where, following the commission of an offence under this Act by any person or vessel, the person or vessel is pursued to a place at sea beyond the limits of the fisheries waters, or if the person or vessel is otherwise pursued to a place at sea beyond the limits of the fisheries waters in circumstances and to the extent recognised by international law, any power conferred on an authorised officer under this Act shall be exercisable at such a place beyond the limits of the fisheries waters:

Provided that the pursuit shall not be terminated or interrupted at any time before the authorised officer or officers concerned arrives at such a place with a view to exercising that power.

(2) For the purposes of subsection (1), pursuit of a person or vessel is not taken to be terminated or interrupted merely because the authorised officer or officers concerned lose sight of such person or vessel.

(3) A reference in subsection (2) to losing sight of a person or vessel includes a reference to output from radar or other sensing device.

Identification of authorised officer.

68. An authorised officer in exercising any of the powers conferred on him by this Act shall on demand produce identification to show he is an authorised officer under this Act.

Compounding of offences.

69.(1) The Cabinet Secretary may by notice in the Gazette issue a schedule of offences under this Act or any regulations made thereunder which may be settled by the Director-General through compounding under subsection (2).

(2) The Director or any fisheries officer of the Service may, if he is satisfied that a person has committed any of the offences listed in the notice issued under in subsection (1), and if the person admits the commission of the offence and agrees in writing to its being dealt with under this section-

- (a) compound the offence by accepting a sum of money not exceeding one hundred thousand shillings; or
- (b) order the release of any vessel or any other thing, seized in connection with the offence, on payment of a sum of money not exceeding the value of the vessel, or, if the value of such a thing is small, such person

shall be liable to pay a fine not exceeding ten thousand shillings:

Provided that any gear seized by the fisheries officer shall not be released.

(3) Where proceedings are brought against any person for an offence under this Act, it shall be a good defence if the person proves that the offence has been compounded under this section.

(4) Where any person is aggrieved by an order made under subsection (2), he may within thirty days of such order being made, appeal against such order to the High Court and the provisions of the Criminal Procedure Act in relation to appeals shall apply *mutatis mutandis* to every such appeal as if it were an appeal against sentence passed by a subordinate court in exercise of its own original jurisdiction.

(5) Any fisheries officer who compounds an offence shall submit to the Director-General a list of compounded offences in the prescribed manner.

(6) The Director-General shall, after every three months and in such form as the Director of Public Prosecutions may direct, submit to the Director of Public Prosecutions a return of all compounded offences compounded during that period

Offences committed against an authorised officer.

70. Any person who -

- (a) assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with, an authorised officer, in the performance of, his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
- (b) fails to comply with any lawful order, requirement or request of an authorised officer or otherwise contravenes section 54 or section 55;
- (c) uses threatening language or behaves in a threatening manner or uses abusive language towards an authorised officer while in the execution of his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
- (d) incites or encourages any other person to assault, obstruct, resist, delay, refuse boarding or entry, intimidate or otherwise interfere with an authorised officer while carrying out his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
- (e) knowingly furnishes to an authorised officer any particulars which are false or misleading in any respect;
- (f) impersonates or falsely represents himself to be the master or other officer of a fishing vessel;
- (g) resists lawful arrest;
- (h) interferes with, delays or prevents by any means, the lawful apprehension or arrest of another person under this Act; or
- (i) is in breach of any duty to the authorised officer required under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding three

hundred and fifty thousand shillings or imprisonment for a term not exceeding two years, or to both.

Impersonating an authorised officer.

71. Any person who impersonates or falsely represents himself to be an authorised officer 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 two years, or to both.

Destruction of evidence and avoidance of seizure.

72. Any person who -

- (a) being on board any vessel being pursued, about to be boarded or which has been notified of intended boarding by any authorised officer, or
- (b) being in a fish processing establishment or a place or premises where a related activity is conducted or in relation to which a licence, permit or other authorisation is issued or required under this Act, throws overboard, discards or destroys any fish, fish products, fishing gear, explosive, poison, noxious substance, chart, log, document or other thing with intent to avoid the seizure thereof or the detection of any offence against this Act,

Receiving fish in respect of which offence has been committed.

73. Any person who for purposes of trade and commerce receives or retains any fish knowing or having reason to believe that an offence under this Act has been committed in respect thereof commits an offence and shall be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or imprisonment for a term not exceeding two years, or to both.

Importation of illegal fish.

74. (1) Subject to subsection (3), any person who —

- (a) on his own account, or as partner, agent or employee of another person, lands, imports or otherwise brings into Kenya; or
- (b) causes or permits a person acting on his behalf, or uses a vessel, to land, import or otherwise bring into Kenya,

any fish taken, possessed, transported or sold contrary to the law of another State, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

(2) This section shall not apply to fish taken on the high seas contrary to the laws of another State where Kenya does not recognize the jurisdiction of that State over the high seas.

(3) Where there is an agreement with another State relating to offences under subsection (1), the penalty, or any portion of it according to the terms of the agreement, shall, after all costs and expenses have been deducted, be remitted to that State.

PART VI — PROSECUTION, HANDLING OF SEIZED GOODS AND EVIDENCE

Conduct of prosecutions.

Cap. 75

Forfeiture and disposal of perishables.

75. Any authorized officer may, subject to the direction of the Director of Prosecution, conduct any prosecution for any offence under this Act or the regulations made there under and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

76. (1) 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

(2) The Director-General may depending on the circumstances, release or destroy live fish seized under this section.

77. (1) If any vessel, vehicle, aircraft or other thing has been detained or seized in terms of paragraph 52 (2) (g), and -

Treatment of seized goods.

- (a) 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 detention or seizure, the Director-General may apply to the court for the vessel vehicle, aircraft or other thing to be forfeited to the Republic, and the court shall make such order as it shall deem fit.
- (b) the lawful owner cannot be traced within ninety days of such seizure, the same shall be forfeited to the Service and may be disposed in such a manner as the Director-General may consider appropriate.
- (c) the court does not order the forfeiture of it, any proceeds realized from its disposal shall be returned to the owner thereof or the person having the possession, care or control of it at the time of such detention or seizure.

(2) 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 have been paid.

(3) If any payment contemplated in subsection (2) is not made within such time as the court may determine, the vessel, vehicle, aircraft or thing may be sold in satisfaction and the proceeds shall be dealt with in accordance with section 7.

(4) Any vessel, vehicle, aircraft or other thing ordered to be forfeited in terms of this Act may, if no appeal has been lodged at the expiry of the time limited for appeal in a court, be disposed of in the manner that the Cabinet Secretary may determine.

Application of Security.

78. Any security or net proceeds of sale held in respect of any vessel, vehicle, aircraft or other thing shall be applied as follows—

- (a) the discharge of any forfeiture ordered;
- (b) the payment of all fines or a contribution towards such a fine, for offences in terms of this Act or penalties imposed in terms of this Act, arising out of the use of or in connection with the vessel, vehicle, aircraft or other thing;
- (c) the discharge of all orders for costs in proceedings in terms of this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other thing; and
- (d) if any sum remains, return to the owner of such goods.

Liability for loss, damage or deterioration of things in custody. Removal of Custody.

79. The Service shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other thing while in the custody of the Service in terms of this Act.

80. (1) Any person who knows or can reasonably be expected to know that a vessel, vehicle, aircraft or other thing is held in the custody of the Service in terms of this Act and who removes it commits an offence.

(2) If any vessel, vehicle, aircraft or other thing held or forfeited in terms of this Act has been unlawfully removed from the custody of the Service it shall be liable to seizure in accordance with any relevant law, or, where the same is removed by the owner or maker of a foreign fishing vessel, in accordance with international law.

Forfeiture.

81. A court which convicts any person of an offence under this Act may, in addition to any penalty otherwise imposed—

- (a) order anything other than immovable assets used in connection with the offence, including any vessel so used together with its fishing gear, stores and cargo, appurtenances as well as anything in respect of which the offence has been committed, to be forfeited;

- (b) order all fish found on board any vessel or vehicle used in connection with the offence to be forfeited, except that any fish that is proved not to have been caught in the course of the commission of an offence shall not be forfeited.

Certificate of evidence.

82. (1) The Director-General may give a certificate stating-

- (a) that an appended document is a true copy of the licence, permit, authorization or certificate of registration issued to a vessel or person;
- (b) that a particular location or area of water was within the fisheries waters or within any other controlled area of the fisheries waters subject to specified conditions;
- (c) that an appended chart shows the boundaries of the fisheries waters, territorial seas, or other areas delineated for any specified purpose;
- (d) that a particular item or piece of equipment is fishing gear;
- (e) that an appended document is a true copy of an access agreement or arrangement or a fisheries management agreement or arrangement;
- (f) the cause or manner of death of or injury to any fish; or
- (g) that a call sign, name or number and the system under which they are allotted are that of a particular vessel.

(2) A certificate given under subsection (1) shall state the name of the authorised officer making the certificate and —

- (a) his address, official position, country of appointment and authority under which he is appointed;
- (b) the name and call sign, if known, of the fishing vessel concerned;
- (c) the place or area in which the vessel was located, and
- (d) the date and time or period of time the vessel was in the place or area stated in paragraph (c) and
- (e) a declaration that he checked the position fixing instruments used to fix the place or area stated in (c) and their accuracy within the internationally accepted margin of errors or standards relating to such instruments.

(3) Any certificate given under this section shall be headed "Certificate Given Under section 82 of the Fisheries Management and Development Act".

(4) The provisions under this section are in addition to and not in derogation from any requirement for admissibility of evidence as provided for in the Evidence Act.

PART VII – THE FISH LEVY

Cap. 80

Fish levy.

83. (1) The Cabinet Secretary may, order the payment by persons engaged in fishing or related activities of a fish levy (hereafter referred to as ("the levy").

(2) The order published under subsection (1) may (a) make different provisions

in relation to different activities.

(3) Contain provisions as to 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.

(4) Any person who fails to comply with the provisions of an order issued under this section commits an offence.

Fish Levy Trust Fund.

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

(2) The Trust Fund shall consist of-

- (a) The levy imposed by the Cabinet Secretary under this section
- (b) such sums of money as may be received by the Trust in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the Trust Fund; and
- (c) such other sums of money or other assets as may be specifically designated to the Fund by the Service out of its general fund.

(1) The Trust Fund shall be vested in the Service and shall be administered by a Board of Trustees appointed by the Minister, on such conditions as he may deem fit.

(2) The object of the fund shall be to facilitate research intended to further the development of fisheries management, capacity building, scholarships and grants.

Pollution Prevention Zone.

85. For purposes of protecting the aquatic environment and ecology, the Kenya fishery waters are hereby declared to be a pollution prevention zone.

Discharge of Pollutants prohibited.

86. (1) Except in the cases of emergency involving the safety of a fishing craft or crew, no person shall intentionally or negligently place or discharge into Kenya fishery waters, any article, including abandoned fishing gear, or pollutant which may-

- (a) cause harm to any fisheries resource or marine mammals;
- (b) interfere with fishing or obstruct fishing gear or vessels; or
- (c) become a hazard to navigation.

(2) The owner or master of a fishing vessel places or discharges pollutants into the Kenya fishery water, commits an offence and shall be liable on conviction to a fine of one million

(3) In addition to sub section (3), the court may order the owner or master of the fishing vessel so convicted to clean up the environment affected by the discharge

(4) Where the owner or master fails, neglects or refuse to clean up as ordered under sub (4), the Director –General may cause the cleaning up at the expense of the owner or master of the fishing vessel

(5) The Director- General may cause the suspension or cancellation of the licence of a vessel to which this section applies

(6) In the event of an accidental placing or discharge of such articles or pollutant into the fishery waters or in the event of encountering such articles, the owner or master of the vessel shall immediately report the incident to the Director-General giving the following information-

- (a) the name of the reporting person and the name and call sign, if any, of his vessel;
- (b) the nature of the article disposed or encountered;
- (c) the location of the article or pollutant spill; and
- (d) the time and date of the incident.

(7) Unless it is provided otherwise, the provisions of section 93 of the Environment Management and Co-ordination Act, 1999, shall apply to offences involving discharge of pollutants under this Act.

No. 8 of 1999.

Placing of live fish.

87. (1) No person shall place or by act of omission cause to be placed any species of live fish in any body of water 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.

PART VIII—AQUACULTURE DEVELOPMENT

Regulations for Aquaculture.

88. The Director-General may in consultation with the Board and with the approval of the Cabinet Secretary, by notice in the Gazette, and for purposes of proper management of aquaculture make regulations outlining-

- (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.

Establishment and operation of aquaculture

89. (1) No person shall establish or operate an aquaculture establishment to which this section applies otherwise than under the authority of, and in accordance with the conditions of, an aquaculture permit granted by the Director-General under section 91.

(2) Any person who establishes or operates an aquaculture establishment in contravention of subsection (1) or 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 fifty 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 may be prescribed by the Director-General by notice in the gazette.

Registration of Aquaculture Establishment

90. (1) The owner or lessee of an aquaculture establishment shall cause it to be registered with the Director-General and shall, for the purposes of the registration, provide to the Director-General-

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

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

Aquaculture permits

91. (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, 1999.

No. 3 of 1999.

Co-operation with other bodies.

92. The Director-General may co-operate with other bodies which deal with fisheries in neighboring countries for the purposes of-

- (a) preventing the escape of cultured species into shared water bodies; and
- (b) protecting the fisheries from effluents which might affect the shared water bodies.

PART IX—FISH SAFETY AND QUALITY

Competent authority.

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

(2) The management of the competent authority in matters related to this Act shall be the responsibility of a standing committee and a technical committee.

(3) The functions of the competent authority shall be to-

- (a) convene on a regular basis the meetings of the standing and technical committees;
- (b) monitor the production of, fishery products and fish feed with a view to assessing risks to humans;
- (c) control fish handling, landing, transportation, processing and marketing;
- (d) work in collaboration with other Government agencies in matters related to this section;
- (e) assess and approve plans and structures of intended fishery enterprises;
- (f) carry out inspection of operational fishery enterprises for compliance with fish safety regulations issued by the Cabinet Secretary;
- (g) lay down all procedures to be followed for compliance with provisions under paragraph (f);

- (h) specify conditions for the placing on the market of fish, fishery products and fish feed;
- (i) maintain a register of fishery enterprises approved by the competent authority.
- (j) issue health certification of fish, fishery products and fish feed subject to the consignment meeting set requirements ;
- (k) grant approval for the fishery enterprises that meet applicable requirements prescribed by the Cabinet Secretary.
- (i) perform such other functions as may be necessary or expedient for food safety conditions of fishery products in accordance with this Act.

(3) The Cabinet Secretary, may for the purposes of subsection (2) make regulations, and such regulations shall have effect with regard to membership and conduct of the affairs of the standing committees.

Harmonization of fish safety and quality standards.

94. The Director-General may 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.

PART X — COMMUNITY PARTICIPATION

Establishment of Beach Management Units.

95. (1) The Cabinet Secretary may for purposes of ensuring structured community participation in fisheries management, make regulations governing the administration of beach management units.

(2) Regulations made under (1) may provide, in respect of the beach management units, for-

- (a) objectives, structure, areas of jurisdiction and mandate in co-management;
- (b) membership and general administration;
- (c) establishment, registration, supervision and dissolution procedures;
- (d) fees and charges which a beach management unit may levy and the management of such levies, and
- (e) any other consideration the Cabinet Secretary may deem necessary.

Promotion of fish production and marketing.

96. The Director-General may, 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 XII— MISCELLANEOUS

Regulations.

97. (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) presenting 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, fishery products and fish feed
- (f) Providing for the management and control of fishing ports and fishing waters;
- (g) 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.

Suprecession.

98. 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 XII REPEALS AND TRANSITIONAL

Repeals and transitional provisions.

99. (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 any 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 him, 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
- (f) Cabinet Secretary shall mean a Cabinet Minister during the transition period.

FIRST SCHEDULE

(S. 13)

MEMBERSHIP AND THE CONDUCT OF THE AFFAIRS OF THE BOARD

Tenure of office. 1. (1) The chairman of the Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(2) Other than ex-officio members, a member of the Board shall hold office for a period not exceeding three years on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term.

(3) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office fall at different times.

(4) A member other than the chairman or an ex-officio member may –

(a) at any time resign from office by notice in writing to the Cabinet Secretary;

(b) be removed from office by the Cabinet Secretary if the member-

(i) has been absent from three consecutive meetings of the Board without the permission of the chairman; or is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or

(iii) is convicted of an offence involving fraud or dishonesty;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(iv) is incapacitated by prolonged physical or mental illness;

(v) 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.

Meetings of the Board.

2. (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.

Disclosure of interest.

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at the meetings of the Board at which the contract, proposed contract or matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact, and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Board may regulate procedure

4. Save as provided in this Schedule, the Board may regulate its own procedure.

SECOND SCHEDULE

(S. 13)

STAFF OF THE SERVICE

PART A—FISHERIES OFFICERS

A- (a) Professional Cadre s.12(1) a

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) 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

The Cabinet Secretary may constitute an inter-agency MCS unit composed of the following agencies for purposes of enforcement of this Act.

Members	Designation	Status of Membership
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
Representative Of NEMA	Member	Permanent
Representative of Public Health and Sanitation	Member	co-opted
Representative of Defence	Member	co-opted
Representative of Cooperatives	Member	co-opted

Representative of Water	Member	co-opted
Representative of Immigration	Member	co-opted
Representative of Kenya Revenue Authority	Member	co-opted
Representative of Kenya Wildlife Service	Member	co-opted
Representative Kenya Maritime Authority	Member	co-opted
Representative Kenya Ports Authority	Member	co-opted
Representative of East Africa Community / Foreign Affairs	Member	co-opted

SECOND SCHEDULE

(S.33 (2))

A - DESIGNATED FISH LANDINGSTATIONS

1. Indian Ocean

s/no	Name of Landing site	District	Division/ Location	county
	Vanga	Msambweni	Vanga	Kwale
	Mokowe	Lamu	Mokowe	Lamu
	Mombasa	Mombasa	Mvita	Mombasa

APPENDIX 2

PART I — PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Jurisdiction and sovereign rights of Kenya
4. Application.
5. Objective and principles.
6. Establishment of the Kenya Oceans and Fisheries Council

PART II—THE KENYA FISHERIES SERVICE

7. Establishment and status.
8. Headquarters.
9. Functions of Service.
10. Establishment, functions, powers and duties of the Board of Directors.
11. Membership of the Board
12. Termination of appointment as a member of the Board
13. Disclosure of interest
14. Meetings of the Board
15. Appointment of the Director-General.
16. Functions of the Director – General.
17. Other staff of the Service.
18. Authorized officers
19. Honorary fisheries officers.
20. Establishment of Monitoring, Control and Surveillance Unit.
21. Inter-agency monitoring, control and surveillance unit
22. Collaboration with Fish Marketing Authority

PART III-FINANCIAL AND ADMINISTRATIVE PROVISIONS

23. Funds of the Service.
24. Financial Year.
25. Annual estimates.
26. Accounts and audit.
27. Fisheries Research and Development Fund.
28. Fish Levy Trust Fund.
29. Director-General to report to the Board

PART IV-FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

30. Fisheries vest in the State.

Division 1 - Fisheries Development Measures

31. Fisheries development measures.

Division 2 – International fisheries conservation and management measures

32. Notification by the Director-General.
33. Implementation of international conservation and management measures.

Division 3 –Coordination of fisheries management with Counties, shared fisheries management

- 34. Director-General to keep Counties informed of management measures, processes.
- 35. County may develop fisheries management plans
- 36. County to submit fisheries management plans to Director-General for endorsement.
- 37. Relations between National and County governments
- 38. Shared responsibility for fisheries management
- 39. Establishment of Beach Management Units

Division 4 – Fisheries Conservation and Management

- 40. Responsibility for planning fisheries management
 - 41. Fisheries management plans
 - 42. Fisheries management measures.
 - 43. Limitation of fishing and fishing related activities
 - 44. Closed areas
 - 45. Closed seasons
 - 46. Prohibited fishing gear and methods
 - 47. Damage, destruction to and interference with fishing gear, vessel, person prohibited
 - 48. Possession of prohibited fishing gear
 - 49. Leaving or abandoning objects in the sea prohibited
 - 50. Declaration of endangered species of fish
 - 51. Prohibitions and requirements for marine mammals
 - 52. Marine Protected Areas
 - 53. Fisheries impact assessments
 - 54. Pollution of the Kenya Fishery Waters
 - 55. Fish landing stations, etc.
 - 56. Placing of live fish.
 - 57. Director-General to direct stock assessments, collection and analysis of other information and forward to the Board.
 - 58. Prohibited activities relating to fish or fish products taken contrary to the laws of another State

PART V - IMPORT, EXPORT AND TRADE AND MARKETING OF FISH AND FISH PRODUCTS

- 59. Import and release of live fish
- 60. Export of live fish
- 61. Possession and trade in fish, fish product or other marine resources prohibited
- 62. Promotion of fish production and marketing

PART VI – FISH QUALITY AND SAFETY

- 63. Competent authority.
- 64. Harmonization of fish safety and quality standards.
- 65. Sale, export of adulterated or contaminated fish, or fish products prohibited

PART VII – AQUACULTURE

- 66. Aquaculture activities requirements
- 67. Aquaculture development plan
- 68. Collaboration with Counties
- 69. Prohibited to deprive community of traditional access to fisheries
- 70. County's responsibility to monitor non-commercial aquaculture activities
- 71. Permission of Director-General and approval by Board required

72. Director-General's authority to inspect, seize fish destined for import or export or diseased, highly invasive fish
73. Aquaculture waste
74. Escapement
75. Use of drug, chemical, etc. restricted
76. Information on wild, genetically modified species
77. Interfering with aquaculture establishment prohibited
78. Transboundary aquaculture ecosystems.
79. Regulations for Aquaculture.

PART VIII – INFORMATION, DATA AND RECORDS

80. Information, data and records.
81. Ownership of information
82. Information in partnership agreements between vessel agents and vessel owners
83. Information on labels of containers, etc. containing fish harvested in Kenya fishery waters
84. Information to be true, complete and correct
85. Confidential information
86. Registers of licences and authorizations.
87. Information on legal and administrative action taken in respect of violations of the Act.
88. Information available to public.

PART IX-LICENSING AND REGISTRATION

Division 1- Licences, authorizations and registration

89. Licences and authorizations required
90. Subsistence fishing exempt from licence requirements
91. Grant, renewal and issuance of licences and authorizations
92. Standards for approval, renewal and issuance of licences and authorizations
93. Requirements for denial of licences and authorizations
94. Application for the grant or renewal of licences or authorizations
95. Terms and conditions of licences and authorizations
96. Preference for employment of citizens of Kenya
97. Period of validity of licences and authorizations
98. Fees, charges or levies
99. Suspension or cancellation of licence or authorization
100. Termination of licences and authorizations
101. Transfer of licences and authorizations
102. Right of appeal

Division 2 - Fishing, transshipment and fish aggregating devices

103. Conditions for fishing for industrial or semi-industrial fishing vessels
104. Conditions for industrial fishing vessels
105. Reporting requirements for industrial fishing vessels
106. Conditions for semi-industrial fishing vessels
107. Reporting requirements for semi-industrial fishing vessels
108. Conditions for recreational fishing vessels
109. Requirements for transshipment
110. Deployment and maintenance of a fish aggregating device
111. Designating fish aggregating device
112. Markings, equipment for fish aggregating devices

I 13. Disposal of unauthorized fish aggregating devices

Division 3- Fish processing and marketing

I 14. Conditions for fish processing licence

I 15. Period of validity, renewal, additional conditions and suspension of fish processing licence

I 16. Inspectors to request information and keep records

I 17. Returns

Division 4- Aquaculture

I 18. Establishment and operation of aquaculture.

I 19. Registration of Aquaculture Establishment, notice of transfer.

I 20. Aquaculture permits.

I 21. Application for an aquaculture licence

I 22. Standards for approval of aquaculture licence

I 23. Inspection of proposed site

I 24. Conditions for aquaculture licences

I 25. Exclusive rights

I 26. Registration of artisanal fishing vessels

I 27. Registration of vessels.

I 28. Applications for licences, etc.

PART X COMPLIANCE WITH ACT, LICENCES, AUTHORIZATIONS AND REQUIREMENTS FOR FISHING VESSELS ENTERING, NAVIGATING OR EXITING THE KENYA FISHERY WATERS

I 29. Unlicensed activities prohibited.

I 30. Foreign fishing vessels.

I 31. Stowage of fishing gear

I 32. Transshipment at sea prohibited

PART XI REQUIREMENTS FOR FOREIGN FISHING VESSELS OR VESSELS FISHING UNDER CHARTER ARRANGEMENTS

I 33. Fisheries access

I 34. Fisheries access requirements

I 35. Fisheries access review

I 36. Requirements for joint venture and charter agreements, rights and vessel licensing for foreign fishing vessels

I 37. Agents or companies to designated for purposes of legal process, information

I 38. Preference for Kenya products

I 39. Performance bond

I 40. Force majeure or distress

PART XII- MONITORING, CONTROL AND SURVEILLANCE

Division 1 - Powers of authorized officers

I 41. Authority and general powers of authorized officers

I 42. Identification of authorized officers

I 43. Declaration of boarding and inspection

I 44. Powers of hot pursuit

I 45. Powers of entry and search of authorized officers

I 46. Power to take, detain, remove and secure information and evidence

I 47. Power of arrest.

I 48. Power to give direction

- 149. Seizure of vessels, etc.
- 150. Removal of parts from seized vessels, etc.
- 151. Authority of authorized officer or inspector in relation to abandoned fishing vessels, fishing, gear, fish or fish products

Division 2 - Appointment and functions of, and duties to, observers and inspectors

- 152. Observer programme
- 153. Appointment of, and identification by inspectors and observers
- 154. Application of Act to observers in areas beyond national jurisdiction
- 155. Requirements for monitoring of offloading
- 156. Duties of operators, etc, to inspectors and observers
- 157. Conditions and costs for observers

Division 3- Protection of and duties owed to authorized persons

- 158. Authorized persons
- 159. Protection of authorized persons from liability
- 160. Insurance for authorized persons
- 161. Obstruction, etc of authorized persons

Division 4 - Requirements for vessel monitoring systems

- 162. Vessel Monitoring Systems

Division 5 - Requirements for use of ports

- 163. Use of port without authorization prohibited
- 164. Vessels may be prohibited from entering port
- 165. Denial of the use of port to a foreign fishing vessel
- 166. Inspection of foreign fishing vessels in port

PART XIII - REQUIREMENTS FOR ARRESTED PERSONS AND SEIZED ITEMS

- 167. Arrest or detention and release of foreign fishing vessels, crew members
- 168. Prompt judicial or administrative proceedings for arrested persons
- 169. Conditions for bail
- 170. Delivery and notice for seized items
- 171. Disposal of perishable items
- 172. Notice of detainment or seizure of property
- 173. Treatment of items detained or seized
- 174. Release of seized goods
- 175. Application of bond, etc.
- 176. Unlawful removal of seized goods
- 177. Liability for loss, damage or deterioration of things in custody

PART XIV – EVIDENCE

- 178. Certificate evidence
- 179. Validity and procedure for certificate
- 180. Certificate as to the location of a vessel
- 181. Electronic location device
- 182. Photographic evidence
- 183. Presumptions

- 184. Onus of proof
- 185. Interference with evidence and avoidance of seizure.
- 186. Tampering with item, etc. that may be used in evidence of non-compliance with the Act

PART XV- SUMMARY ADMINISTRATIVE PROCEEDINGS

- 187. Decision to proceed administratively
- 188. Summary administrative proceedings

PART XVI — JURISDICTION, PROSECUTION, FORFEITURE, LIABILITIES AND OTHER ACTIONS

- 189. Jurisdiction of the Court
- 190. Conduct of prosecutions.
- 191. Forfeiture
- 192. Disposition of forfeited property
- 193. Deprivation of monetary benefits
- 194. Costs incurred by State
- 195. Liability for non-payment of pecuniary penalties
- 196. Liability for loss or damage
- 197. Civil liability of officers of companies
- 198. Liability of operators
- 199. Continuing offences and repeat offenders
- 200. Banning order
- 201. Citizen suits and civil enforcement
- 202. Injunctions

PART XVII ESTABLISHMENT OF FISH MARKETING AUTHORITY

- 203. Establishment of Fish Marketing Authority
- 204. Object and purpose of the Fish Marketing Authority
- 205. Functions of Fish Marketing Authority
- 206. Board of directors
- 207. Tenure of office and vacation of office
- 208. Conduct of meeting of the Board
- 209. Disclosure of interests
- 210. Delegation of functions
- 211. Appointment of chief executive and other staff
- 212. Funds of the Fish Marketing Authority

PART XVIII— MISCELLANEOUS

- 213. Regulations.
- 214. Suprecession.

PART XIX - REPEALS AND TRANSITIONAL

- 215. Repeals and transitional provisions.

SCHEDULES

THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL, 2011

A Bill for

An Act of Parliament to provide for the conservation, management and development of fisheries and other aquatic resources; to establish the Kenya Fisheries Services; and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I — PRELIMINARY

Citation and commencement.

4. This Act may be cited as the Fisheries Management and Development Act, 2011, and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint, and different dates may be appointed for the coming into operation of different provisions.

Interpretation.

5. In this Act, unless the context otherwise requires-

“access agreement or arrangement” means any agreement or arrangement entered into pursuant to section 133;

“Act” includes regulations or other forms of subsidiary legislation made thereunder;

..”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 craft capable of self-sustained movement through the atmosphere and includes helicopters and unmanned or remotely operated airborne devices;

” artisanal fisheries” means small scale traditional fisheries that may be carried out as subsistence fishing or for 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 10 meters, which is motorised or not motorised by an outboard or inboard engine not exceeding 25 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 under section 203;

“aquaculture” means the cultivation, propagation or farming of the 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;

“aquaculture fisheries resources” means live fish and marine plants cultivated under aquaculture;

“authorized officer” includes a fisheries officer, and any person appointed by the Board under section 18(1);

“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;

“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 under section 10;

“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;

“buy” includes-

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

“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;

“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 or a pilot;

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

“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;
- (b) attempt to send or take out of Kenya;
- (c) receive on account or consignment for the purposes of (a) or (b); or
- (d) carry or transport anything for the purposes of (a) or (b), when associated with any buying or selling, or intended buying or selling of the fish or fish products;

“export facility” means any building or vessel or area in which food 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;

“fish processing” means any process that adds value to or preserves fish and includes the cutting up, dismembering, cleaning, sorting, icing, freezing, 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 of a fish (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 second schedule;

“fishery” or “fisheries” means-

- (a) one or more stocks of fish, or parts thereof, 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 water 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, transshipping or transporting of fish that have not been previously landed at port ;
- (c) provisioning 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, providing 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 and/or licensed or required to be registered or licensed in Kenya pursuant to this Act and/or under the Merchant Shipping Act and Kenya Maritime Act;

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

“Government” means the Government of Kenya unless the context otherwise indicates;

“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;

“import” means the bringing into the country of any fish or fish product and aquatic flora from any place outside Kenya;

“industrial fishing vessel” means a decked fishing vessel with a length overall of 20 meters or greater and an inboard engine;

“international agreement” includes any treaty or other legally binding instrument, including bilateral, multilateral regional agreements or arrangements;

“international conservation and management measures” means measures to conserve or manage one or more species of living marine resources which are adopted and applied by a regional fisheries management organization or arrangement in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention of the Law of the Sea, and which are recognised as binding by the Republic of Kenya as notified in the Gazette in accordance with section 33

“Kenya fishery waters” means all waters over which Kenya exercises or claims jurisdiction or sovereign rights and the bed and subsoil underlying such waters, and includes all maritime zones declared in the Maritime Zones Act, internal waters, riverine systems and any other waters including intertidal, inland and riverine over which Kenya exercises or claims jurisdiction;

“Kenya fishing vessel” means a vessel that is-

- (a) owned by a body incorporated in Kenya that is controlled by and assigns a majority of the shareholdings and profits as well as beneficial ownership to Kenyan citizens and, where required, holds a valid and

- applicable registration issued pursuant to the Merchant Shipping Act, and does not hold any other registration; or
- (b) is not required to be registered under the Merchant Shipping Act and 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;

“landing” means bringing any fish or fish product to the harbour, port or beach from within or outside the fishery waters and offloading it to such place for the first time after it was caught;

“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 Kenyan fisheries waters; and
- (c) lands all of its catch or a substantial part of its catch in Kenya;

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

“operator” means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer and master and includes the beneficiary of the economic or financial benefit of the vessel’s operations;

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

Act 4 of 2009
Act 5 of 2006

“pollution” means the introduction, directly or indirectly, of substances or energy into the marine or aquatic environment which results or is likely to result in deleterious or otherwise harmful effects or impacts on fisheries resources and their habitat, marine environmental quality and fishing related activities;

“president” means ... (President of the Republic of Kenya? See section 11(2))

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

“sell” includes-

- (e) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter;
- (f) disposition to an agent for sale on consignment;
- (g) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale; and
- (h) disposition by way of raffle, lottery, or other game of chance, and “sell” and “sold” have a corresponding meaning;

“Service” means the Kenya Fisheries Service established under section 7;

“semi- industrial fishing vessel” includes:

- (a) a “decked semi-industrial fishing vessel” with a length overall of not less than 10 meters and not more than 20 meters and that is decked, less than 50 GRT and powered by an inboard engine; and
- (b) an “undecked semi-industrial fishing vessel” with a length overall of not less than 10 meters and not more than 20 meters, less than 50 GRT and powered by engines of at least 40 horsepower;

“subsistence fishing” means local, non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption of the fishers, their families, and community’

Cap 371

“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, and includes “territorial sea”;

Cap 250

“transhipment” 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;

“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.

Cap 371

Jurisdiction and sovereign rights of Kenya

Cap 371

6. (1) Kenya exercises full jurisdiction and sovereign rights over fisheries resources in accordance with the Maritime Zones Act, 1989, and such other maritime zones or areas that 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 exclusive 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.

Application.

7. This Act, unless the contrary intention appears, shall apply to:

- (a) areas over which Kenya exercises jurisdiction or sovereign rights, including the Kenya fishery waters;
- (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:
 - (i) the fishery waters; and
 - (ii) areas beyond national jurisdiction:
 - a. following hot pursuit initiated in the Kenya fishery waters and conducted in accordance with international law; or
 - b. as required pursuant to this Act or international conservation and management measures;
 - c. as permitted by international law or any international agreement;
- (e) 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.

Objective and principles.

8. (1) The objective of this Act is to protect, manage, use and develop the aquatic resources in a manner that is consistent with ecologically sustainable development and to that effect the following principles shall apply –

- (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 of access to the fisheries resources be 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 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 entire community;
- (g) encouraging participation of users of the fisheries resources, and of the community more generally, 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 and wealth generation;
- (n) minimization of wastes, bycatch, discards, catch by lost or abandoned gear, pollution originating from fishing vessels and 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 law; and
- (q) ensuring effective cooperation with coastal States, fishing States and entities and competent organisations and arrangements.

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

(3) The Cabinet Secretary, the Service and other persons or bodies involved in the administration, implementation or enforcement of this Act and any other person or body required to comply with or consider any activity pursuant to, or application of, this Act, including in relation to other legislation, shall act in accordance with, and seek to further the objective and principles of this Act.

Establishment of the Kenya Oceans and Fisheries Council.

9. (1) There is hereby established an advisory body to be known as the Kenya Oceans and Fisheries Advisory Council (“the Council”), which shall consist of the Cabinet Secretaries responsible for-

- (a) fisheries;
- (b) internal security;
- (c) defence;
- (d) public health;
- (e) transport;
- (f) water;
- (g) trade;
- (h) environment and mineral resources;
- (i) wildlife;
- (j) finance;
- (k) cooperatives;
- (l) energy;
- (m) lands;
- (n) science and technology;
- (o) East African Community;
- (p) regional development; and
- (q) foreign affairs.

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

- (a) policies in relation to the co-ordination of ocean and fisheries management;
- (b) the allocation of 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 that are connected with this or any other related Act.

(3) 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;

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

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

PART II—THE KENYA FISHERIES SERVICE

Establishment and status.

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

(2) Subject to any other law in force in Kenya and any sub-regional, regional or international obligations of Kenya, the Cabinet Secretary may give policy direction through the Board in relation to achieving the objectives of this Act.

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

(c) suing and being sued;

(d) 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.

(4) 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.

Headquarters

11. The Service shall have its headquarters in Nairobi and shall provide services at County levels.

Functions of Service.

12. The functions of the Service shall be to-

(l) ensure the appropriate conservation management, sustainable use, development and protection of the fisheries resources;

(m) formulate and implement policies regarding the conservation, management and utilization of all fisheries resources within the scope of this Act;

(n) manage all fisheries and aquaculture activities and fishing related activities within the scope of this Act; ;

(o) prepare and implement fisheries-specific management plans for the Kenya fishery waters;

Cap 242

Cap 254

- (p) provide education and extension services to create public awareness and support for fisheries conservation, management, development and sustainable use and relevant policies;
- (q) set and meet goals for fisheries conservation, management, development and sustainable use;
- (r) collaborate in, and, 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;
- (s) collect and analyse data in relation to resources and activities falling within the scope of this Act;
- (t) identify manpower requirements and recruit manpower at all levels for the Service for fisheries conservation, management development and aquaculture production;
- (u) 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;
- (v) act on behalf of the government 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;
- (w) administer and co-ordinate international protocols, conventions and treaties regarding fisheries in all its aspects in consultation with the Cabinet Secretary;
- (x) subject to the Public Health Act and the Food, Drugs and Substance Act, control and regulate fish safety and quality;
- (y) raise revenue through levies, fees, investments and other means in accordance with this Act, 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;
- (z) undertake the development of appropriate fisheries infrastructure;
- (aa) facilitate investment in commercial fisheries, in collaboration with relevant agencies, persons or bodies, including Government departments;
- (bb) promote development and introduction of appropriate technologies in aquaculture production, processing and preservation in collaboration with relevant agencies and stakeholders;
- (r) identify and promote construction of any works deemed necessary for the sustainable development and economic utilization of fisheries resources;
- (s) 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, 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 not inconsistent with the provisions of this Act as may be necessary to carry out the objectives and provisions of this Act.

Establishment, functions, powers and duties of the Board of Directors.

13. (1) A Board of Directors (“the Board”) is hereby established, which shall have functions to-

- (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, 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) approve the annual budget and financial plan of the Service and otherwise provide oversight for all financial matters;
- (e) endorse the annual report of the Service required under section 29 and transmit it through the Cabinet Secretary to the Cabinet;
- (f) approve a transparent and objective selection process, and required qualifications for, the Director-General and the Director of the Service, and as appropriate for other persons in the employ or service of the Service;
- (g) approve employment policies, a transparent and objective selection process and general terms and conditions for employees of the Service;
- (h) provide policy guidance over the exercise of the functions and powers of the Service; and
- (d) perform any other function which the Cabinet Secretary may by notice in the *Gazette* prescribe.

(2) The Board is a sitting board and shall perform its powers and functions accordingly.

(3) The Board may adopt such by-laws as it sees fit, consistent with this Act, governing the conduct of its business and performance of the powers and duties granted to or imposed on it by law.

(4) 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) not act, or agree to the Service acting, in a manner that contravenes this Act;

- (c) exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation-
 - (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.

Membership of the Board

14.(1) The members of the Board shall consist of-

- (a) the Principal Secretaries of the Ministries for the time being responsible for-
 - (i) fisheries;
 - (ii) defence;
 - (iii) finance;
 - (iv) natural resources; and
 - (v) trade;
 - (b) the Director of the Kenya Marine and Fisheries Research Institute;
 - (c) five members, not being public officers, appointed by the Cabinet Secretary who have long-term knowledge and experience in the conservation, management, development and sustainable use of fisheries resources.
 - (d) in addition to the requirements of subsections (a)-(d), and in exceptional circumstances, the Cabinet Secretary shall, upon the recommendation of the Board, appoint as a member of the Board not more than two other persons with not less than fifteen years' experience in fisheries conservation, management, development and sustainable use where it considers that such knowledge and experience may assist the Board in the performance of its functions and duties.
 - (e) All members must meet the requirements of Chapter Six of the Constitution
- (2) The Chairperson shall be appointed by the President from among the members appointed pursuant to paragraph 1(c).
- (3) The Director-General shall be the secretary to the Board.
- (4) The Board shall elect annually a Deputy Chairperson from among its members.

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

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

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

(7) 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.

Termination of appointment as a member of the Board

12. (1) A member of the Board, other than an *ex officio* member, shall remain a member until:

- (a) he/she resigns from office by notice in writing signed by him or her and delivered to the Chairperson, who shall transmit such resignation to the Cabinet Secretary;
- (b) it is determined by the Cabinet Secretary upon the recommendation of the other members of the Board that he or she does not perform his or her duties in accordance with section 10(4); or
- (c) he/she is removed from office by the Cabinet Secretary if the member-
 - (i) has been absent from three consecutive meetings of the Board without the permission of 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 incapacitated by prolonged physical or mental illness;
 - (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 Minister of the relevant Ministry or the governing body of the relevant parent organisation;
 - (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.

Disclosure of interest

13. (1) Prior to his or her appointment as a member of the Board under this Act, each person shall declare his or her interest in any matter falling within the functions and powers of the Board in which he/she knows or reasonably should know that an interest exists, as described in subsection (5).

(2) A member of the Board shall not, in his or her capacity as a member of the Board, willingly participate in any matter in which he/she knows or reasonably should know an interest exists, as described in subsection (5).

(3) 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 Chair.

(4) The disclosure given under subsection (3) 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).

(5) 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/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 or 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.

(6) In this section, the following terms shall have the meanings stated:

- (a) "benefit" shall mean gain or advantage of any kind, and shall include financial gain, property, service, or improvement of condition;
- (b) "business" shall mean businesses of any kind whether situated in the Republic of Kenya or elsewhere and whether incorporated or not;
- (c) "family member" shall mean a parent, brother, sister, spouse, cousin, aunt, uncle, nephew, niece or child, including a person who is adopted legally or in accordance with custom, 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 or extended family;
- (d) "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;
- (e) "member" or "member of the Board" means any member of the Board of Directors; and
- (f) "property" shall mean real or personal property of every description whether situated in the Republic of Kenya or elsewhere.

Meetings of the Board

14. (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 no less than five working days in advance of such meeting.

(2) Special meetings shall be convened upon a written request by the Minister or not less than four members, and in accordance with such other procedures as the Board may agree in by-laws, providing that at least five working days' notice of the meeting has been given to every member.

(3) At a meeting of the Board-

- (a) six members, one of whom shall be the Chairperson or his or her nominee, shall 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.

(3) 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.

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

(5) The Board may, in its discretion at any meeting of the Board-

(a) invite persons to attend; or

(b) receive or hear submissions or information from any person.

(6) 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.

(7) The Board may, from time to time, establish such advisory sub-committees under terms and conditions specified by the Board, and in accordance with this Act, as it considers necessary in relation to its functions and powers for the purpose of making reports and recommendations to the Board, and each sub-committee shall be comprised of Board members and other experts as may be necessary to conduct business.

(8) Any sub-committee established by the Board under subsection (7) shall not take any decisions for or exercise any functions of, or on behalf of, the Board or the Service.

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

Appointment of the Director-General.

15. (1) There shall be a Director-General of the Service who shall be appointed by the Board 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/environmental management, development or science;

(b) fisheries studies, including fisheries governance, management, development or science;

(c) oceanography; or

(d) management,

(e) any other area which the Board is satisfied is relevant,

and has at least fifteen years' experience in a senior management position in a public institution.

Functions of the Director-General.

16. (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) identify marketing and investments 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 or other person in the service of the Service, as may be approved by the Board, except this power of delegation.

Other staff of the Service

17. (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 Schedule; 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 shall 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.

Authorized officers

18. (1) In addition to the officers appointed pursuant to section 17(b), the Cabinet Secretary, upon advice of the Director-General and with the approval of the Board may 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 have the status and powers of an authorised officer under this Act and shall perform such other functions as the Board may specify.

Honorary fisheries officers.

19. (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.

Establishment of Monitoring, Control and Surveillance Unit.

20. (1) There is hereby established within the Service a Monitoring, Control and Surveillance Unit ("the MCS Unit")

(2) The Unit shall have the functions of:

- (a) monitoring, controlling and surveillance, including compliance and enforcement, of:
 - i. all activities falling within the scope of this Act; and
 - ii. any other legislation relating to activities falling within the scope of this Act; and
- (b) as appropriate, 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.

(3) The MCS Unit shall include the officers specified in Part B of the Second 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 in accordance with section 18(1).

(4) In addition to the provisions in Part XII 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.

Inter-agency monitoring, control and surveillance unit

21.(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"), and shall designate membership as provided in Part D of the First Schedule.

(2) 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.

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

Collaboration with Fish Marketing Authority

22.(1) The Service shall collaborate with the Fish Marketing Authority established under section 203 and other agencies to ensure that trade in fish serves to further the objects and principles of this Act.

PART III-FINANCIAL AND ADMINISTRATIVE PROVISIONS

Funds of the Service.

23. (1)The funds of the Service shall consist of-

- (a) such monies as may be provided 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 advisers, observers, research and other

- personnel, activities or operations which support the functions and programmes of the Service;
- (d) travel expenses relating to official business of the Director-General and staff, and members of the Board and the Cabinet Secretary in accordance with the budget and rates approved by the Board;
 - (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 Countries 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 borrow for its purposes such moneys as the Board shall approve from institutions approved under the Banking Act, 1989, or such other intergovernmental or recognised international agency as the Board may approve.

(5) The Service may open and maintain an account or accounts with a bank approved under the (e.g. financial institutions act), and shall at all times maintain at least one such account and shall pay all its moneys into such account or accounts.

Cap 488

Financial Year.

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

Annual estimates.

25. (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) or in pursuance of the Board given with prior written approval of the Cabinet Secretary and the Cabinet Secretary to the Treasury.

Accounts and audit.

Act 12 of 2003.

Fisheries Research and Development Fund.

26. (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, 2003.

27. (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 facilitate research intended to further the development of fisheries management, capacity building, scholarships, grants and support for the observer programme established under section 151.

(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. (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 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-

Fish Levy Trust Fund.

- i. activities within the scope of this Act; and
- ii. 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 supplementary funding of activities geared towards management, development and capacity building, awards and urgent mitigation that will ensure sustainability of the fisheries resource.

(4) The trust shall be administered by a Board of Trustees appointed by the Cabinet Secretary by a notice in the Gazette on such terms and conditions as he/she deems fit. The trustees shall be persons who meet the requirements of Chapter Six of the Constitution.

**Fish Levy Trust
Fund.
Director-General
to report to the
Board**

29. (1) The Director-General shall, within four months after close of the 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 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.

PART IV-FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

Fisheries vest in the State.

30. (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, such fisheries or fisheries resources as it has been the custom of that community to use, otherwise than for the purpose of sale.

Division 1 - Fisheries Development Measures

Fisheries development measures.

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

Division 2 – International fisheries conservation and management measures

Notification by the Director-General.

32.(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.

Implementation of international conservation and management measures.

33. (1) 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 32(1), the Director-General shall-

- (a) provide to the appropriate authorities of the flag State, relevant coastal State(s), relevant regional fisheries management organizations 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 this Act and 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 any relevant regional fisheries management organization.

Division 3 –Coordination of fisheries management with Counties, shared fisheries management

Director-General to keep Counties informed of management measures, processes.

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

(2) Each County shall 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.

County may develop fisheries management plans

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

(2) In developing such fisheries management measures and plans, the relevant authorities in the County shall take steps to ensure that they 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.

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

36. Each fisheries management plan developed by authorities in each County shall:

- (a) take into consideration, to the extent possible, elements of a relevant fisheries management plan described in section 41; and
- (b) enter into force upon approval by the Director-General.

Relations between National and County governments

37. (1) Where there is any conflict between a County fisheries management plan or any County fisheries management measures 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 it to the Cabinet Secretary with recommendations on the action to be taken.

(3) Where the Cabinet Secretary after considering the report submitted under subsection (2)(b) is satisfied that the County government has mismanaged any of its functions related to the fisheries he/she may in the public interest and in consultation with the Cabinet Secretary responsible for the County government, direct that such functions be henceforth performed by the Director-General for a specified period, and shall direct the County government to take the specified steps to rectify the situation.

(4) The functions referred to in sub section (3) shall revert to the County government when the Cabinet Secretary is satisfied that the County government has complied with the directions given under that subsection.

Shared responsibility for fisheries management.

38.(1) The Director-General may make arrangements with Counties, competent fishers' organizations and such other stakeholders' organisations that may be recognized for their fisheries management skills and knowledge, for the development of shared responsibility for the management of artisanal fisheries, Marine Protected Areas and areas within the jurisdiction of each County.

(2) Such arrangements may be established in fishery management plans established in accordance with section 41, or by a shared management agreement which includes the following to the greatest extent possible:

- a) a statement of objectives of the agreement;
- b) a description of the area covered by the agreement;
- c) a description of the management activities to be undertaken;
- d) rules governing the access to and use of the area by other fishers;
- e) rules governing the requirements for information and data;
- f) rules governing the enforcement of the agreed activities;
- g) the duration of the agreement;
- h) provision for monitoring the agreement;
- i) provision for revision of the agreement; and

Establishment of Beach Management Units.

j) provision for the settlement of disputes.

39. (1) The Cabinet Secretary may, for purposes of ensuring structured community participation in fisheries management, make regulations governing the administration of beach management units.

(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) membership and general administration;
- (c) establishment, registration, supervision and dissolution procedures;
- (d) fees and charges which a beach management unit may levy and the management of such levies, and
- (e) any other consideration the Cabinet Secretary may deem necessary.

Division 4 – Fisheries Conservation and Management

Responsibility for planning fisheries management. Fisheries management plans.

40. 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.

41.(1) The Board may, on the recommendation of the Director-General, authorize 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 conservation and management measures for effective sustainable use of the fisheries resources.

(2) The Director-General shall:

- a) prepare, keep under review and be responsible for the implementation of plans for the conservation management, development and sustainable use (“fisheries management plans”) 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 ensure that stakeholders are consulted in the development of each fisheries management plan, that such plan is consistent with this Act and that the following are included in each plan:

- 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; and
- m) a process for amending or repealing the plan, including the consultation and other processes to be followed.

(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 measures in a fisheries management plan commits an offence and shall be liable to such fine as may be stated in such plan or to a fine not exceeding five 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 six months, and in respect of all other activities not exceeding two years or to both.

Fisheries management measures.

42. (1) The Director-General may, 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 designated areas, species of fish or methods of fishing;
- (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;
- (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) provide for the regulation of identification of trade in endangered species of fish and fish products, and
- (j) any other measures consistent with the objective and principles of this Act.

(2) Where the use of any gear is prohibited in any area or in all areas, the Director-General may also, by notice in the Gazette, prohibit the possession, trade or manufacture of the gear in such area or areas.

(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 five hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

Limitation of fishing and fishing related activities

43.(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) The measures may apply *inter alia*, to such activity, place and/or time as the Director-General deems fit, including the number of persons or vessels, the use of specified gear or activities in specified areas or specified seasons.

(3) The measures may include, *inter alia*:

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

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

Closed areas

44.(1) The Director-General may, in accordance with the best scientific advice and such other relevant information as may be available, declare closed areas, including their duration, for fishing in specified areas of the Kenya fishery waters.

(2) Each declaration of a closed area made in accordance with subsection (1) shall be in writing and effective upon public notification.

(3) A person who engages in fishing in a closed area declared in accordance with 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 three years or to both.

Closed seasons

45. (1) The Director-General may, in accordance with the best scientific advice and such other relevant information as may be available, declare closed seasons, including their duration, for fishing in all areas or specified areas of the Kenya fishery waters.

(2) Each declaration of a closed season made in accordance with subsection (1) shall be in writing and effective upon public notification.

(3) A person who engages in fishing during a closed season declared in accordance with 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 three years or to both.

Prohibited fishing gear and methods

46. (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 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, lights or other electrical devices for the purpose of fishing, including stunning, disabling, catching or killing fish, or in any way rendering fish to be caught more easily; or
- (m) such other gear as may be prescribed or prohibited in a fisheries management plan.

(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 his/her 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 (a) of subsection (4).

(7) A person who contravenes subsections (1), (2), (3), (4) or (5) commits an offence and shall be liable on conviction to a fine not exceeding five one million shillings or to a term of imprisonment not exceeding three years or to both.

(8) In any proceedings for any offence under subsection (4), a certificate as to the cause and manner of death or injury of any fish, signed by the Director-General or any person authorized by him in writing shall be prima facie evidence of the facts averred in it until the contrary is proved.

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

47. (1) No person shall, using a vessel, wilfully, negligently, unintentionally or otherwise damage, destroy, interfere with, endanger, injure or cause loss of life in respect of:

- (a) any fishing gear that he/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/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) undertake to minimize any damage caused;
- (b) 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;
- (c) where there has been a death of a person, recover the body and bring it directly to port; and
- (d) promptly make a full report of the incident and steps taken by him/her to the Director-General.

(4) A person who contravenes subsection (1), (2) or (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 and in addition that person shall fully compensate the owner or apparent owner of the fishing gear for any damage caused and for lost fishing time, any injured person compensation for medical expenses, injury and as appropriate loss of expectation of life, and the estate of any person who died as a consequence of the action full compensation for loss of life unless there is sufficient proof that:

- (a) in the case of fishing gear, that the person who owned or used the fishing gear at the relevant time did not hold a valid and applicable licence required pursuant to this Act; or
- (b) the damage, destruction, interference or endangerment took place in an area where the person(s) or vessel(s) that caused such consequences 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) Each person making a claim for compensation pursuant to subsection (4) shall do so as soon as possible and in any case within a reasonable time after the damage, destruction, interference or endangerment took place, and shall produce all available evidence.

Possession of prohibited fishing gear.

48.(1) Except as otherwise may be provided in this Act, a person shall not, without permission in writing from the Director-General, possess or control fishing gear which is prohibited for use in the Kenya fishery waters.

(2) 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 three years or to both, and in addition the gear shall be forfeited.

Leaving or abandoning objects in the sea prohibited.

49. (1) No person shall dump gear, moorings and 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 and/or removing the relevant objects.

Declaration of endangered species of fish.

50. (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 fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

Prohibitions and requirements for marine mammals.

51. (1) Subject to subsection (3), no person shall engage in fishing for marine mammals in the 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.

Marine Protected Areas.

52. (1) The Cabinet Secretary may, in consultation with the Kenya Oceans and Fisheries Advisory Council 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; and
- (k) fines and penalties.

(2) The management measures in each declaration made under subsection (1)(f) shall, upon publication in the Gazette, have the status of Regulations.

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

Fisheries impact assessments.

53. (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 inform the Director-General of such plans and consult with him/her prior to the commencement of the planned activity with a view to ensuring the conservation and protection of such resources.

(2) The Director-General may make or require reports and recommendations by the agency responsible for environmental protection in Kenya and those conducting the planned activity regarding the likely impact of such activity on the fishery resources, including their habitat, and possible means of preventing or minimising adverse impact.

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

(4) Where a person proceeds with activities described in subsection (1) without first informing the Director-General or, where the Director-General has required reports and recommendations pursuant to subsection (2), or proceeds without making such reports or recommendations or acts in a manner inconsistent with any such report or recommendation, such person commits an offence and shall be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or to a term of imprisonment not exceeding three years or to both. In addition, such person shall be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat to its previous state.

Pollution of the Kenya Fishery Waters.

54. (1) No person shall prepare for the introduction of, attempt to introduce or introduce into the Kenya fishery waters, directly, indirectly, deliberately or accidentally, 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 hundred thousand shillings or to a term of imprisonment not exceeding five years or to both, and in addition shall be liable for full 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 (shall) 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 Environment Management and Co-ordination Act, 1999, shall apply to offences involving discharge of pollutants under this Act.

Act 12 of 2003.

Fish landing stations, etc.

55.(1)The Cabinet Secretary may, on the recommendation of the Director-General as endorsed by the Board establish by notification in the Gazette, establish-

- (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.

Placing of live fish.

56. (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/she 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.

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

57. (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 analyse statistical and other data and information on activities under the scope of this Act and forward the same to the Board.

(2) In addition 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.

Prohibited activities relating to fish or fish products taken contrary to the laws of another State

58. (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, transship, 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.

(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.

(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.

PART V- IMPORT, EXPORT AND TRADE AND MARKETING OF FISH AND FISH PRODUCTS

Import and release of live fish

59. (1) No person shall import into Kenya any live fish without the written approval of the Director-General and in accordance with such procedures as may be prescribed.

(2) No person shall release into the fishery waters any live fish imported into Kenya 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 he/she 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 he/she 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.

Export of live fish

60. (1) No person shall export from Kenya any live fish except in accordance with such procedures as the Director-General may require in writing and publicly notify or as may be prescribed.

(2) 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 three years or to both.

Possession and trade in fish, fish product or other marine resources prohibited

61. (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 shall be forfeited.

Promotion of fish production and marketing

62. The Director-General may, 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 VI – FISH QUALITY AND SAFETY

Competent authority.

63. (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 management of the competent authority in matters related to this Act shall be the responsibility of a standing committee and a technical committee.

(3) The functions of the competent authority shall be to—

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

(3) The Cabinet Secretary, may for the purposes of subsection (2) make regulations, and such regulations shall have effect with regard to membership and conduct of the affairs of the standing committees.

Harmonization of fish safety and quality standards.

64. The Director-General may in consultation with the Cabinet Secretary enter into arrangements or agreements with other States relating to shared fishery resources for the purpose of harmonization of fish safety and quality standards.

Sale, export of adulterated or contaminated fish, or fish products prohibited

65. (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 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, and in addition any fish or fish products involved in the transaction and those owned or controlled by such person shall be forfeited.

PART VII – AQUACULTURE

Aquaculture activities requirements

66. (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 both.

Aquaculture development plan

67. (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) The aquaculture development plan shall have duration of at least three years and shall be renewed, modified or replaced at the end of each three year period.

(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 possible within one year from the date on which this Act enters into force.

Collaboration with Counties

68. 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.

Prohibited to deprive community of traditional access to fisheries

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

(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.

County's responsibility to monitor non-commercial aquaculture activities

70. (1) Counties shall, based on the advice of the Director-General, monitor aquaculture and mariculture practices and operations in areas under their respective jurisdictions other than commercial aquaculture operations regulated pursuant to this Act.

(2) Where any person or any County authority has cause to believe that any fish in and/or 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, he/she or such County authority shall notify the Director-General.

(3) The Director-General shall, if he/she is satisfied that the fish and/or fish products subject to notification under subsection (2) are so infected, give notice in writing to the owner of the relevant waters requiring the destruction of all fish and/or fish products in the said waters or the taking of such other measures as the Director-General may specify in the notice.

(4) Every person who receives a notice under subsection (3) shall comply with its requirements at his/her own expense, and in default of such compliance, the local 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.

(5) A person who does not comply with the requirements in the Director-General's notice received pursuant to subsection (3) 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.

Permission of Director-General and approval by Board required

71. (1) No person shall, without written permission granted by the Director-General with the endorsement of the Board:

- (a) introduce or cause to be introduced into Kenya or the Kenya fishery waters any 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 the Director-General, with the written endorsement of the Board, considers appropriate.

(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.

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

72. (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.

Aquaculture waste

73. (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 being blown, washed or swept off the area used by such person for aquaculture.

(2) Where any person fails or apparently fails to fulfil the conditions set out in subsection (1), the Director-General, in consultation with relevant environmental protection authorities, 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 fulfill the requirements set out in the notification.

(4) A person who contravenes subsection (1) and (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).

Escapement

74. (1) Each person engaged in commercial aquaculture in Kenya shall take appropriate measures to prevent and/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 12 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 he/she 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 7 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.

Use of drug, chemical, etc. restricted

75. (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.

Information on wild, genetically modified species

76. 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 of aquaculture.

Interfering with aquaculture establishment prohibited

- 77.** (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.

Transboundary aquaculture ecosystems

78. 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.

Regulations for Aquaculture.

79. The Director-General may in consultation with the Board and with the approval of the Cabinet Secretary, by notice in the Gazette, and for purposes of proper management of aquaculture make regulations in relation to, inter alia-

- (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/she deems necessary for the proper management of aquaculture.

VIII – INFORMATION, DATA AND RECORDS

Information, data and records.

80. (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 he/she may specify, or as may be prescribed:

- (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) 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) and/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.

Ownership of information.

81. 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.

Information in partnership agreements between vessel agents and vessel owners

82. (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 the 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 five hundred 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.

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

83. (1) The labels of any container or packaging materials containing fish harvested in the fishery waters shall clearly designate:

- (a) that the fish were harvested in the 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.

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

84. (1) Any information given, furnished or maintained or required to be given, furnished or maintained under this Act shall be true, complete and correct and no such information shall be false, misleading or inaccurate.

(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 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.

**Confidential
information**

85. (1) No person carrying out duties or responsibilities under this Act, including the Cabinet Minister, 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 Minister 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, in writing-

- (a) authorize any person to receive or access confidential information;
- (b) grant or 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 Minister 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/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 three hundred and fifty thousand shillings.

Registers of licences and authorizations.

86. (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 Minister.

(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 and/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 of Kenya, 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, as 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.

Information on legal and administrative action taken in respect of violations of the Act.
Information available to public.

87. 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.

88. 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 85.

PART IX- LICENSING AND REGISTRATION

Division 1- Licences, authorizations and registration

Licences and authorizations required

89. (1) A valid and applicable licence issued in accordance with Section 95(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 any vessel for recreational fishing in the Kenya fishery waters;
- (d) operating a fish processing establishment;
- (e) commercial aquaculture; and
- (f) 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) A valid and applicable written authorization issued in accordance with section 91 and 92 shall be required for:

- (a) using a Kenya fishing vessel in areas beyond national jurisdiction;
- (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.

Subsistence fishing exempt from licence requirements

90. (1) Any person engaging in subsistence fishing, intended to result in consumption of the fish caught, shall be exempt from the requirement to hold a licence.

(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, to a company which is a licensee, in respect of any act done by the person or company as such licensee.

Grant, renewal and issuance of licences and authorizations

91. (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 89 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, he/she shall state in writing reasons for the decision, and promptly transmit them to the applicant.

Standards for approval, renewal and issuance of licences and authorizations

92. (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 139, 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 prelicensing 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, etc.

(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 139, 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 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 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.

Requirements for denial of licences and authorizations

93. (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 139;
- (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) a vessel 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.

**Application
for the grant
or renewal
of licences or
authorizations**

94. (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.

Terms and conditions of licences and authorizations

95. (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 139 and notified to the Director-General; and
 - (ii) any access fee and/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; 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.

Preference for employment of citizens of Kenya. Act No.1 of 2007

96. (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 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, 2007.

(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 91 and 92, 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.

Period of validity of licences and authorizations

97. 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.

Fees, charges or levies.

98. (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 153(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 152 and to pay the observer costs identified in section 157.

(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.

Suspension or cancellation of licence or authorization

99. (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 and/or international conservation and management measures in respect of which the licence or authorization was given, and:

- (i) any applicable law or international agreement provides for such suspension or cancellation;
- (ii) the relevant person or persons involved in such contravention has/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.

Termination of licences and authorizations

100. (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.

Transfer of licences and authorizations

101.(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.

Right of appeal

102. 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.

Division 2 - Fishing, transshipment and fish aggregating devices

Conditions for fishing for industrial or semi-industrial fishing vessels

103.(1) Fishing licences issued for industrial or semi-industrial fishing vessels for fishing or fishing related 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 45% 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 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 Public Notice by the Cabinet Secretary or 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 three years or to both.

Conditions for industrial fishing vessels.

104. (1) In addition to the conditions specified in section 95, 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 the vessel's position, catch and such other information that may be required by the Director-General to the every 24 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 30 % 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 for each fishing trip:

(i) fish trawlers:	40%
(ii) 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 one million shillings or to a term of imprisonment not exceeding three years or to both.

Reporting requirements for industrial fishing vessels.

105. (1) In addition to the conditions described in sections 95 and 104, 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 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 24 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 24 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.
- (e) 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;
- f) 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
- g) 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.

Conditions for semi-industrial fishing vessels

106. (1) In addition to the conditions described in section 95, 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.

Reporting requirements for semi-industrial fishing vessels.

107. (1) In addition to the conditions described in section 95 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 hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

Conditions for recreational fishing vessels.

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

(a) no person shall use a recreational fishing vessel for fishing in the Kenya fishery waters unless a valid and applicable registration has been issued under the authority of the Director-General, and the registration

- number is prominently displayed on such vessel in such manner and format as may be required by the Director-General; and
- (b) on receipt of an application for registration of a recreational fishing vessel made in accordance with such form as may be prescribed, 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 in 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.

Requirements for transhipment

109. (1) The operator of any vessel 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 72 hours prior to the intended transhipment.

(2) Notification given under subsection (1) 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 72 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 transshipment or loading authorization shall specify when and where transshipment 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 transship at sea under any circumstances unless authorized by the Director-General;
- (b) only transship at the time and port or other place authorized by the Director-General for transshipment;
- (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 his/her 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 72 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 subsection (1), (2), (3), (4), (5), (6) or (7) 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.

Deployment and maintenance of a fish aggregating device

110. 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 he/she may specify or as are otherwise specified in this Act.

(2) In granting permission under subsection (1), the conditions which the Director-General may specify include the following-

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

(5) Unless otherwise provided under this Act or specified by the Director-General, permission 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 24 hours of such placement and of the nature and location of the device.

(7) A 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.

Designated fish aggregating device

111. (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) A 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.

Markings, equipment for fish aggregating devices

112.(1) No person, being the operator of a fishing vessel or any other person in apparent control of a fish aggregating device deploys a fish aggregating device unless it-

- (a) is clearly marked with the name of the owner and of the vessel from which such a device was placed; and
- (b) is equipped with a radar reflector and such lights as shall be 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.

Disposal of unauthorized fish aggregating devices

113. (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 five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

Division 3- Fish processing and marketing

Conditions for fish processing licence.

114. (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 permitted for that operation, including such limits on species and quantity as the Director-General may set;
- (b) the operator of the fish processing facility shall ensure that:
 - (i) all relevant health, hygienic and environmental laws and standards of Kenya are implemented; and
 - (ii) no fish is accepted for processing that 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 Director-General 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 authorized officer or inspector.

(3) 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 five years or to both.

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

115. (1) The period of validity of each fish processing licence shall not exceed ten years, 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 licence 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, conditions of 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.

Inspectors to request information and keep records

116. (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.

(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 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.

Returns

117. (1) For purposes of fishery conservation and management, the Director-General may require data returns from the sellers or buyers of such species as he/she may designate during such period as he/she may 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.

Division 4- Aquaculture

Establishment and operation of aquaculture.

118.(1) No person shall establish or operate a commercial aquaculture establishment otherwise than under the authority of, an aquaculture licence granted under section 91 and in accordance with the such conditions as may be required under section 124.

(2) Any person who establishes or operates an aquaculture establishment in contravention of subsection (1) or 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 may be prescribed by the Director-General by notice in the Gazette.

Registration of Aquaculture Establishment, notice of transfer.

119. (1) The owner or lessee of an aquaculture establishment shall cause it to be registered with the Director-General and shall, for the purposes of the registration, provide to the Director-General-

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

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

Aquaculture permits.

120. (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, 1999.

Application for an aquaculture licence

121. (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 Environment Management and Coordination Act, 1999, 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 in respect of any law, 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, at the applicant's expense, in such manner as may be prescribed and 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.

Standards for approval of aquaculture licence

122. (1) When considering an application submitted pursuant to section 121, 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.

123. (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 the relevant licence applicant to pay such fee for the inspection carried out pursuant to subsection (1) as may be prescribed.

124. (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 he/she 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 fish 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 shall 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 epidemic 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.

Inspection of proposed site

125. 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.

Division 5 – Registration and exception

Registration of artisanal fishing vessels

126. (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 in such form as may be prescribed or as the Director-General may require.

(3). A person who contravenes subsection (1) 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 one year or to both.

Registration of vessels.

127. (1) Subject to subsection (2) and in addition to the provisions of section 126, 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 Cabinet Secretary 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 a 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, as 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 of the Board, where he/she 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 in respect of that vessel upon payment of the prescribed fee by the applicant.

(7) In any judicial or administrative proceedings brought under this Act, the entry in respect of a vessel in the Fishing Vessel Register, 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 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.

Applications for licences, etc.

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

PART X COMPLIANCE WITH ACT, LICENCES, AUTHORIZATIONS AND REQUIREMENTS FOR FISHING VESSELS ENTERING, NAVIGATING OR EXITING THE KENYA FISHERY WATERS

Unlicensed activities prohibited.

129. (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 his/her 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.

Foreign fishing vessels.

130. Where a foreign fishing vessel-

- (a) enters the fishery waters except for a purpose recognised by international law or relevant law of Kenya;
- (b) fishes within the territorial sea of Kenya;
- (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 commit an offence and shall each be liable on conviction to a fine not exceeding two million shillings.

Stowage of fishing gear.

131. (1) The operator and master of a-

- (a) semi-industrial or industrial fishing vessel in any place in the Kenya 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 Kenya 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 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 exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

Transshipment at sea prohibited.

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

(2) A person who contravenes subsection (1), including the operator of a vessel used for transshipment, commits an offence and shall be liable on conviction to a fine not exceeding one million or to a term of imprisonment not exceeding five years or to both.

PART XI REQUIREMENTS FOR FOREIGN FISHING VESSELS OR VESSELS FISHING UNDER CHARTER ARRANGEMENTS

Fisheries access.

133. (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 Oceans and Fisheries Advisory Council permit access by foreign fishing vessels to the fishery waters for fishing or fishing related activities.

(2) Fisheries access may be granted, and licences or authorizations may be issued in accordance with subsection (1) 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 92 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 licence; 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 the terms and conditions in this Act and such other 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.

Fisheries access requirements

134. 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 such organization(s);
- (e) that the vessel is not included on a list of illegal, unreported or unregulated 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 such organization(s), and that 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 139 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.

Fisheries access review.

135. (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 Director-General, 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.

(3) Fisheries access may be suspended or otherwise limited by the Cabinet Secretary on the advice of the Director-General 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.

(4) 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.

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

136. (1) No agreement governing joint ventures, or the chartering of any foreign fishing vessel for fishing or fishing related activities within or beyond the 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, 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 of Kenya;
- (e) full and complete evidence is submitted, as the Cabinet Secretary may require, that all financial obligations of the foreign fishing vessel will be met promptly and effectively, including payment of all fees and any applicable fine, penalty or other determination which may result from the vessel's activities; and
- (f) in respect of a charter agreement, that the flag State is responsible for exercising full and effective control over the vessel when it is in areas beyond the national jurisdiction of Kenya.

(3) Unless a company is otherwise established under a joint venture or charter agreement, where the operator of the foreign fishing vessel is a company incorporated outside Kenya and doing business in Kenya, it shall establish a place of business in Kenya that includes the requirements for significant benefit to Kenya under subsection (2)(b) and shall comply with the requirements of Part XVIII of the Companies Act, 2009;

Cap 486

4) Any vessel fishing under an approved charter agreement shall be subject to all requirements of this Act in respect of foreign fishing vessels, including licensing and compliance agreements.

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

137. (1) The operator of each foreign fishing vessel licensed pursuant to section 136 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,

and 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.

(3) 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, Cap 486 and any other law of 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 his/her authority as an agent; or
- (i) not engage in any activity that constitutes or is likely to constitute a conflict of interest with his/her duties and responsibilities as an agent under this Act and the laws of Kenya.

(4) 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 his/her responsibilities pursuant to this Act including the requirements in subsection (3);
- (b) complies with all requirements in subsection (3).

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

(6) Where any operator does not comply with subsection (4):

- (a) the applicable licence(s) shall be suspended for such period as the Director-General, in consultation with the Cabinet Secretary, thinks fit but not less than one month; or
- (b) the licence(s) may be revoked; and

he/she shall fully disclose information regarding the agreement between the operator and the agent in addition to the requirements of section 82 of this Act.

(7) A person who contravenes the requirements set out in subsections (1), (2), (3) or (4) 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.

Preference for Kenya products

138. 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.

Performance bond

139. (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) Such performance bonds 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 and/or compensation for violations against this Act. Such performance bonds 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 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;
- (b) has not been provided, the applicable licence shall be liable to cancellation by the Cabinet Secretary.

Force majeure or distress

140. 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 XII- MONITORING, CONTROL AND SURVEILLANCE

Division 1 - Powers of authorized officers

Authority and general powers of authorized officers

141. (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/her powers under this Act.

(3) An authorized officer bringing 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 he/she 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/she shall make such reports to the Director-General as may be required pursuant to the terms of such international agreement or arrangement.

Identification of authorized officers

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

Declaration of boarding and inspection

143. (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) Such Boarding and Inspection Form as may be prescribed or required by the Director-General 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.

Powers of hot pursuit

144. An authorized officer may, following hot pursuit outside the Kenya fishery waters in accordance with international law and commenced within the fisheries waters, stop board and search outside the fisheries waters any vessel which he/she 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.

Powers of entry and search of authorized officers

145. (1) An authorized officer may, for purposes falling within the scope of 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, including premises that are part of or attached to a dwelling house which he/she reasonably suspects are used for activities falling within the scope of this Act:
 - (i) in or on which he/she has reason to suspect that evidence of an offence against this Act may be found; or
 - (ii) that 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 any court of competent jurisdiction and, the provisions of this section shall apply *mutatis mutandis*.

Power to take, detain, remove and secure information and evidence

146. (1) An authorized officer may, for purposes and activities falling within the scope of this Act:

- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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
- (i) 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), he/she may, *inter alia*:

- (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.

Power of arrest.

147. (1) An authorized officer may, if he/she believes on reasonable grounds that a person is committing or has committed an offence against this Act, or if a person assaults him/her or any other authorized officer, inspector, observer, or fishery dock observer while exercising his/her powers or duties under this Act, or offers a bribe to an authorized officer, inspector, observer or fishery dock observer:

- (a) order that person to forthwith cease and desist;
- (b) request that person to supply to the authorized officer that person's name, date of birth, residential address and occupation and may request that person to supply such verification of those details as it is reasonable in the circumstances to require that person to provide; and
- (c) arrest, without warrant, that person.

(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,

Power to give direction

148. (1) An authorized officer may, if he/she 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) take 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 is reasonably necessary for the purpose of the authorized officer exercising any other powers under this Act, until the authorized officer permits the master to depart from that place, provided that the period does not exceed seventy two (72) 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), he/she 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.

Seizure of vessels, etc.

149. (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 court of 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 are being, or have 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 are intermixed;
- (c) any article, record or thing which the authorized officer believes on reasonable grounds may be or 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 ground 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 custody under this Act.

(3) Anything seized pursuant to subsection (1) shall be delivered into the custody of the Director-General.

(4) A written notice shall be given to the person from whom any article or thing was seized or to any other person whom the authorized officer believes is the owner or person otherwise entitled to possession of the article or thing seized and the grounds for such seizure shall be stated in the receipt.

Removal of parts from seized vessels, etc.

150.(1) An authorized officer may remove any part from the vessel seized pursuant to this Act for the purpose of immobilizing that vessel.

(2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel upon release.

(3) No person shall, otherwise than acting under the authority of the Director-General:

- (a) possess or arrange to obtain any part or parts removed under subsection (1);
- (b) possess 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.

Authority of authorized officer or inspector in relation to abandoned fishing vessels, fishing gear, fish or fish products

151. (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/she shall apply to the Court of applicable jurisdiction 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 person has absconded to any place within or outside Kenya, or has concealed himself or herself so that he/she 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.

Division 2 - Appointment and functions of, and duties to, observers and inspectors

Observer programme

152. (1) An observer programme shall be established by the Board for the purpose of collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including, inter alia:

- (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, 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 cooperatively with the Government of Kenya, or any international conservation and management measures on any vessel used for fishing, transshipment, transportation and/or landing of fish within and beyond the fishery waters and such other uses as may fall within the scope of this Act.

Appointment of, and identification by inspectors and observers

153. (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, monitor and report on the fulfillment of pre-licensing requirements and any obligations pursuant to this Act; and
- (b) observers for purposes of the observer programme established under section 152, 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 or herself and produce evidence that he/she is an inspector or observer.

Application of Act to observers in areas beyond national jurisdiction

154. 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 responsibilities and duties under this Act of operators, crew members or other relevant persons to such observer shall be fully applicable.

Requirements for monitoring of off loading

155. (1) The operator of any fishing vessel required as a condition of licence 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 such 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.

Duties of operators, etc, to inspectors and observers

156. (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/her official duties, to carry out his or her duties, including 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/she may have taken or used on board the vessel;
- (d) gather such other information relating to fisheries as may be required for purposes of carrying out the objectives of this Act; and
- (e) allow observers to 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 exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years or to both.

Conditions and costs for observers

157. (1) The operator and license 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 15 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) The costs of operating the observer programme shall consist of funds paid by:

- a) licence holders in respect of all or any vessels licensed or authorized pursuant to this Act as a specified component of the licence fee as provided in section 98, at such level and in such manner as the Director-General may require, in accordance with any relevant

policy which may be adopted by the Minister or such level as may be prescribed;

b) such other source as may be qualified to contribute to the Fund established in section 27.

(3) The costs referred to in subsection (1) shall include, inter alia-

a) full insurance coverage;

b) salary;

c) allowances;

d) equipment;

e) training;

f) all travel and associated expenses to and from the vessel to which the observer is assigned; and

g) other costs associated with the management and administration of the observer programme at a level to be prescribed or approved in writing by the Minister.

(3) Where payment of the costs required under subsection (3) is not made at the required time, or within thirty days of such reasonable time as may be required by the Director-General, the relevant licence shall be cancelled.

(4) Before placing any observer on a fishing vessel, the Director-General shall give the operator or licence holder or his/her agent reasonable notice of the requirement to take an observer on board at a specified time and place and to remain on board for a specified period of time and to disembark at a specified place.

(5) Upon receipt of a notice given under subsection (4), no person shall:

a) cause or allow the vessel to which the notice relates to put to sea without taking on board the observer(s) at the time and place specified in such notice; or

b) otherwise refuse to take on board such observer(s).

(6) The operator of a licensed vessel shall notify the Director-General:

a) at the beginning of each licensing period of any port or ports in Kenya Leone where it intends to base operations for purposes of observer placement, and if placement is not possible at such port or ports the operator of the vessel shall be responsible to the Director-General or all and any extra costs incurred in observer placement; and

b) of the intended time of entry into and subsequent departure from port at such reasonable time prior to such entry as the Director-General-General may direct for the purpose of arranging observer deployment.

(7) 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

five hundred thousand 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.

(8) A person who does not give such notification as required in subsection (6) commits an offence and shall be liable on conviction to XX, and in addition the applicable licence may be suspended or cancelled.

Division 3- Protection of and duties owed to authorized persons

Authorized persons

158. For the purposes of this Division, “authorized person” refers to any authorized officer, inspector or observer appointed pursuant to this Act.

Protection of authorized persons from liability

159. (1) The Service and officers, employees and 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, who acts or omits to act while performing duties under this Act shall not be subject to any action, liability, claim or demand for any matter or thing done or omitted to be done in good faith (whether negligently or not) in the performance or purported performance of any function or duty, or exercise or purported exercise of any power under this Act, or any other applicable fisheries law.

(2) Where a vessel is being brought to a place in Kenya in accordance with this Act:

- (a) where 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.

Insurance for authorized persons Obstruction, etc of authorized persons

160. The Service shall ensure full group insurance coverage for all authorized persons.

161.(1) For the purposes of this section “fail” includes any effort which does not result in meeting the specified requirement.

(2) No person shall:

- (a) being the operator or crew member of a vessel, fail or refuse to allow and assist any person identified as an authorized person:
 - (i) safe boarding of a vessel;
 - (ii) to have full access to and use of all facilities, gear and equipment on

- board which such authorized person may determine is necessary to carry out his/her 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 any authorized person is forced by circumstances to stay on board the vessel for a prolonged period of time, provide him/her 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) safe disembarkation from a vessel;
- (b) fail or refuse to allow an audit, inspection, examination or search that is authorized by or under this Act to be made or impedes the same;
 - (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 or her duties and powers under this Act, including requesting access to records, documents, areas, gear and equipment including navigation and communication equipment and that equipment be turned on for his or her use;
 - (f) when lawfully required to state his/her 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/her 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/her duties;
 - (l) impersonate or falsely represent himself or herself to be an authorized officer, or to be a person lawfully acting under the Director's instructions or in his/her aid;
 - (m) impersonate or falsely represent himself or herself to be the master or an officer, or not to be the master or an officer, of a fishing vessel;
 - (n) fail to sail a seized vessel to a place in Kenya designated by an authorized officer and 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/her duties; or in any other way obstruct or hinder an authorized person in the exercise of his or her 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/her duties or exercising his/her powers under this Act, or towards any person lawfully acting under the authorized officer's instructions or in his/her aid; or
 - (r) obstruct, resist, delay, refuse boarding to, intimidate, or kidnap an authorized person who is performing his/her duties or exercising his/her powers under this Act, or any person lawfully acting under a authorized officer's instructions or in his/her 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 exceeding two million or to a term of imprisonment not exceeding ten years or to both, and in addition the applicable licence may be suspended or cancelled.

Division 4 - Requirements for vessel monitoring systems

Vessel Monitoring Systems

162. (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/her 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.

(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 does not 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 a 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 subsection (3), (4), (5) or (6) 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, and in addition the applicable licence may be suspended or cancelled.

Division 5 - Requirements for use of ports

Use of port without authorization prohibited

163. (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 drydocking, unless:

- (a) the port has been designated for use by foreign fishing vessels;
- (b) the operator has given at least 48 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 he/she may require;
- (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 that 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.

Vessels may be prohibited from entering port

164. (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 fishing related activities in support of illegal, unreported and unregulated fishing, in particular the inclusion of a vessel on a list of vessels having 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) Notwithstanding subsection (1), authorization for such 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 and 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 exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

Denial of the use of port to a foreign fishing vessel

165. (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 landing, transshipping, packaging or processing of fish that have not been previously landed and for other port services, including, inter alia, refuelling and resupplying, maintenance and drydocking, 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 license 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 of illegal, unreported or unregulated fishing, 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 that 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 exceeding two million shillings or to a term of imprisonment not exceeding ten years or to both.

(4) Any person who, knowing or having reasonable cause to know that a vessel has been denied the use of port, takes any action in assisting such vessel to use port or to provide it with goods or services that have been denied, 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 ten years or to both.

Inspection of foreign fishing vessels in port

166. (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 the Director-General may require.

XIII - REQUIREMENTS FOR ARRESTED PERSONS AND SEIZED ITEMS

Arrest or detention and release of foreign fishing vessels, crew members

167.(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 other form of corporal punishment.

Prompt judicial or administrative proceedings for arrested persons

168.(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 (30) 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 (90) days after her/his arrest, any item seized from that person shall be forfeited to the State.

Conditions for bail

169. 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 prohibited access to the vessel or is allowed access only on conditions determined by the Court.

Delivery and notice for seized items

170. (1) Any seizure pursuant to this Act shall be delivered into 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.

Disposal of perishable items

171. (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 shall be 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/she may dispose of the same in such other manner as he/she 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 such sale shall be dealt with by the Court according to law.

Notice of detainment or seizure of property

172. (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. Such notice 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.

Treatment of items detained or seized

173. (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 (90) 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 (90) days of the service or attempted service of notice pursuant to this Act, the 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 have been paid.

Release of seized goods

174. (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 that is not a Kenya fishing vessel, the Court shall have regard to the aggregate amount of the fair market value of the property to be released, an estimated total fine or other penalty provided for the offence or offences charged or likely to be charged and the costs the prosecution would be likely to recover if a conviction were entered 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 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 connected with the commission of an offence under this Act:

(i) payment in full within 30 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 might be required as an exhibit in court proceedings or is reasonably required for any further investigations of offences against this Act.

Application of bond, etc.

175. (1) Any bond, security or net proceeds of sale held in respect of any vessel, vehicle, aircraft or other item shall be applied as follows and in this order:

(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.

Unlawful removal of seized goods

176. (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 is 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.

Liability for loss, damage or deterioration of things in custody

177. 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 took reasonable care given the circumstances.

PART XIV – EVIDENCE

Certificate evidence

178. (1) The Director-General or any person designated in writing by him or her may give a certificate stating that:

- (a) a specified vessel was or was not on a specified date or dates a Kenya 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 license 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 c h a r t e r 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) a 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.

Validity and procedure for certificate

179.(1) Unless the contrary is proved, a document purporting to be a certificate issued under section 178 shall be deemed to be such a certificate and to have been duly issued.

(2) Where a certificate issued under section 178 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 issued under section 178 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 issued under section 178 shall be titled "Certificate made under section 178, 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 178 and 179 of this Act.

(6) Any omission from or mistake made in any certificate issued under section 178 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 178 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.

Certificate as to the location of a vessel

180. (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 charged, 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 any certificate made under subsection (1) state:

- (a) his name, address, official position, country of appointment and provision under which he/she is appointed;
- (b) the name, if known, 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 he 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) if a position fixing instrument which is not judicially noticed as notoriously accurate or a designated machine is used, a declaration that he/she checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 179 shall apply to a certificate given under this section as if it had been a certificate issued under section 178 and any reference therein to section 178 shall be read as a reference to this section.

(4) For the purposes of this section "authorized officer" shall include surveillance officers and those charged with similar responsibilities in other countries.

Electronic location device

181. (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 unless the contrary is proved of the facts that they aver.

(2) The readings of such devices may be made from a printout or as observed from a visual display unit.

(3) Any electronic location device must be capable either wholly or partially in itself of producing the readings concerned and not merely be a receiver of information or data.

Photographic evidence

182. (1) If 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, it 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 notoriously 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 do not affect the admissibility of photographic evidence in any way.

Presumptions

183. (1) All fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.

(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 be presumed to have been caught during the commission of an offence or during illegal, unreported or unregulated fishing activities, unless the contrary is proved.

(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; 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 in any legal proceedings for an offence under this Act:

- (a) an authorized officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of illegal gear; and
- (b) the Court considers that, having regard to the evidence, the grounds are reasonable, all the fish shall be presumed to have been so taken, unless the contrary is proved.

(7) 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.

(8) 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.

(9) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.

(10) 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.

(11) 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.

(12) 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.

PART XV SUMMARY ADMINISTRATIVE PROCEEDINGS

Onus of proof

184. (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 130, 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 84, the onus shall be on that person to prove that the information given was true, complete and correct.

Interference with evidence and avoidance of seizure.

185. (1) No person shall, being on board any vessel being pursued, about to be boarded or notified that it will 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/she 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 subsections (1), (2), (3) or (4) 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.

Tampering with item, etc. that may be used in evidence of non-compliance with the Act

186. (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.

Decision to proceed administratively

187. (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 he or she may, within 24 hours of receiving such notification, choose to proceed administratively.

(3) Where the person charged chooses to proceed administratively, he/she shall notify the Director-General in writing that he or she:

- (a) admits to having committed such violation; and
- (b) consents to summary administrative proceedings after being fully informed about these proceedings.

(4) Upon notifying the Director-General of his or her choice under subsection (3), the person charged 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 which took place in accordance with this Act in relation to the violation subject to the Summary Administrative Proceedings, and to have waived any right to a hearing in the judicial process.

(5) Upon receiving the notification given under subsection (3), the Director-General or his/her designee may handle this 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 24 hours, the Director-General shall refer the matter to prosecution.

Summary administrative proceedings

188. (1) The Director-General may, where the person charged has fulfilled the conditions of section 187 (3)), dispose of such violation by causing a Compounding Agreement to be drawn up by the Attorney General to formalise the terms and conditions for the Director-General to accept on behalf of the Kenya Government from such person an Administrative Penalty, the amount of which shall:

- (a) not exceed the maximum fine or penalty provided under this Act, plus the fair market value of any fish caught illegally;
- (b) not be less than ;and
- (c) where the person charged has committed the same or a similar offence in the past, an amount not less than the fine or determination previously set plus an additional ten per cent.

(2) The compounding of an offence under this section shall be valid on the payment of the fine or penalty and the notification in writing upon payment, under the signature of both parties, to the appropriate Court.

(3) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined under subsection (1) is not paid within 3 working days of the notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately be referred to the Court.

(4) On payment of the penalty 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/she may determine.

(5) Where the person is unable to pay the determination in full, that person may enter into an agreement with the Director-General and Attorney General providing that the determination shall be paid in such installments as may be agreed.

(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/she is charged has been compounded under this section.

(7) The Director-General may order that any fishing gear or other appliance used for illegal fishing connected with the vessel be confiscated, but shall not impose a term of imprisonment in compounding an offence.

(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 XVI — JURISDICTION, PROSECUTION, FORFEITURE, LIABILITIES AND OTHER ACTIONS

Jurisdiction of the Court

189. (1) Any act or omission in contravention of any provision of this Act committed:

- (a) by a person or vessel within the Kenya fishery waters;
- (b) outside the Kenya fishery waters by any Kenya citizen or vessel or person ordinarily resident in Kenya;
- (c) outside the Kenya fishery waters by any person or vessel in contravention of section 58; 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 jurisdiction of Kenya.

(2) Where an authorized officer is exercising any powers conferred on him/her 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 act, 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.

Conduct of prosecutions.

Cap. 75

190. Any authorized officer may, subject to the direction of the Director of Prosecution, conduct any prosecution for any offence under this Act or the regulations made there under and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

Forfeiture

191. (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 offence; or
- (d) where any fish has been sold under section 171, 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 shall 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.

Disposition of forfeited property

192. (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 or her behalf, shall not be liable in any way of any costs incurred or damages sustained as of a decision taken under subsection (2) .

Deprivation of monetary benefits

193. (1) A Court that has convicted 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 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.

Costs incurred by State

194. (1) The operator and charterer shall jointly and severally bear the cost or expenditure incurred by the Government, upon application by the Government and as determined by the Court upon conviction, in connection with:

- (a) the seizure of a fishing vessel, vehicle or aircraft or other item for an offence against this Act, including any relevant costs of pursuit of a 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.

Liability for non-payment of pecuniary penalties

195. 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; and all such proceedings shall be deemed to be civil proceedings.

Liability for loss or damage

196. (1) A person who commits an offence against this Act may, 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.

Civil liability of officers of companies

197. (1) Except as further provided 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 defense to liability under this section for the officer 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.

Liability of operators

198. 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 be deemed to be that of the operator of the vessel, unless otherwise expressly provided.

Continuing offences and repeat offenders

199. Each day of a continuing offence shall be considered a separate offence.

Banning order

200. 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 Kenya fishery waters.

Citizen suits and civil enforcement

201. A person harmed by a violation of any provision of this Act or the accompanying regulations may bring an action against any responsible person, except the Government and its employees, in a court of competent jurisdiction and in response the court may award civil damages and injunctive relief, as the court deems appropriate.

Injunctions

202. A court of competent jurisdiction may issue an injunction to enforce any provision of this Act against any person including the Ministry.

PART XVII ESTABLISHMENT OF FISH MARKETING AUTHORITY

Establishment of Fish Marketing Authority.

203. (1) There is established a board 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;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) 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.

Object and purpose of the Fish Marketing Authority.

Functions of the Fish Marketing Authority.

204. The object and purpose of the Fish Marketing Authority shall be to market fish and fish products originating from, landed in or processed in Kenya.

205. 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 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 caught fish and fish products.
- (d) enforce national fisheries trade laws and international fisheries related trade rules
- (e) identify fish market needs and trends and advise fisheries stakeholders accordingly; and
- (f) develop and improve the fish market infrastructure and marketing system;
- (g) organize stakeholders to ensure smooth marketing of fish and fishery products;
- (h) collaboration with national and international trade related bodies;
- (i) advice the Cabinet Secretary on issues related to national and international trade trends; and
- (j) perform any other functions that are ancillary to the object and purpose for which the Fish Marketing Authority is established

Board of Directors.

206 (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) the Chief Executive Officer of the Fund;
- (g) the Chief Executive Officer of the Fish Marketing Authority, who shall be the secretary; and
- (h) five 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) three 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 (f) 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 another 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 allowances determined by the Minister, in consultation with the Minister responsible for matters relating to finance.

Tenure of office and vacation of office

207 (1) A member of the Board of Directors appointed under section 206(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 206(1) to fill that vacancy.

Conduct of meeting of the Authority

208 The conduct of the meetings of the Board of Directors shall be in accordance with the Third Schedule.

Disclosure of interest

209 (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.

Delegation of functions

210 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.

Appointment of chief executive and other staff

211. (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 senior management level in Fisheries or marketing or 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 of three years.

(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.

Funds of the Fish Marketing Authority

212 (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 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 any funds not immediately required for its purposes, as it may determine.

PART XVIII— MISCELLANEOUS

Regulations.

213. (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) presenting 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) 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;
and
- (s) any other thing he/she may deem necessary for the promotion of fisheries in Kenya.

Supercession

214. 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 XIX REPEALS AND TRANSITIONAL

Repeals and transitional provisions.

215.(1) The following Acts are repealed -

- (a) the Fisheries Act (Cap 378); (and regulations, etc thereunder?)
- (b) the Trout Ordinance (Cap.380); and
- (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 any 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 him, 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

- (f) Cabinet Secretary shall mean a Cabinet Minister during the transition period.

FIRST SCHEDULE

(S. 17)

STAFF OF THE SERVICE

PART A—FISHERIES OFFICERS

A-(a) Professional Cadre s.12(1) a

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 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) 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; and
- (c) confinement for not more than fourteen days in a guard room or restriction to the confines of any.

PART D —INTER-AGENCIES MCS UNIT

Section 21

The inter-agency Monitoring, Control and Surveillance Unit established under section 21 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.

Members	Designation	Status of Membership
1. Director-General(Fisheries)	Chair	Permanent
2. Representative of Police/Internal Security	Member	Permanent
3. Representative of Judiciary	Member	Permanent
4. Representative of County Government (County Director of Fisheries)	Member	Permanent
5. Representative of BMUs	Member	Permanent
6. Representative Of NEMA	Member	Permanent
7. Representative of Public Health and Sanitation	Member	Permanent
8. Representative of Defence	Member	co-opted
9. Representative of Cooperatives	Member	co-opted
10. Representative of Water	Member	co-opted
11. Representative of Immigration	Member	co-opted
12. Representative of Kenya Revenue Authority	Member	co-opted
13. Representative of Kenya Wildlife Service	Member	co-opted
14. Representative Kenya Maritime Authority	Member	co-opted
15. Representative Kenya Ports Authority	Member	co-opted
16. Representative of East Africa Community / Foreign Affairs	Member	co-opted

SECOND SCHEDULE

S.55 (2)

DESIGNATED FISH LANDINGSTATIONS

1.Indian Ocean

s/no	Name of Landing site	District	Division/ Location	County
	Vanga	Msambweni	Vanga	Kwale
	Mkongoni	Lamu	Hindi	Lamu
	Old Port	Mvita	Mvita	Mombasa

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/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,

APPENDIX 3

The Fisheries Management and Development Bill, 2011

Final review, Explanatory notes

27 November 2011

Submitted by Judith Swan ACP Fish II Legal Consultant

The final review of the draft of the Fisheries Management and Development Bill has been completed, and the outcomes/recommendations are described below.

1. General

The close and careful attention given in Kenya to the draft Bill presented for review in Kenya on 26 October 2011, based on comprehensive communications regarding the development of the draft between the consultant and Ms. Susan Imende, is highly impressive. The draft now reflects the policies and needs of Kenya, as well as best practices under national fisheries laws and implementation of international instruments.

As is usually the case in legal drafting, a true iterative process, there are still some points that needed clarification, elaboration or correction, but these are minimal. These points, described below, relate to substantive recommendations and editorial amendments.

2. SUBSTANTIVE RECOMMENDATIONS

Some substantive recommendations are made in the draft Bill. One, not previously addressed, is to amend the title to include "Aquaculture" – The Fisheries and Aquaculture Management and Development Bill. This practice is being increasingly adopted internationally to acknowledge the two separate forms of activity and the consequent need for different approaches to management and development. In fact, the name of the FAO Fisheries Department has been changed in the last few years to the FAO Fisheries and Aquaculture Department.

Other key recommendations that had substantive aspects, involved a need for further elaboration or included new provisions are made in the following sections:

- 2 Interpretation
- 18 Authorized officers
- 21 Inter-agency monitoring, control and surveillance unit (and the corresponding First Schedule, Part D)
- 92 Standards for approval, renewal and issuance of licences and authorizations
- 157 Conditions for observers
- 188 Summary administrative proceedings
- 204 Objects and purpose (Fish Marketing Authority)
- 207 Tenure of office and vacation of office

2.EDITORIAL AMENDMENTS

2.1. General language

Language was amended in many other sections for purposes of “polishing” the meaning and intent. It has no major substantive significance, but clarifies the existing language and intention of the section.

2.2 Cross references

The substantive editorial amendments recommended in the final review relate to cross references. It is difficult when working intensely on legislation – where draft sections are often amended, deleted or replaced – to ensure that the proper section is being referenced. A number of cross-references have therefore been amended in this version to refer to what is now the proper section.

2.3 Formatting

Ms.Imende advised that formatting would be finalized in Kenya, but some amendments have nonetheless been included in the final review as shown in track changes. It is recommended that the following be considered in undertaking the final formatting, which should be consistent throughout the document.

2.3.1 Citation of other Acts

Citations of some other Acts in the margin are missing and should be added; this is indicated by comments in the draft.

Other Acts are cited differently in the text. Some have the year of the Act, others the Cap. number in the text of the section. Others just have the name of the Act.

2.3.2 Lists

The punctuation of the chapeau of lists varies and should be aligned. Use of either a dash or semicolon should be chosen and made consistent throughout the draft Bill. For example:

No person shall:
(a) fish without a licence
or
No person shall-
(a) fish without a licence.

An attempt was made to convert some of the semicolons into a dash, but this should be decided according to the format used in Kenya.

2.3.3 Marginal titles

The titles of each section that appear in the margin vary; some have no punctuation and some have a full stop. These should be aligned. For example:

Interpretation
or Interpretation.

An attempt was made to add punctuation to a number of the marginal titles, but this should be decided according to the format used in Kenya.

2.3.4 Paragraph formatting

An attempt was made to re-format a number of paragraphs to ensure proper spacing and margins, as well as spaces between words, but because of the complexity of the document it was not possible to properly format some of them. This will need further attention.

LIST OF PUBLICATIONS – LISTE DES PUBLICATIONS

SmartFish Programme

1. *Report of the Inception / Focal Point Meeting of the SmartFish Programme – Flic en Flac, Mauritius, 15th-16th June 2011*. REPORT/RAPPORT: SF/2011/01. August/Août 2011. SmartFish Programme. Indian Ocean Commission (55 pages).
2. *Report of the First Steering Committee Meeting of the SmartFish Programme – Flic en Flac, Mauritius, 17th June 2011*. REPORT/RAPPORT: SF/2011/02. August/Août 2011. SmartFish Programme Indian Ocean Commission (51 pages).
3. *Rapport de la réunion de présentation du programme SmartFish aux points focaux – Flic en Flac, Ile Maurice, 15-16 juin 2011*. REPORT/RAPPORT: SF/2011/03. August/Août 2011. SmartFish Programme. Indian Ocean Commission (55 pages).
4. *Eco-Certification for the Tuna Industry, Technical Assistance for Implementation of a Regional Fisheries Strategy for ESA-IO (IRFS)*. REPORT/RAPPORT: SF/2011/04. May 2011. SmartFish Programme. Indian Ocean Commission (40 pages).
5. *Regional Market Assessment (Supply and Demand)*. REPORT/RAPPORT: SF/2012/05. March/Mars 2012. SmartFish Programme. Indian Ocean Commission (264 pages).
6. *Trade Assessment Study*. REPORT/RAPPORT: SF/2012/06. March/Mars 2012. SmartFish Programme. Indian Ocean Commission (120 pages).
7. *Gouvernance des Pêches Maritimes dans l'Ouest de l'Océan Indien*. REPORT/RAPPORT: SF/2012/07. June/Juin 2012. SmartFish Programme. Indian Ocean Commission (101 pages).
8. *Value Chain Assessment of the Artisanal Fisheries – Mauritius*. REPORT/RAPPORT: SF/2012/08. June/Juin 2012. SmartFish Programme. Indian Ocean Commission (85 pages).
9. *Kenya Fisheries Governance*. REPORT/RAPPORT: SF/2012/09. June/Juin 2012. SmartFish Programme. Indian Ocean Commission (36 pages).
10. *Training Needs Analysis – Quality and Hygiene*: REPORT/RAPPORT: SF/2012/10. June/Juin 2012. SmartFish Programme. Indian Ocean Commission (95 pages).
11. *A Review of Somalia's & (Semi-Autonomous Regions) Fisheries Legislation and Management*. REPORT/RAPPORT: SF/2012/11. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (49).
12. *Assessment of IUU Activities On Lake Victoria*. REPORT/RAPPORT: SF/2012/12. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (130 pages).
13. *Review Of The Legal Framework for the ESA-IO Region*. REPORT/RAPPORT: SF/2012/13. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (149 pages).
14. *Comprehensive capacity review to implement effective MCS in the ESA-IO Region*. REPORT/RAPPORT: SF/2012/14. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (101 pages).

15. *Assessment of IUU Fishing in Lake Tanganyika*. REPORT/RAPPORT: SF/2012/15. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (52 pages).
16. *Spirulina – A Livelihood and a Business Venture*. REPORT/RAPPORT: SF/2012/16. SmartFish Programme. June/Juin 2012 Indian Ocean Commission (39 pages).
17. *Diversification Study (Eco-Tourism and Recreational Fisheries)*. REPORT/RAPPORT: SF/2012/17. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (76 pages).
18. *Value Chain Analysis of Fisheries Sector for Rodrigues*. REPORT/RAPPORT: SF/2012/18. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (78 pages).
19. *Dagaa Value Chain Analysis and Proposal for Trade Development*. REPORT/RAPPORT: SF/2012/19. June/Juin 2012 SmartFish Programme. Indian Ocean Commission (45 pages).
20. *Operationalization of Fish Auction Market. (Feasibility Study)*. REPORT/RAPPORT: SF/2012/20. August/Août 2012 SmartFish Programme. Indian Ocean Commission (45 pages).
21. *Options to Reduce IUU Fishing in Kenya, Tanzania, Uganda and Zanzibar*: REPORT/RAPPORT: SF/2012/21. August/Août 2012 SmartFish Programme. Indian Ocean Commission (101 pages).
22. *Revitalization of Fisheries Research in Mauritius*. REPORT/RAPPORT: SF/2012/22. August/Août 2012 SmartFish Programme. Indian Ocean Commission (58 pages).
23. *Preparation of Draft Kenya Fisheries Management and Development Bill*: REPORT/RAPPORT: SF/2012/23. August/Août 2012 SmartFish Programme. Indian Ocean Commission (200 pages).

La bonne gouvernance et de la gestion des pêches et de l'aquaculture permettent d'améliorer la contribution du secteur à la sécurité alimentaire, au développement social, à la croissance économique et au commerce régional ; ceci en assurant par ailleurs une protection renforcée des ressources halieutiques et de leurs écosystèmes.

La Commission de l'Océan Indien (COI) ainsi que la COMESA (Common Market for Eastern and Southern Africa), l'EAC (East African Community) et l'IGAD (Inter-Governmental Authority on Development) ont développé des stratégies à cette fin et se sont engagés à promouvoir la pêche et l'aquaculture responsable.

SmartFish supporte la mise en œuvre de ces stratégies régionales en mettant l'accent sur le renforcement des capacités et des interventions connexes visant à :

- mettre en place des mécanismes pour la gestion et le développement durable des pêches ;
- développer un cadre de gouvernance des pêches au niveau régional ;
- renforcer le suivi-contrôle-surveillance pour les pêcheries partagées ;
- développer des stratégies et supporter des initiatives propres à accroître le commerce régional du poisson ;
- contribuer à la sécurité alimentaire en particulier par la réduction des pertes après captures et la diversification de la production.

SmartFish est financé par l'Union Européenne dans le cadre du 10^{ème} Fond Européen de Développement.

SmartFish est mis en œuvre par la COI en partenariat avec la COMESA, l'EAC et l'IGAD et en collaboration avec la SADC. Une collaboration étroite a également été développée avec les organisations régionales de pêche de la région. L'assistance technique est fournie par la FAO et le consortium Agrotec SpA.

By improving the governance and management of our fisheries and aquaculture development, we can also improve food security, social benefits, regional trade and increase economic growth, while also ensuring that we protect our fisheries resources and their ecosystems.

The Indian Ocean Commission (IOC), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Inter-Governmental Authority on Development (IGAD) have developed strategies to that effect and committed to regional approaches to the promotion of responsible fisheries and aquaculture.

SmartFish is supporting the implementation of these regional fisheries strategies, through capacity building and related interventions aimed specifically at:

- implementing sustainable regional fisheries management and development;
- initiating a governance framework for sustainable regional fisheries;
- developing effective monitoring, control and surveillance for transboundary fisheries resources;
- developing regional trade strategies and implementing regional trade initiatives;
- contributing to food security through the reduction of post harvest losses and diversification.

SmartFish is financed by the European Union under the 10th European Development Fund.

SmartFish is implemented by the IOC in partnership with the COMESA, EAC, and IGAD and in collaboration with SADC. An effective collaboration with all relevant regional fisheries organisations has also been established. Technical support is provided by Food and Agriculture Organization (FAO) and the Agrotec SpA consortium.

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