



Food and Agriculture  
Organization of the  
United Nations

# Legal report on the ecosystem approach to fisheries in Kenya

An analysis of the ecosystem approach to fisheries in selected  
national policy and legal instruments of Kenya

FAO EAF-Nansen Programme Report No. 47  
EAF-N/PR/47 (En)

A decorative graphic at the bottom of the page consisting of several thick, wavy blue lines that resemble ocean waves. Interspersed among these waves are several small, solid blue circles, which represent fish or bubbles.

PROGRAMME REPORT

## THE EAF-NANSEN PROGRAMME

The EAF-Nansen Programme “Supporting the Application of the Ecosystem Approach to Fisheries Management considering Climate and Pollution Impacts” supports partner countries and regional organizations in Africa and the Bay of Bengal improving their capacity for the sustainable management of their fisheries and other uses of marine and coastal resources through the implementation of the Ecosystem Approach to Fisheries (EAF), taking into consideration the impacts of the climate and pollution.

The Programme is executed by the Food and Agriculture Organization of the United Nations (FAO) in close collaboration with the Institute of Marine Research (IMR) of Bergen, Norway, and funded by the Norwegian Agency for Development Cooperation (Norad). This Programme is the current phase of the Nansen Programme which started in 1975.

The aim of the Programme is that sustainable fisheries improve food and nutrition security for people in partner countries. It builds on three pillars, Science, Fisheries Management, and Capacity Development, and supports partner countries to produce relevant and timely evidence-based advice for management, to manage fisheries according to the EAF principles and to further develop their human and organizational capacity to manage fisheries sustainably. In line with the EAF principles, the Programme adopts a broad scope, taking into consideration a wide range of impacts of human activities and natural processes on marine resources and ecosystems including fisheries, pollution, climate variability and change.

A new state of the art research vessel, the *Dr Fridtjof Nansen*, is an integral part of the Programme. A comprehensive science plan, covering a broad selection of research areas, and directed at producing knowledge for informing policy and management decisions, guides the Programme’s scientific work.

The Programme works in partnership with countries, regional organizations, other UN agencies as well as other partner projects and institutions.

# **Legal report on the ecosystem approach to fisheries in Kenya**

**An analysis of the ecosystem approach to fisheries in selected national  
policy and legal instruments of Kenya**

**By Julia N. Nakamura and Teresa Amador**

**FAO EAF-Nansen Programme Report No. 47  
EAF-N/PR/47 (En)**

**Programme report**

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS  
Rome, 2022**

Required citation:

Nakamura, J.N. & Amador, T. 2022. *Legal report on the ecosystem approach to fisheries in Kenya – An analysis of the ecosystem approach to fisheries in selected national policy and legal instruments of Kenya*. EAF-Nansen Programme Report, No. 47. Rome, FAO. <https://doi.org/10.4060/cc1550en>

The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

The views expressed in this information product are those of the author(s) and do not necessarily reflect the views or policies of FAO.

ISBN 978-92-5-136756-8

© FAO, 2022



Some rights reserved. This work is made available under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 IGO licence (CC BY-NC-SA 3.0 IGO; <https://creativecommons.org/licenses/by-nc-sa/3.0/igo/legalcode>).

Under the terms of this licence, this work may be copied, redistributed and adapted for non-commercial purposes, provided that the work is appropriately cited. In any use of this work, there should be no suggestion that FAO endorses any specific organization, products or services. The use of the FAO logo is not permitted. If the work is adapted, then it must be licensed under the same or equivalent Creative Commons licence. If a translation of this work is created, it must include the following disclaimer along with the required citation: "This translation was not created by the Food and Agriculture Organization of the United Nations (FAO). FAO is not responsible for the content or accuracy of this translation. The original [Language] edition shall be the authoritative edition."

Disputes arising under the licence that cannot be settled amicably will be resolved by mediation and arbitration as described in Article 8 of the licence except as otherwise provided herein. The applicable mediation rules will be the mediation rules of the World Intellectual Property Organization <http://www.wipo.int/amc/en/mediation/rules> and any arbitration will be conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

**Third-party materials.** Users wishing to reuse material from this work that is attributed to a third party, such as tables, figures or images, are responsible for determining whether permission is needed for that reuse and for obtaining permission from the copyright holder. The risk of claims resulting from infringement of any third-party-owned component in the work rests solely with the user.

**Sales, rights and licensing.** FAO information products are available on the FAO website ([www.fao.org/publications](http://www.fao.org/publications)) and can be purchased through [publications-sales@fao.org](mailto:publications-sales@fao.org). Requests for commercial use should be submitted via: [www.fao.org/contact-us/licence-request](http://www.fao.org/contact-us/licence-request). Queries regarding rights and licensing should be submitted to: [copyright@fao.org](mailto:copyright@fao.org).

## Abstract

Legislating for the ecosystem approach to fisheries (EAF) is complex, due to the holistic nature of the EAF involving multiple factors that underpin the social, economic, environmental, and institutional aspects of fisheries sustainability. These factors include ecosystems integration, risks, inter-sectoral collaboration, research, participatory processes, monitoring, control, surveillance, and enforcement, among others. To assess how the EAF is being implemented through national policy and legal frameworks, FAO developed [\*A diagnostic tool for implementing an ecosystem approach to fisheries through national policy and legal frameworks\*](#).

The present legal report on the EAF used the diagnostic tool to assess the alignment of selected policy and legal instruments of Kenya with the EAF. This assessment analysed the extent to which 82 EAF legal requirements, which are considered the minimum standards in legislating for the EAF, are reflected in Kenya's policies and legislation relevant to the fisheries sector of the country and other relevant sectors (such as environment, wildlife, ecosystems, and maritime affairs). Based on this preliminary diagnosis, gaps were identified in the assessed instruments, and recommendations were made for improving the implementation of the EAF.

This report was elaborated following a participatory approach with the involvement of the national competent authorities of Kenya. Drafted in July 2021, the report was submitted to the national authorities of Kenya in November 2021. The Ministry of Agriculture, Livestock, Fisheries and Cooperatives, Kenya, endorsed this EAF Legal Report in June 2022.



# Contents

<b>Acknowledgements .....</b>	<b>vii</b>
<b>Abbreviations and acronyms.....</b>	<b>viii</b>
<b>1. Introduction: legislating for the ecosystem approach to fisheries.....</b>	<b>1</b>
1.1 A diagnostic tool for implementing the ecosystem approach to fisheries through national policy and legal frameworks .....	1
1.2 International legally binding instruments and non-legally-binding instruments relevant to an ecosystem approach to fisheries.....	1
<b>2. Legal report on the ecosystem approach to fisheries: assessing a country’s policy and legal framework .....</b>	<b>3</b>
2.1 Methodology and scope .....	3
2.1.1 Selection and collection of national policy and legal instruments of Kenya .....	3
2.1.2 Desk-based stepwise assessment of selected national policy and legal instruments .....	3
2.1.3 Filling in the Ecosystem Approach to Fisheries Legal Checklist of Kenya .....	4
2.1.4 Additional observations .....	5
2.2 Overview and main findings .....	5
2.2.1 Fisheries policy .....	6
2.2.2 Fisheries primary legislation .....	7
2.2.3 Fisheries secondary legislation .....	9
2.2.4 Other sectors primary legislation.....	10
2.2.5 Other sectors secondary legislation.....	12
<b>3. Conclusion .....</b>	<b>13</b>
3.1 Main gaps in the assessed policy and legal instruments .....	13
3.2 Level of alignment of the assessed policy and legal instruments with an ecosystem approach to fisheries .....	13
3.3 Final considerations and proposed way forward .....	14
<b>4. References.....</b>	<b>16</b>
<b>Appendix A. List of national policy and legal instruments assessed in this report .....</b>	<b>17</b>
<b>Appendix B. Ecosystem Approach to Fisheries Legal Checklist applied against selected national policy and legal instruments .....</b>	<b>18</b>

## Tables

Table 1.	Status of Kenya in selected international legally binding instruments relevant to an EAF .....	2
Table 2.	Summary of the stepwise assessment .....	4
Table 3.	Meaning of the symbols used in the Ecosystem Approach to Fisheries Legal Checklist .....	5
Table 4.	Criteria for determining the level of alignment of assessed instruments with an EAF .....	14



## Acknowledgements

This EAF Legal Report is a product of the Development Law Service (LEGN) of FAO's Legal Office in collaboration with the Assessment and Management Team (NFIFM) of FAO's Fisheries and Aquaculture Division, and the EAF-Nansen Programme. Funding for the projects "Strengthening the Knowledge Base for and Implementing an Ecosystem Approach to Marine Fisheries in Developing Countries (EAF-Nansen GCP/INT/003/NOR)" and "Supporting the Application of the Ecosystem Approach to Fisheries Management considering Climate Change and Pollution Impacts" (EAF-Nansen GCP/GLO/690/NOR) has been provided by the Norwegian Agency for Development Cooperation (Norad). FAO is grateful to Norad for this assistance.

The initial draft of this EAF Legal Report was prepared by Julia Nakamura, under the supervision, counsel and technical input of Pio Manoa, and extensively reviewed by Teresa Amador. Further improvements were made through the inputs and comments collected from participants in an FAO internal online mock-training in April 2020, in which the methodology and scope were clarified. Appreciation is extended to Blaise Kuemlangu, Buba Bojang and Minmin Lei of LEGN, Merete Tandstad of NFIFM, the participants of the mock-training, and all other FAO colleagues who supported the development of this EAF Legal Report.

We are also grateful to the delegates of Kenya who, following the *First Online regional workshop on the use of the Diagnostic Toll on Implementing an EAF through policy and legal frameworks* (15–17 September 2020), have conducted their own assessment, applying the EAF Legal Checklist against selected policies and legislation of Kenya. The findings of this country assessment were incorporated into the present EAF Legal Report, improving the overall information reported.

## Abbreviations and acronyms

BMU	Beach Management Unit
EAF	ecosystem approach to fisheries
EIA	environmental impact assessment
FAO	Food and Agriculture Organization of the United Nations
FMP	fishery management plan
IMO	International Maritime Organization
IUU	illegal, unreported and unregulated (fishing)
KOFC	Kenya Ocean and Fisheries Council
MCSE	monitoring, control, surveillance and enforcement
MPA	marine protected area
NGO	non-governmental organization
RFMO/A	regional fisheries management organization and/or arrangement
TAC	total allowable catch
VMS	vessel monitoring system

# 1. Introduction: legislating for the ecosystem approach to fisheries

The Food and Agriculture Organization of the United Nations (FAO) has promoted the implementation of the ecosystem approach to fisheries (EAF) through various activities conducted over the last decades (FAO, 2019), many of which under the EAF-Nansen Programme (FAO, n-d). Among the many ways or processes through which the EAF can be implemented is the review of national policies and/or legislation, which provides a country the opportunity to reassess its respective policy and legal frameworks, identify the gaps and/or needs for improvement, and present recommendations for enacting new policy and/or legal instruments for the EAF, and/or amending the existing ones so that they are appropriately aligned with the EAF.

FAO's initiative to promote legislating for the EAF has been undertaken through the development of studies, guidance materials and tools (Skonhofs, 2011; FAO, n.d-b; FAO, 2016; FAO, 2021a; FAO, 2021b; FAO, 2021c; FAO, 2021d; FAO, 2021e).

## 1.1 A diagnostic tool for implementing the ecosystem approach to fisheries through national policy and legal frameworks

The latest material developed by FAO for the implementation of the EAF through national policy and legal frameworks, published in 2021, is [\*A diagnostic tool for implementing an ecosystem approach to fisheries through national policy and legal frameworks\*](#) (hereafter referred to as "EAF Legal Diagnostic Tool" (FAO, 2021a; FAO, 2021b; FAO, 2021c). This tool, which constitutes the basis for the development of the present report, provides important information about the EAF and should be read together with this report. Such relevant information includes a non-exhaustive list of international legal instruments that support the EAF (Appendix A of the EAF Legal Diagnostic Tool), and a non-exhaustive list of examples of selected national policy and legal instruments relevant for the EAF (Appendix B of the EAF Legal Diagnostic Tool).

The Appendix C of the EAF Legal Diagnostic Tool provides the EAF Legal Checklist for Assessment and Implementation of the EAF Policy and Legal Frameworks (hereafter referred to as "EAF Legal Checklist"), based on which the level of alignment of a country's policy and/or legal frameworks with the EAF and the 17 EAF Components can be assessed (FAO, 2016).

## 1.2 International legally binding instruments and non-legally-binding instruments relevant to the ecosystem approach to fisheries

There are several international legally binding and non-legally-binding instruments that provide for the EAF. The Appendix A of the EAF Legal Diagnostic Tool highlights, in a non-exhaustive list, selected provisions of international instruments or decisions relevant for the EAF. Other legally binding instruments in support of the EAF are the applicable conservation

and management measures of regional fisheries management organizations/arrangements (RFMO/As) which should also be taken into account, on a country-by-country basis, in the assessment of a given country's EAF commitments.

It should further be noted that provisions of international non-legally-binding instruments that reflect principles of international law are also legally binding and therefore relevant in the analysis of the national policy and legal frameworks.

States which are a party to multilateral conventions or agreements, as well as States which adopt or endorse international non-legally-binding instruments that reflect principles of international law have the duty to align their national policy and legal frameworks with the obligations that derive from such international and regional instruments.

In light of these considerations, Table 1 below provides the present status of Kenya in respect to the EAF's relevant international legally binding instruments selected from Appendix A of the EAF Legal Diagnostic Tool.

Table 1. Status of Kenya in selected international legally binding instruments relevant to the EAF	
Instrument	Status
1971 Ramsar Convention on Wetlands of International Importance	Party
1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora	Party
1979 Convention on the Conservation of Migratory Species of Wild Animals	Party
1982 United Nations Convention on the Law of the Sea	Party
1992 Convention on Biological Diversity	Party
1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement)	Not a Party
1995 United Nations Agreement for the Implementation of the Provisions of the LOSC relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	Party
2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing	Party

Note: In accordance with the information provided in the secretariats of the international conventions and agreements as of May 2022.

For the international legally binding instruments that Kenya **is a Party**, and to the non-binding instruments that Kenya has endorsed or adopted, it is important to ensure that the relevant provisions of the EAF highlighted in Appendix A of the EAF Legal Diagnostic Tool are properly reflected in the national policy and legal frameworks.

With regard to the 1993 Compliance Agreement that Kenya is **not yet a Party**, it is important to identify and analyse the reasons preventing the country's consent to be bound by such instruments and raise awareness to the importance of the international fisheries governance framework. Such analysis is however beyond the scope of this report.

## 2. Legal report on the ecosystem approach to fisheries: assessing a country's policy and legal framework

The EAF Legal Diagnostic Tool was the main tool used for the preparation of this report (hereafter referred to as the “EAF Legal Report”). Selected national policies and legislation were assessed and applied against the EAF Legal Checklist.

This section is divided into two subsections. Subsection 2.1 describes the methodology and scope, including the selection of the national policy and legal instruments relevant for the EAF and the assessment of the EAF legal requirements in such instruments by filling in the EAF Legal Checklist using the symbols under Table 3 below. Subsection 2.2 provides an overview of main findings, highlighting some specific parts of the policy instruments and legal provisions identified as good practice in legislating for or addressing the EAF.

### 2.1 Methodology and scope

Understanding the complexities, detail and broad range of matters that the EAF comprises is a challenge due to *inter alia* its holistic nature and the context and priorities of each country. A simplified assessment methodology was therefore developed for the application of the EAF Legal Checklist against the selected national policy and legal instruments, leading to the compilation of this report.

This desk-based preliminary assessment cannot however replace an in-country detailed assessment of the national policy and legal frameworks.

#### 2.1.1 Selection and collection of national policy and legal instruments of Kenya

The main source for the selection and collection of national policies and legal instruments was FAOLEX (FAO, n.d-b) which, besides the Constitutions of countries, provides a vast electronic repository of national policy and legal instruments on fisheries and other sectors relevant for the EAF, including on environment, sea, water, and wild species and ecosystems.<sup>1</sup>

The relevant information for the EAF available at FAOLEX is listed under **Appendix A** and identified by a reference letter and number to facilitate their citation in the EAF Legal Checklist provided in **Appendix B** of this report. Appendix A and Appendix B shall therefore be read together.

#### 2.1.2 Desk-based stepwise assessment of selected national policy and legal instruments

The selected national policy and legal instruments relevant for the EAF under **Appendix A** of this report were assessed against the EAF Legal Checklist following the steps described in Table 2 below.

---

<sup>1</sup> Notwithstanding the importance of certain cross-sectoral issues such as gender and climate change, these were not considered in this report.

<b>Steps</b>	<b>National policy and legal instruments analysed</b>	<b>Scope</b>
<b>1<sup>st</sup></b>	<b>Fisheries policy:</b> a plan, policy, strategy, action plan, policy chart concerning fisheries, aquaculture, wildlife, sea and/or oceans, sustainable development, management and/or conservation.	Searching for the EAF legal requirements with a focus on the parts of the policy that address the principles, objectives, plans, priorities, recommendations, strategies and actions.
<b>2<sup>nd</sup></b>	<b>Fisheries primary legislation:</b> a fisheries act, code, law, or any other type of instrument implementing the fisheries policy as well as the general law on fisheries, forestry and wildlife providing the legal framework for fishing and fishing related activities. It is the main legal instrument on fisheries, which contains the typical outline and broadly covers the subjects described in subsection 3.1 of the EAF Legal Diagnostic Tool. It should be noted that this typical outline is without prejudice to the particular structure of the fisheries primary legislation of the assessed country.	Searching for the EAF legal requirements in each provision of the fisheries primary legislation.
<b>3<sup>rd</sup></b>	<b>Fisheries secondary legislation implementing or elaborating the fisheries primary legislation:</b> fisheries decree, regulation, order, ordinance which sets out in more detail the requirements of the fisheries primary legislation – concerning e.g. fishing vessel registration, fishing vessel requirements, vessel monitoring system (VMS), fisheries research, fisheries fund, small-scale fisheries.	Searching for the EAF legal requirements not found in the relevant parts of the fisheries policy nor in the provisions of the fisheries primary legislation.
<b>4<sup>th</sup></b>	<b>Other sector's primary legislation:</b> an act, code or law on the relevant sectors of <i>inter alia</i> environment, sea, water, and wildlife species and ecosystems.	Searching for the EAF legal requirements not found in the relevant parts of the fisheries policy nor in the provisions of the fisheries primary and secondary legislation.
<b>5<sup>th</sup></b>	<b>Other sector's secondary legislation:</b> a decree, regulation, order, ordinance regulating the primary legislation of other sectors assessed under step 4.	Searching for the EAF legal requirements not found in the relevant parts of the fisheries policy nor in the provisions of any of the previously assessed legal instruments.

The Kenya Marine and Fisheries Research Institute and the Kenya Fisheries Service conducted its own assessment, applying the EAF Legal Checklist against selected policies and legislation of Kenya. The information provided and the results of the country self-assessment have been incorporated in this report.

### **2.1.3 Filling in the Ecosystem Approach to Fisheries Legal Checklist of Kenya**

The EAF Legal Checklist provides the EAF legal requirements structured by the 17 EAF Components, based on a step-wise methodology (FAO, 2021, Subsection 2.2), and in accordance with the typical subjects of a fisheries primary legislation, without prejudice to the particular structure of the fisheries primary legislation of Kenya (FAO, 2021, Subsection 3.2). In filling it in, priority was given to assessing the EAF legal requirements in the fisheries policies and primary/secondary legislation. In this process, the different symbols presented in Table 3 below were used.

<b>Symbol</b>	<b>Perceived level of alignment with the EAF legal requirement</b>	
✓	Full or sufficient	Part(s) in the assessed fisheries policy or provision(s) in the assessed legislation <u>totally incorporates</u> the EAF legal requirement.
∅	Partial or insufficient	Part(s) in the assessed policy or provision(s) in the assessed legislation <u>partially incorporates</u> the EAF legal requirement. <sup>2</sup>
X	None or in-existent	No part in the assessed policy nor provision in the assessed legislation was found that incorporates the EAF legal requirement.
●	Not considered	No assessment was carried out since the EAF legal requirement was fully or sufficiently found in the <b>primary</b> fisheries policy/legislation, or in the <b>primary</b> legislation of other sector.
N/A	Not applicable	The EAF legal requirement is exclusively relevant to fisheries (that is the case of all the EAF legal requirements under Fisheries Management, Monitoring, Control, Surveillance and Enforcement (MCSE) and almost all of those under enforcement processes and sanctions scheme) and therefore not applicable to other sector's legislation.
*	Optional	The EAF legal requirement is considered to have a non-mandatory nature and therefore is not expected to be found in the assessed policy or legal instrument.

The last two columns of the EAF Legal Checklist indicate: **(i)** the parts of the policy instruments and legal provisions where the EAF legal requirement was found; and **(ii)** additional relevant comments and explanatory notes that clarify, where appropriate, nuances in assessing the policy and legal instruments and the rationale for the assessment of partial or insufficient coverage of the EAF legal requirements. It should be noted that these additional comments and explanatory notes will benefit from a more in-depth analysis during the comprehensive review at country level.

The results of this assessment are presented in **Appendix B** of this report which provides the EAF Legal Checklist applied against the selected policies and legislation of Kenya.

#### **2.1.4 Additional observations**

While filling in Appendix B, some parts of the policy framework and some provisions of the legal framework which in some cases are anchored in the Kenya Constitution of 2010, were considered particularly relevant in incorporating the EAF legal requirements. These parts and legal provisions which, without prejudice to others that may also be relevant, were considered good examples of addressing the EAF (in the case of a policy instrument) or legislating for the EAF (in the case of a legal instrument), have been highlighted in the main findings under subsection 2.2 below as good practice in legislating for the EAF.

## **2.2 Overview and main findings**

<sup>2</sup> A more in-depth analysis will be required to understand how EAF legal requirements filled in with the ∅ symbol could be fully incorporated in legal and policy instruments or reflect potential contradictions between one legal and/or policy instrument and another. Such analysis goes beyond the scope of this desk-based preliminary assessment.

This subsection provides an overview of the main findings of this desk-based preliminary assessment of the EAF in the selected national policy and legal instruments of **Kenya** presented under **Appendix B**.

### **2.2.1 Fisheries policy**

The assessed five fisheries policies correspond to A1 to A5 in Appendix A. They cover **30** of the 82 EAF legal requirements.

The *2008 National Oceans and Fisheries Policy* is focused on the promotion, implementation and monitoring of sustainable management and responsible fishing practices on the basis of *inter alia* the principles of good governance through co-management and transparency, ecosystem approach, precautionary approach, sustainability and environmental integrity (Chapter 3(3.2)). It endorses the ecosystem-based approach for the management of resources combined with the operational management plans for each fishery or resource (Chapter 4(4.2.2)), the establishment of a formal mechanism of conducting monitoring, control and surveillance (MCS) (Chapter 4 (4.5)) and the promotion of regional and international cooperation (Chapter 4 (4.6)). It also promotes governmental collaboration through the establishment of the Kenya Ocean and Fisheries Council (KOFCC), clear and legitimate decision-making processes, well defined delimitation of functions and responsibilities between different agencies, Departments and Ministries operating within the fisheries and ocean sectors (Chapter 4(4.8)). Also of relevance is the investment in the artisanal fishery, which is reserved for local investors (Chapter 4(4.9.3)), and the promotion of women and youth's participation in investments and trade in the fishery sector (Chapter 4(4.9.4)). Also relevant for the EAF is this policy's promotion of public awareness and active participation of all stakeholders in the management and development of fisheries and oceans (Chapter 4(4.13.2)) as well as coordination between the government and other agencies on all cross-cutting issues (Chapter 4(4.14.1)).

The *2018-2030 National Wildlife Strategy's* Strategic Goals include the protection and restoration of habitats and ecosystems through evidence and adaptive management (Page 54). Such goal sets out strategies that, *inter alia*, fosters the protection of wildlife habitat and reduction of biodiversity loss (Page 56) and the restoration of wildlife habitats and their connectivity (Page 57). Among the priority activities are increasing the extent and management effectiveness of the conservation and protection of marine and coastal ecosystems (Page 57). Another important strategy for the EAF is the promotion of coexistence to reduce wildlife conflict, which comprises priority activities such as developing and providing communication and education materials, and extension services on human wildlife conflict mitigation measures and management strategies (Page 63). Under the goal of access, incentives and sustainable use are the priority activities of creating opportunities for local communities in biodiversity conservation and sustainable use, as well as cross sectoral coordination of marine and coastal natural resource management (Page 72).

The *2017 National Wildlife Conservation and Management Policy* is aimed at, *inter alia*, developing a coordinated framework for wildlife management considering other sectoral



policies and the roles of various agencies (Chapter 3(3.2.1)) and ensuring maintenance and enhancement of ecological integrity of wildlife and their habitats (Chapter 3(3.2.3)). Its overarching principles include the ecosystem approach, which requires wildlife resources to be management as a key component of a complex ecological systems with the maintenance of ecosystems functions and ecological processes (Chapter 3(3.3.1)). Other EAF-related relevant principles of this policy are the inter and intra-generational equity, international cooperation, policy integration, precautionary principle and public participation (Chapter 3(3.3.1)). Also of relevance to the EAF is the policy statement of developing a marine protected area strategy in line with national and international integrated coastal zone management strategy (Chapter 5(5.2)(i)).

The *2013 Management Plan for Fisheries targeting Small and Medium Sized Pelagic Fish* states that it is consistent with the EAF and it is anchored on the afore mentioned Oceans and Fisheries policy (Chapter 5(5.1)). This FMP is built on an ecological risk assessment that analyses three EAF issues namely ecological wellbeing, community wellbeing and ability to achieve (Chapter 5(5.2)). Its management and operational objectives are defined with the respective activities and time frames, including the implementation of a revised MCS strategy (Table 1).

The *2013 National Environment Policy* is also aligned with the EAF, containing objectives that, *inter alia*, promote and support the use of innovative environmental tools such as environmental impact assessments (EIAs), promote and enhance cooperation, collaboration, synergy, partnerships and participation in the protection, conservation, sustainable management of environmental and natural resources (Chapter 3(3.1)(d)(e)). The implementation of this policy is guided by the principles of the ecosystem approach, sustainable resource use, public participation, precautionary principle, international cooperation, community empowerment, among others (Chapter 3(3.2)(c)(e)(g)(i)(k)(n)). Policy statements include ensuring the development and implementation of harmonised integrated coastal zone management policy and integrated ocean management policy, strategy and action plan; undertaking and supporting research and training in the conservation and management of coastal and marine ecosystems and resources; promoting regional and international cooperation in conserving and managing marine migratory species; harmonising and coordinating roles of regulatory agencies in charge of coastal and marine resources management; and involving and empowering communities in such management (Chapter 4(4.3)).

## **2.2.2 Fisheries primary legislation**

The assessed fisheries primary legislation corresponds to B1 and B2 in Appendix A. The main primary fisheries legislation is the *Fisheries Management and Development Act of 2016* (hereinafter referred to as "*Fisheries Act*"), which covers 55 of the 82 EAF legal requirements.

The *Fisheries Act* is guided by the principle of "ensuring the effective application of the ecosystem approach to fisheries management" (Section 5(2)(d)). In its implementation it also provides for the principle of "encouraging the participation of users of the fisheries resources,

and the general community, in the management of fisheries” (Section 5(2)(g)). Another relevant provision to the EAF is the establishment of a MCS Unit to conduct MCS and enforcement including compliance activities, and to cooperate, coordinate with and perform such functions within the broader system at bilateral, sub-regional, regional and international levels (Section 20(2)). To ensure coordinated and effective inter-agency enforcement of and compliance with the Fisheries Act, the Cabinet Secretary responsible for matters relating to fisheries may establish an inter-agency MCS Unit (Section 21 (1) and (3)), to be chaired by the Director-General of the Kenya Fisheries Service (Section 21 (4)). A Fisheries Research and Development Fund is established to provide funding for research that advances the development of fisheries management, capacity building, scholarships, grants and supports for the observer programme established by the Act (Section 27(3)).

The *Fisheries Act* contains important provisions on coordination and collaboration among the Director-General and County Governments in the management of fisheries within each County (Sections 33-36). A mechanism for ensuring structured community participation in fisheries management is provided through the establishment, by County Governments, of Beach Management Units (BMUs)<sup>3</sup> to be managed by regulations from the Cabinet Secretary (Section 37). Consultation with Counties and other relevant stakeholders is a duty of the Director-General when developing guidelines and standards for fisheries management plans,<sup>4</sup> whose minimum content is outlined by the Act (Section 39(3)). Such content comprises *inter alia* the identification of fisheries resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem, the impact of the plan on fishery or fisheries involved, associated and dependent species, habitat and ecosystem, and a social impact assessment of the plan with reference to disadvantaged groups such as women, persons with disability and youth (Section 39(3)(a)(g)(n)).

In addition, the *Fisheries Act* requires the master of a vessel that has entangled with fixed fishing gear or other object to undertake to minimize any damage caused by the gear, where practicable, return the gear to the sea, log the position, and make a full report of the incident and steps taken to the Director-General at the master’s earliest opportunity (Section 43(2)). Also of relevance is the duty of any person, Government Ministry or other agency planning to conduct any activity other than fishing, which is likely to have an adverse impact on fish and their habitats, to apply to the Director-General, who, in turn, refers the matter to the authority in charge of environment for providing an impact assessment of the proposed activity on the fishery resources including their habitats, and possible means of preventing or minimizing adverse impact (Section 48). The licensing and registration regime is provided under Part X which sets up, among others, the application for granting or renewal of a licence or authorisation (Section 89), terms and conditions (Section 90), and validity (Section 92).

---

<sup>3</sup> 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” (Section 2).

<sup>4</sup> Each County may develop fisheries management measures and plan consistent with the Act, taking into account relevant measures taken, information and data available, economic and social value of the resource (Section 34).

Reporting of catch and effort data with specific requirements for industrial fishing vessels and semi-industrial fishing vessels is also required (Sections 100 and 102).

### **2.2.3 Fisheries secondary legislation**

The assessed three fisheries secondary legislation corresponds to C1 to C3. They cover **25** of the 82 EAF legal requirements.

*Regulations L.N. 34/1991 on Fisheries (General)*, as last amended in 2010, implement some provisions of the Fisheries Act including on registration of local fishing vessels, licensing scheme of fishermen and prohibitions of fishing methods and gear. Regarding the latter, trawling in the waters of Lake Victoria, in Kenyan waters of Lake Turkana and within three nautical miles of the coast of Kenya within its territorial waters is prohibited (Regulation 43(1)(a)(c)(d)). Other relevant provisions for the EAF allow the Director to regularly and based on scientific evidence, by notice published in the Gazette, prescribe the gears or methods to be applied during fishing for crustacean in order to reduce by-catch,<sup>5</sup> and to specify total allowable catch (TAC) (Regulation 56A(c)(e)). The Regulations also detail the obligations of the owner of a fishing vessel in respect of collection of data and carrying out such other management and enforcement activities, and subjects them to the obligation of embarking and disembarking observers and providing them with accommodation, food and all other reasonable assistance for enabling the carrying out of the observer's duties (Regulation 56C(b)(d)).

Notably, the Kenya fishery waters are declared to be 'pollution prevention zone' for the purpose of protecting their aquatic environment and ecology (Regulation 59). Except in circumstances involving safety of a fishing craft or crew, the regulations prohibit the intentional or negligent placement or discharge by any person of any article, including abandoned fishing gear or pollutant into Kenya fishery waters, which may cause harm to any fisheries resource or marine mammal, interfere with fishing or obstructing fishing gear or vessels, or become a hazard to navigation (Regulation 60(1)).

*Regulations L.N. 402/2007 Fisheries (Beach Management Unit)* are particularly relevant for the EAF in respect of integrating lower level authorities and participatory approach in managing a given area. The BMUs are aimed at, *inter alia*, recognise the roles played by different sections of the community, including women; build capacity of members for effective management of fisheries in collaborations with other stakeholders; and prevent or reduce conflicts in the fisheries sector (Regulation 3(3)). Co-management areas are designated by authorised fisheries officer, following a consultative process, and such participatory approach is also observed in the drafting of a co-management plan for such areas (Regulation 7).

---

<sup>5</sup> By-catch is defined by the Regulations as 'any species taken and any mortalities incidental to the target species in respect of which the license has been granted' (Regulation 2).

*Regulations L.N. 214/2003 on Fisheries (Prohibitions)* provides specific restrictions on fishing for, landing, processing, moving and trading in certain species, outlining the precise length, closed season, authorised area for conducting such activities, and the authorised weight of certain species subject to those activities.

#### **2.2.4 Other sectors primary legislation**

The other sectors primary legislation corresponds to D1 to D5 in Appendix A.

The *Environment Management and Coordination Act* of 1999, as last amended in 2015 (hereinafter referred to as “*Environmental Act*”), contains several provisions that are aligned with the EAF. It recognises the right of every person to access any information related to the implementation of the Act (Section 3A). It requires the High Court to follow the precautionary principle (Sections 2 and 3(5)(f)) and calls for cooperation among individuals and state organs to protect and conserve the environment and to ensure the ecological sustainable development and use of natural resources (Section 3(2A)). This latter obligation is anchored in the 2010 Constitution of Kenya, which requires the State to ensure the sustainable exploitation, utilisation, management and conservation of the environment and natural resources (Clause 69(1)(a)). The Constitution also promotes the enforcement of environmental rights by granting the person alleging violation of the right to a clean and healthy environment to appeal to court for *inter alia* redress and compensation (Clause 70(2)(c)).

In line with the Constitution, which provides for the duty of the State to encourage public participation in the management, protection and conservation of the environment, and to establish systems of EIA, environmental audit and monitoring of the environment (Clause 69(1)(d)(f)), the *Environmental Act* calls for the principle of public participation in the development of policies, plans and processes for environmental management (Section 3(5)(a)). It further requires the Cabinet Secretary to provide evidence of public participation in the formulation of the policy and environmental action plan (Section 5(ca)).<sup>6</sup>

The National Environment Management Authority is established therein with the mandate of *inter alia* coordinating the environmental management activities, promoting integration of environmental considerations into development policies, plans, programmes and projects (Section 9(2)(a)), and formulating the National Environmental Action Plan, which is prepared every six years, adopted only after public participation is undertaken, and reviewed every three years (Section 37(1)(5)). This Act also requires an environment action plan at county level, ensuring public participation and consistency among every county plan (Section 40) with the purpose of coordinating and harmonising environmental policies, plans, programmes and decisions of the national and county governments (Section 41A).

---

<sup>6</sup> Pursuant to the respective 2015 Amendment, this sub-item “ca” was included under Section 5 of this *Environmental Management and Coordination*.

Moreover, the Environmental Act establishes national funds, namely the National Environment Trust Fund and the National Environment Restoration Fund, to facilitate research for furthering environmental management, capacity building, environmental awards, publications and grants, and to provide supplementary insurance for the mitigation of environmental degradation (Sections 24 and 25). Environment committees, to be appointed by the Minister by notice in the Gazette, are representative, including lower level authorities at Provincial and District levels (Section 29(2)(3)). The Act also provides for the adoption of measures to ensure the conservation of biological diversity *in-situ*, including the issuance of guidelines for the selection and management of protected areas to promote conservation of aquatic ecosystems under national jurisdiction, and *ex-situ*, especially for species threatened with extinction (Sections 51 and 52).

Notably, this Act contains provisions for integrated national coastal zone management plan, outlining its content and requiring its review every four years (Section 55(2)(3)(4)), and provisions on application of penalties and on liability for activities undertaken that cause pollution or damage in the coastal zone (Section 55(5)-(9)). An EIA is required prior to financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, which includes fish-processing plants (Section 58(1)).

*Act No. 31/2016 on Access to Information* ensures the right of every citizen to access information held by the State as well as another person, where such information is required for the exercise or protection of any right or fundamental freedom (Section 4(1)). Such right is limited in respect of specified circumstances such as where the information disclosure is likely to undermine the national security of Kenya, impede the due process of law or endanger the safety, health or life of any person (Section 6(1)).

*Act No. 47/2013 on Wildlife Conservation and Management* is guided by principles of, *inter alia*, conservation and management of wildlife that entails effective public participation, an ecosystem approach and sustainable utilization (Section 4(b)(c)(f)). The Cabinet Secretary responsible for wildlife matters has the duty to formulate and publish in the Gazette a national wildlife conservation and management strategy at least once every 5 years, containing principles, objectives, standards, indicators, procedures and incentives that include, among others, measures for the protection of wildlife species and their habitats and ecosystems; norms and standards for ecosystem-based conservation plans; and measures facilitating community-based natural resources management practices (Section 5(1)(2)). Such strategy must be periodically reviewed, and all relevant public bodies must take into account and give effect to it when exercising or performing any statutory function (Section 5(3)(4)). Another important provision of this Act is that it includes various functions relevant for the EAF within the mandate of the Kenya Wildlife Service, such as coordinating the preparation and implementation of ecosystem plans; conducting and coordinating all research activities in the field of wildlife conservation and management and ensuring application of research findings in conservation planning, implementation and decision-making (Section 7(h)(l)).

*Act No. 4/2009 on Merchant Shipping*, as amended in 2012, establishes a register of all Kenyan ships to be maintained by the Registrar of Ships (Section 25). It also provides specific requirements for the identification marks of registered fishing vessels (Section 48).

#### **2.2.5 Other sectors secondary legislation**

The other sectors secondary legislation corresponds to E1 to E5 in Appendix A.

*Regulations L.N. 101/2003 on Environmental (Impact Assessment and Audit)*, as last amended in 2009, contain rules on the content and procedures of an EIA, including the responsibilities of the competent authorities and roles of other actors such as experts and the public in the EIA's evaluation and approval (Regulations 7 to 9). In respect of public participation, these regulations ensure that the project report is widely publicized by the proponent of the respective project. Such publicity includes posting posters in strategic public places informing affected parties and communities, publishing a notice for two successive weeks in a nationwide circulation newspaper and making this notice's announcement in the official and local languages in nationwide coverage radio at least once a week for two consecutive weeks (Regulation 17(2)(a)). The proponent is also required to undertake a minimum of three public meetings with the affected parties and communities, which shall be timely notified to secure their right to provide oral and written comments accordingly (Regulation 17(2)(b)-(d)). The Regulations also provide for holding a widely publicized and timely notified public hearing (Regulation 22).

*Regulations L.N. 242/2017 on Wildlife Conservation and Management (Protection of Endangered and Threatened Ecosystems, Habitats and Species)* aim to, *inter alia*, provide the protection of ecosystems that are threatened or endangered so as to maintain their ecological integrity and ensure their survival in the wild, as well as ensure sustainable management and utilization of biodiversity (Regulation 4(b)(c)(e)). They specify the duties of the Kenya Wildlife Service, which include the creation of corridors, buffer zones and taking measures for the protection of fragile ecosystems (Regulation 5(2)(c)). It also prohibits certain activities in listed ecosystems, such as mining, quarrying and extraction of oil and gas or exploration, introduction and movement of species out of the ecosystems and introduction of invasive species (Regulation 5(1)). The Kenya Wildlife Service is in charge of consulting with relevant lead agencies and imposing bans, restrictions or similar measures on the access and use of any listed species to ensure maximum conservation and sustainability (Regulation 8(1)).

## 3. Conclusion

### 3.1 Main gaps in the assessed policy and legal instruments

Some of the EAF legal requirements in the EAF Legal Checklist in **Appendix B** were not incorporated (X) or were only partially incorporated (Ø) by the assessed policy and legal instruments of Kenya identified under **Appendix A**. This subsection summarizes the main gaps from the desk-based preliminary assessment without prejudice to others that may be identified in a comprehensive analysis of the national policy and legal frameworks at country level.

The results obtained in this Report indicate a substantive level alignment of the policy and legal frameworks of Kenya with the EAF. Some key EAF legal requirements have, however, not been found in the assessed instruments.

Of the 82 EAF legal requirements, **76** EAF legal requirements were found in Kenya's policy and legal frameworks assessed in this EAF Legal Report. It should be noted that the 82 EAF legal requirements are considered the minimum standards in legislating for the EAF which may be further elaborated and improved in advancing the implementation of the EAF. Based on the present preliminary assessment, only **6** EAF legal requirements remain to be incorporated in the policy and legal frameworks of Kenya.

The institutional arrangements under the assessed policy and legislation do not sufficiently address conflict over fisheries and the respective review process of conflict management, as required by EAF Component 7. Another limitation identified was the lack of alignment with EAF Component 9, in respect of detailed regulation of TACs, the associated process of establishing them, coordinating with international or regional management measures and related monitoring. Improvements could also be made with regard to fisheries monitoring and research based on EAF principles and to improve the knowledge of the EAF as required by EAF Component 13.

As in the majority of the jurisdictions, some EAF legal requirements are specifically covered by other sectors' primary and secondary legislation, such as the EIA required by EAF Component 16 regarding which gaps were also found namely with respect to the detail components of the EIA and EIS and the processes for their submission, review and decision making.

### 3.2 Level of alignment of the assessed policy and legal instruments with the ecosystem approach to fisheries

In determining the level of alignment of the assessed policy and legal instruments with the EAF in the EAF Legal Report, the following criteria were used:

Number of EAF legal requirements incorporated in the assessed policy and legal instruments	Percentage of the 82 EAF legal requirements incorporated	Overall level of alignment with the EAF
0 - 30	0 - 36%	Low
31 - 50	37 - 61%	Low-medium
51 - 61	62 - 75%	Medium
62 - 72	76 - 87%	Medium-high
73 - 82	88 - 100%	High

The policy and legal instruments of Kenya, assessed in this Report, incorporate **76** out of the 82 EAF legal requirements, therefore indicating a **high** level of alignment with the EAF.

### 3.3 Final considerations and proposed way forward

Legislating for the EAF is complex and challenging. Due to the numerous national policy and legal instruments relevant to the EAF, this EAF Legal Report should be considered as a desk-based preliminary assessment. It provides the initial basis upon which countries can advance the work towards improving their national policy and legal frameworks in alignment with the EAF, contributing to the ultimate goal of sustainability in fisheries.

The incorporation in the national policy and legal frameworks of the EAF relevant provisions from international legally binding instruments<sup>7</sup> to which Kenya is a Party, as identified under subsection 1.2 above, should be a priority in the improvement of the EAF implementation at the national level. The relevant EAF provisions from the international non-binding instruments that reflect principles of international law should also be incorporated in the national policy and legal frameworks.

With respect to the assessed policy and legal instruments, certain gaps have been identified which should be addressed to ensure full implementation of the EAF in the country. The following subjects could benefit from a detailed review and update in the relevant policy and legal instruments: “conflict management”, “fisheries management”, particularly in respect of output controls and “fisheries monitoring and research”.

The review and update with respect to “fisheries management” and “fisheries monitoring and research” could be led by fisheries whereas “conflict management” would require a more active involvement of other sectors in the review of their transversal relevant provisions.

It is recommended that the gaps identified in this preliminary assessment are incorporated in the amendment or adoption of new policy and legal instruments of Kenya.

<sup>7</sup> See Appendix A of the EAF Legal Diagnostic Tool.



The review of national policies and/or legislation is one of the many ways or processes through which an assessment of the implementation of the EAF can be conducted. It provides a country with the opportunity to reassess its respective policy and legal frameworks, identify the gaps and/or needs for improvement, and present recommendations for enacting new policies and/or legal instruments for the EAF, and/or amending the existing ones to bring them fully in line with the EAF.

## 4. References

### Reports and other international instruments

- FAO.** 2021a. *A diagnostic tool for implementing an ecosystem approach to fisheries through policy and legal frameworks*. Rome. <https://doi.org/10.4060/cb2945en>
- FAO.** 2021b. *Un outil de diagnostic pour la mise en œuvre d'une approche écosystémique des pêches à partir des cadres politiques et juridiques*. Rome. <https://doi.org/10.4060/cb2945fr>
- FAO.** 2021c. *Uma ferramenta de diagnóstico para a implementação de uma abordagem ecossistêmica às pescas através de quadros políticos e jurídicos*. Roma.
- FAO.** 2021d. *Legislating for an ecosystem approach to fisheries – Revisited – An update of the 2011 legal study on the ecosystem approach to fisheries*. FAO EAF-Nansen Programme Report No. 36. Rome. <https://doi.org/10.4060/cb6750en>
- FAO.** 2021e. *Ecosystem Approach to Fisheries – Policy and Legal Implementation*. In: FAO elearning Academy. Rome, FAO. Cited 8 April 2022. <https://elearning.fao.org/course/view.php?id=753>
- FAO.** 2019. *Progress in the Implementation of the Code of Conduct for Responsible Fisheries and related instruments*. In: *Report of the Thirty-third Session of the Committee on Fisheries, Rome, Italy 9–13 July 2018*. FAO Fisheries and Aquaculture. Report No. 1249. Rome. [www.fao.org/3/ca5184en/ca5184en.pdf](http://www.fao.org/3/ca5184en/ca5184en.pdf)
- FAO.** 2016. *A How-to Guide on legislating for an ecosystem approach to fisheries*. FAO EAF-Nansen project report No. 27, Rome, FAO.
- Skonhoft, A.** 2011. *Legislating for an ecosystem approach to fisheries. A review of trends and options in Africa* (English). FAO EAF-Nansen project report No. 10, Rome, FAO, 2011. 159 p.

### Internet sources

- FAO.** n.d-a. EAF Nansen-Programme, available at <http://www.fao.org/in-action/eaf-nansen/background/history-of-the-nansen-programme/en/> (Accessed on 08 April 2020).
- FAO.** n-d.b. *The EAF IMT tool: monitoring progress and achievements of effective fisheries management*, available at <http://www.fao.org/in-action/eaf-nansen/news/detail-events/en/c/1268177/>.
- FAO.** n.d-c. FAOLEX Database, Country Profiles, available at <http://www.fao.org/faolex/country-profiles/en/>.

## Appendix A. List of national policy and legal instruments assessed in this report

Identification	Instruments of KENYA
<b>A</b>	<b>Fisheries Policies</b>
<b>A1</b>	2018–2030 National Wildlife Strategy
<b>A2</b>	2017 National Wildlife Conservation and Management Policy
<b>A3</b>	2013 Management Plan for Fisheries targeting Small and Medium Sized Pelagic Fish
<b>A4</b>	2013 National Environment Policy
<b>A5</b>	2008 National Oceans and Fisheries Policy
<b>B</b>	<b>Fisheries Primary Legislation</b>
<b>B1</b>	Act No. 35/2016 on the Fisheries Management and Development
<b>B2</b>	Act No. 13/2013 on the establishment of the Agriculture, Fisheries and Food Authority
<b>C</b>	<b>Fisheries Secondary Legislation</b>
<b>C1</b>	Regulations L.N. 402/2007 Fisheries (Beach Management Unit)
<b>C2</b>	Regulations L.N. 214/2003 on Fisheries (Prohibitions)
<b>C3</b>	Regulations L.N. 34/1991 on Fisheries (General), as amended by Regulations L.N. 351/1993, L.N. 18/1996, L.N. 40/1997, L.N. 18/2001, L.N. 88/2006, L.N. 128/2007 and L.N. 77/2010
<b>D</b>	<b>Other Sector's Primary Legislation</b>
<b>D1</b>	Act No. 43/2016 on Water
<b>D2</b>	Act No. 31/2016 on Access to Information
<b>D3</b>	Act No. 47/2013 on Wildlife Conservation and Management
<b>D4</b>	Act No. 4/2009 on Merchant Shipping, as amended by Act No. 12/2012
<b>D5</b>	Act No. 8/1999 on Environmental Management and Coordination, as amended by Act No. 6/2006, Act No. 5/2007, Act No. 6/2009 and Act No. 5/2015
<b>E</b>	<b>Other Sector's Secondary Legislation</b>
<b>E1</b>	Regulations L.N. 242/2017 on Wildlife Conservation and Management (Protection of Endangered and Threatened Ecosystems, Habitats and Species)
<b>E2</b>	Regulations L.N. 117/2012 on Merchant Shipping (Radiocommunications)
<b>E3</b>	Regulations L.N. 48/2012 on Merchant Shipping (Licensing of Vessels)
<b>E4</b>	Regulations L.N. 191/2011 on Merchant Shipping (Port State Control)
<b>E5</b>	Regulations L.N. 101/2003 on Environmental (Impact Assessment and Audit), as amended by L.N. 133/2007 and L.N. 30/2009

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

## Appendix B. Ecosystem Approach to Fisheries Legal Checklist applied against selected national policy and legal instruments

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	<b>Scope and definitions</b>								
General guidelines	1.	– Clearly outline the geographic and substantive scope of the application.	✓	✓	X	✓	✓	(A1) Pages 12–13 (A5) Chapter 3 (B1) Sections 3 and 4 (D4) Section 3 (E4) Regulation 3	
	<b>Principles and objectives</b>								
C.1 EAF concepts C.3 Precautionary approach C.4 Stakeholder participation	2.	– Clearly define and apply the precautionary approach.	✓	✓	•*	✓	•	(A2) Chapter 3(3.3.1) (A4) Chapter 3(3.2)(i) (A5) Chapter 3(3.2)(iv) and 3.3.1 (B1) Section 5(2)(i) (D5) Sections 2 and 3(5)(f)	
C.6 Integration of lower level authorities C.7 Conflict management	3.	– Broaden stakeholder participation with integration of lower level authorities and bodies.	✓	✓	✓*	✓	•	(A1) Pages 72 and 80–81 (A2) Chapter 3(3.3.1) (A4) Chapter 3(3.2)(g)(n) (A5) Chapters 3(3.2)(i)(viii), 4(4.8.2 and 4.13.2) and 5(5.14.4)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes	
			1ary	2ary	1ary	2ary			
and C.11, C.13, C.14 and C.17							(B1) Section 5(2)(g) (C1) Regulation 3(3)(c)(d)(f) (D5) Section 3(5)(a)		
	4.	– Ensure the right of access to fair and transparent information.	✓	X	●*	✓	●	(A5) Chapters 3(3.2(i)) and 4(4.10.2) (D5) Section 4(1) (D5) Section 3A	
	5.	– Promote institutional coordination, cooperation and integration.	✓	✓	●*	●	●	(A1) Page 72 (A4) Chapter 3(3.1)(e) (A5) Chapters 3(3.2(v)), 4(4.13.3) and 5(5.3.2) (B1) Section 9(j)(p)(v)	
	6.	– Maintain ecological relationships among harvested, dependent and associated species.	∅	✓	●*	●	●	(A5) Chapter 5(5.1.4) (B1) Section 5(2)(h)	Reference in (A5) is limited to aquaculture development and research.
	7.	– Promote sustainable development and avoid overexploitation of marine living resources.	✓	✓	●*	●	●	(A4) Chapter 4(4.12) (A5) Chapters 3(3.1.2) and 5(5.5.3 and 5.14.4) (B1) Section 5(1)(2)(a)(e)	
	8.	– Preserve marine habitat, conserve and restore marine living resources and biodiversity.	✓	✓	●*	●	✓	(A1) Pages 54-57 (A2) Chapter 5(5.1 and 5.2(g)) (A4) Chapter 4(4.9)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
							(B1) Section 5(2)(c)(e) (E1) Regulation 4(e)	
9.	– Promote ecosystem well-being, including the human biotic and abiotic components.	✓	✓	●*	✓*	✓*	(A1) Pages 54–57 (A2) Chapter 3(3.3.1) (A5) Chapters 3(3.2(ii)(vi)) and 4(4.2.2) (B1) Section 5(2)(d) (D3) Section 4(c) (E1) Regulation 4(b)(c)	
10.	– Promote adaptive management measures, including their regular monitoring and review.	✓	X	●*	●*	●*	(A1) Page 54 (A5) Chapter 4(4.1.4)	
11.	– Harmonize management measures, including those for shared resources.	✓	X	●*	●*	●*	(A2) Chapter 3(3.3.1) (A5) Chapters 4(4.2.3) and 5(5.5.3)	Reference in (A5) mentions inter-state cooperation for the management of shared resources.
12.	– Reduce and manage conflict between users and stakeholders over fisheries resources and ecosystems.	✓	X	●*	●*	●*	(A1) Page 63 (A5) Chapters 2(2.3) and 4(4.7.2) (C1) Regulation 3(3)(g)	
13.	– Consider socioeconomic contexts (e.g. employment, livelihoods, equity, poverty, gender) when designing and implementing management measures.	✓	✓	●*	✓*	●*	(A5) Chapters 3(3.2.1, 3.3.2–3.3.5) and 5(5.1.1) (B1) Section 5(1)(2)(b)(f)(j)(r) (D5) Section 3(5)(b)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	14.	– Promote management measures, designate the authority and outline the timeline and process for their monitoring and review.	✓	✓	●*	●*	●*	(A5) Chapters 4(4.2 and 4.8), 5(5.5), 6(6.3) and Addendum 3 (B1) Section 30	
	15.	– Provide for the establishment of MCSE measures.	✓	✓	●*	●*	●*	(A4) Chapter 4(4.12) (A5) Chapter 4(4.5) (B1) Section 5(2)(l)	Reference in (A4) is to strengthen the MCS capacity.
	16.	– Promote ecosystem-based research plans/priorities, designate the authority and outline the timeline and process for their monitoring and review.	✓	X	●*	●*	●*	(A5) Chapters 3(3.2) and 4(4.1)	
	17.	– Promote the right of access to education and awareness raising on EAF.	✓	✓	●*	●*	●*	(A1) Page 66 (A2) Chapters 5(5.3(l)) and 6(6.13) (A4) Chapter 7(7.2) (A5) Chapter 4(4.13) (B1) Section 9(e)	
	<b>Institutional arrangements</b>								
C.2 Management boundaries and measures C.4 Stakeholder participation C.5	18.	– Ensure new management boundaries, measures and plans are: (a) ecologically meaningful considering resource ranges, habitats and other ecological factors.	✓	X	✓	✓*	✓*	(A1) Page 57 (A2) Chapter 5(5.2(c) and 5.3(c)(f)) (C1) Regulation 8 (D3) Sections 31–39 (D5) Section 42(3) (E1) Regulation 5(c)(e)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
Coordination, cooperation and integration C.7 Conflict management	(b) overlapped closely and are harmonized with well-established management boundaries and governance structures.	✓	X	✓	✓*	●*	(A2) Chapter 5(5.2(e)(f)(g) and 5.3(c)) (C1) Regulation 8 (D3) Sections 31–39 (D5) Section 42(3)	
C.8 Integrated management of aquatic ecosystems	19. – Promote states cooperation on the harmonization of management measures and plans (bilaterally, regionally and internationally).	✓	✓	X	✓*	●*	(A2) Chapter 5(5.2(k)) (A4) Chapters 4(4.3) and 8(8.6) (A5) Chapters 4(4.2.3) and 5(5.2.3) (B1) Sections 5(2)(p)(q), 30(l), 31 and 32 (D5) Sections 9(2)(f)(g) and 124	
	20. – Establish transparent and accessible mechanisms, bodies (including lower level authorities) or processes to: (a) support well-established management boundaries and governance structures on the basis of ecosystem considerations.	∅	✓	∅	✓*	✓*	(A2) Chapter 5(5.2(e)(f)(g)) (A5) Chapter 4(4.2.4) (B1) Section 40(1)(a) (C1) Regulations 6-8 (D3) Sections 5(2) and 31–39 (E1) Regulation 5(c)(e)	References in (A2) and (A5) do not detail the mechanism or process. Provisions in (C1) lack reference to ecosystems considerations.
	(b) outline conservation and management measures, including FMPs, at local and national levels.	✓	✓	✓	●*	●*	(A2) Chapters 5(5.2(h) and 5.3(e)) (A5) Chapters 5(5.2.2, 5.14.3 and 5.14.5)	



Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
							(B1) Sections 9(a)-(d), 33 and 34 (C1) Regulations 6-8	
	(c) facilitate coordination, cooperation and integration of management decisions, regulatory action, environmental policies, plans and programs.	✓	✓	✓	✓*	●*	(A2) Chapter 6(6.6) (A4) Chapters 4(4.3) and 9(9.1) (B1) Sections 2A and 39(4)(5) (C1) Regulation 8 (D5) Sections 5(a)(b)(c) and 9(2)(a)	
	(d) monitor, assess and align the various environmental policies and plans.	✓	✓	X	✓*	●*	(A4) Chapters 7(7.3) and 8(8.2) (B1) Section 39(4)(5) (D5) Sections 9(2)(a), 41A and 41B	
	(e) manage conflict over fisheries, relevant resource and ecosystem, including parameters for decision-making and resolving the conflict.	∅	✓	∅	●*	●*	(A1) Page 63 (B1) Sections 30(c)(f) and 36(1) (C1) Regulation 3(3)(g)	Reference in (A1) addresses activities for mitigating human wildlife conflict.  Provision in (C1) sets out the objective of beach management unit to prevent or reduce conflicts in the fisheries sector.

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	(f) ensure integrated management of aquatic ecosystems (e.g. integrated coastal zone) based on ecosystem delimitations.	✓	X	X	✓*	●*	(A2) Chapter 5(5.2(h)(i)(j)) (A4) Chapters 4(4.2 and 4.3) and 9(9.1) (D3) Section 5(1)(2)	
	(g) ensure periodic reviews of managed aquatic ecosystems that assess the state of aquatic resources, levels of pollution, habitat degradation and other factors.	✓	X	X	●*	●*	(A2) Chapter 7	
	(h) ensure periodic reviews of integrated management plans to assess objectives and indicators and to determine any potential needs for adjustment or revision.	✓	X	X	✓*	●*	(A4) Chapter 7(7.3) (D3) Section 5(1)–(4)	
	(i) ensure periodic reviews of conflict management processes.	X	X	X	●*	●*		
21.	– Clearly outline powers, roles and responsibilities of all bodies, designated authorities, their relationships and processes, avoiding overlapping and conflicting mandates.	✓	✓	✓	✓*	●*	(A4) Chapter 9(9.2) (A5) Chapters 4(4.8) and 5(5.8.2), Addendums 1(1.1) and 3 (B1) Sections 6(1), 7 and 9 (B2) Sections 3–6 (C1) Regulations 3–6 (D5) Section 29	
22.	– Outline mandates for the government institutions to: (a) coordinate efforts, cooperate and integrate approaches, from the local to the national levels.	✓	✓	✓	✓	●	(A5) Chapter 4(4.13 and 4.14) and Addendum 3 (B1) Sections 9(j)(q)(u) and 33 (C1) Regulations 3-6	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
							(D5) Sections 5(c) and 9(2)(a)	
	(b) coordinate, cooperate and integrate the regional and international processes and arrangements.	✓	✓	X	✓	●	(A4) Chapter 8(8.6) (A5) Chapter 4(4.6) and Addendum 3 (B1) Sections 9(j)(k)(l), 30(l), 31 and 32. (D5) Sections 9(2)(f)(g) and 124	
	(c) allocate financial, human and material resources to ensure the integration of lower level authorities	✓	✓	X	✓	●	(A1) Page 72 (A5) Chapters 4(4.9) and 5 (5.8.3, 5.14.6), Addendum 3 (B1) Section 9(n)–(t) (D5) Sections 39–41 and 43	
	<b>Stakeholder participation, coordination, cooperation and integration</b>							
C.4 Stakeholder participation	23. – Ensure bodies established are broadly representative (from industry, the artisanal sector, academia, civil society and local communities) and processes allow for stakeholder and institutional participation and coordination, engaging and integrating lower level authorities or bodies when resources are affected at local level.	✓	✓	✓	✓	●	(A4) Chapter 8(8.2 and 8.4) (B1) Section 6(1) (C1) Regulations 2, 4 and 9–12 (D5) Section 4(1)	
C.5 Coordination, cooperation and integration	24. – Establish and properly publicize public meetings or hearings.	X	X	X	∅	✓	(D5) Section 59 (E5) Regulations 17–22	Provision in (D5) does not refer to meeting nor hearing but publicizes the EIA.
C.6								

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
Integration of lower level authorities, bodies and stakeholders	25.	– Allow for sufficient and reasonable time for comments on proposed management decisions or actions (e.g. in meetings and in writing).	X	X	X	✓	✓	(D5) Section 59(1)(d)(2) (E5) Regulations 17–22	
C.8 Integrated management of aquatic ecosystems	26.	– Promote international cooperation for effective integrated management of aquatic ecosystems.	✓	✓	X	●	●	(A4) Chapter 8(8.6) (A5) Chapters 4(4.2.3 and 4.6) and 5(5.2.3) (B1) Sections 5(2)(p)(q), 31 and 32.	
		<b>Fisheries management</b> <i>Catch/output controls</i>							
C.9 Controls on fishing operations	27.	– Establish limits on the amount of fish that may be removed from a fishery in a given period of time (e.g. TAC), restrict the number of fish that may be landed in a day (e.g. bag limit) or place limits on the amount of acceptable bycatch and/or discards from a fishery – all based on scientific data and maximum sustainable yield and the precautionary principle.	X	✓	X	N/A	N/A	(B1) Sections 99(1)(j)(k) and 101(1)(d) (C3) Regulation 56A(c)(e)(f)	
C.10 Fishery management plans	28.	– Ensure authority to institute TACs and to allocate individual quotas is representative, including representatives from lower levels of government.	X	X	X*	N/A	N/A		
C.17 Monitoring and review	29.	– Ensure procedure for TACs outlines the category of vessels to which the TAC applies; period of time for which the TAC is declared; process for sub-dividing the TAC into individual quotas; timeline, authority and participatory process for periodic monitoring and review.	X	X	X	N/A	N/A		
	30.	– Coordinate the TACs for shared stocks or highly migratory species with international or regional management measures.	∅	X	X*	N/A	N/A	(A5) Chapter 5(5.3.2)	Reference in (A5) encourages the Government to

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
									cooperate with international and regional organizations in the management of highly migratory and shared stocks.
	31.	– Monitor the catch in real-time and close a fishery when the TAC is reached.	X	X	X*	N/A	N/A		
	32.	– Attach catch controls to licenses and access agreements, including authority responsible for allocating, issuing and regulating quotas, and the procedure to be followed.	X	✓	X*	N/A	N/A	(B1) Sections 89(1)(d), 100(1) and 128(2)(b)	
	33.	– Outline the ability to institute additional catch controls (e.g. bag limits for recreational fishing), including the authority responsible for allocating, issuing and regulating quotas, and the procedure to be followed.	X	✓	X*	N/A	N/A	(B1) Sections 100–102	
		<b>Effort/input controls</b>							
C.9 Controls on fishing operations C.10	34.	– Define a broad fishing license scheme to regulate access to fisheries and fishing vessels with timeline, authority and process for renewing the license, monitoring and compliance, and permit suspension and revocation of the license for non-compliance.	X	✓	✓*	N/A	N/A	(B1) Sections 81, 84–97 (C3) Regulations 9–23 and 29–39	
Fishery management plans C.17	35.	– Designate authority responsible for allocating, issuing and regulating licenses, specified license duration, requirement of a fee and conditions that may be attached to licenses.	X	✓	✓*	N/A	N/A	(B1) Sections 86–97 (C3) Regulations 29-35	
Monitoring and review	36.	– Outline process for establishing provisions for effort controls (e.g. limitation on vessel capacity, on expansion of fishing fleet, on allowable days spent at sea).	X	✓	X*	N/A	N/A	(B1) Sections 5(2)(o), 40(1)(d) and 41	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	37.	– Outline specific details of fishing license scheme (e.g. number of licenses to be allocated, permit conditions for each fishery).	X*	X*	X	N/A	N/A		
	38.	– Empower the designated authority to establish additional regulations for licensing.	X*	✓	✓*	N/A	N/A	(B1) Sections 98(1)(k), 99, 101 and 102 (C3) Regulations 31 and 32	
	39.	– Empower authority to regulate effort controls and respective parameters.	X*	✓	✓*	N/A	N/A	(B1) Section 40(1)(d) (C3) Regulation 54(1)(f)(g)	
	<b>Fishing gear and method controls</b>								
C.9 Controls on fishing operations C.10 Fishery management plans C.17 Monitoring and review	40.	– Establish requirements on fishing gear and methods that are permitted for use within a given fishery or area, including related technical specifications (e.g. general prohibitions on types of gear, methods, specifications on gear design, minimum mesh sizes).	X	✓	✓	N/A	N/A	(B1) Section 42 (C3) Regulations 43(2)(3)(4) and 56A(c)(f)	
	41.	– Outline prohibitions on highly destructive gear and fishing methods (e.g. fishing by toxic substance, explosives, electricity, fishing with the use of light).	X	✓	✓*	N/A	N/A	(B1) Sections 42(1)(l)(5) and 43 (C3) Regulation 49	
	42.	– Outline requirements aimed at reducing negative impacts of fishing methods and gear (e.g. prohibition of trawling in areas with sensitive seabed habitat, require use of biodegradable nets, restrict the use of FADs or require use of bycatch reduction devices).	X	✓	✓	N/A	N/A	(B1) Sections 5(2)(n), 42(2), 43, 108-111 (C3) Regulation 50	
	<b>Spatial and temporal controls</b>								
C.9 Controls on fishing operations	43.	– Regulate area and time in which fishing operations may or may not take place (e.g. closed areas/seasons), closed or	X	∅	✓*	N/A	N/A	(B1) Sections 37 and 41 (C2) Entire regulation (C3) Regulation 43(1)(1A)	Provisions in (B1) respectively empowers the Cabinet Secretary to

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
c.10 Fishery management plans c.17 Monitoring and review		restricted-use areas, which prohibit or limit fishing operations (e.g. protection of artisanal fishing).							make regulations for BMUs, and the Director-General to take fisheries management measures.
	44.	– Empower authority to define spatial and temporal controls and the procedure.	X	✓	✓*	N/A	N/A	(B1) Section 40(1)(a) (C2) Entire regulation (C3) Regulations 54(1)(a)(b) and 56A(a)(b)(g)	
	45.	– Ensure stakeholder and institutional consultation, both at national and lower levels, in the process of defining spatial and temporal controls.	X	X	✓*	N/A	N/A	(C1) Regulation 7	
	46.	– Establish technical details and specifics on spatial controls.	X*	X*	✓	N/A	N/A	(C2) Entire regulation (C3) Third Schedule	
	<b><i>Fishery management plans</i></b>								
C.9 Controls on fishing operations	47.	– Designate authority with power and responsibility to develop, approve, adopt and publicize a FMP, clearly outlining the roles and responsibilities.	✓	✓	✓*	N/A	N/A	(A3) Table 1 (B1) Sections 33-36 and 38–39 (C1) Regulation 7(4)–(7)	
C.10 Fishery management plans  C.17 Monitoring and review	48.	– Ensure FMPs and measures comply with established integrated management plans for aquatic ecosystems involving e.g. protected areas or critical habitat.	∅	✓	✓	*	*	(A5) Chapter 5(5.2.2) (B1) Sections 34-37 (C1) Regulation 8	Reference in (A5) provides for active participation of other industry stakeholders in the development of FMP.

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	49. – Establish process for approval, adoption and publication of FMP with its periodic review.	X	✓	✓*	N/A	N/A	(B1) Sections 34 and 39 (C1) Regulation 7(4)–(13)	
	50. – Detail process of drafting FMP, including multi-level and multi-sector collaboration and consultation with stakeholders, and a participatory transparent process for monitoring and reviewing the FMP at a minimum within five years of their development.	∅	✓	✓*	N/A	N/A	(A5) Chapter 4(4.2.2) (B1) Section 39 (C1) Regulation 7(1)–(4)	Reference in (A5) does not provided details on the process of drafting FMP.
	51. – List the minimum requirements in the FMPs:							
	(a) management objectives that take into account EAF;	✓	✓	●*	N/A	N/A	(A3) Chapters 1 and 2 (B1) Section 39(3)(c)	
	(b) biological description of fishery and ecosystem in which it takes place;	✓	✓	●*	N/A	N/A	(A3) Chapter 3 (B1) Section 39(3)(a)(d)	
	(c) social, economic and institutional aspects of the fishery;	✓	✓	●*	N/A	N/A	(A3) Chapter 4(4.3) (B1) Section 39(3)(a)(d)	
	(d) species composition and levels of bycatch, both retained and discarded;	✓	✓	●*	N/A	N/A	(A3) Chapter 5(5.2) (B1) Section 39(3)(d)	
	(e) ecological relationships between harvested, dependent and associated species;	✓	✓	●*	N/A	N/A	(A3) Chapter 4(4.2) (B1) Section 39(3)(d)(g)	
	(f) impact of other anthropogenic activities on the ecosystem; and	X	✓	●*	N/A	N/A	(B1) Section 39(3)(g)(n)	
	(g) a review of the relationship with other coastal or marine resource management plans.	X	✓	●*	N/A	N/A	(B1) Section 39(3)(l)(m)	
	<b>Conservation measures</b>							
C.14 Habitat and biodiversity	52. – Incorporate the consideration of habitat and biodiversity in the processes for establishing management measures (e.g. outline habitats and species related to the fishery and take	X	X	✓*	✓*	●	(C3) Regulations 45–48 (D5) Sections 50–52	



Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
conservation and restoration		measures to limit the negative impacts of fishing on them) or gear regulations.							
	53.	– Ensure special protection for marine mammals, sea turtles and other particularly vulnerable marine life (e.g. set prohibitions or limitations), in coordination with other national designations or protections and regional and international conservation and management measures.	X	✓	✓*	●*	●	(B1) Section 46 (C3) Regulation 51	
	54.	– Ensure coordination between the various authorities involved in marine environment protection.	✓	X	●*	●*	●	(A1) Page 72 (A5) Chapters 4(4.14) and 5(5.2.5)	
	55.	– Establish mechanisms and designation of authority responsible for establishing:  (a) designation and protection of threatened and endangered species, ensuring cooperation among the authorities throughout the listing process, definition and qualifying factors of each designation, process for listing, including steps for consultation and the special protections associated with the designations.	X	✓	●*	✓*	✓	(B1) Sections 40(1)(b)(h) and 45 (D3) Sections 46-49 (E1) Regulations 7-11	
		(b) protected areas, ensuring the outline of the type of protected areas, description of their levels of protection (e.g. marine reserve, parks, sanctuaries or MPAs), the process for nominating, establishing and managing a protected area, including stakeholder participation particularly of local communities, consultation and coordination with various authorities, both at national and local levels.	X	✓	●*	✓*	●	(B1) Sections 40(1)(b) and 47 (D3) Sections 31-39 (D5) Sections 42(2), 54 and 55	
	(c) the restoration of damaged habitat and ecosystems, ensuring the process through which it is decided when, where and how a damaged habitat/ecosystem shall be restored, and the establishment of funds that may be used to engage in restoration activities.	X	X	X*	✓*	●	(D5) Section 46		

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	56.	– Ensure educational and awareness-raising activities for promoting habitat and biodiversity conservation and restoration with the establishment of special funds to support such activities.	✓	✓	●*	✓*	●	(A4) Chapter 7(7.2) (B1) Section 9(e) (D5) Section 9(2)(m)(n)	
C.15 Regulation of activities potentially harmful to aquatic ecosystems	57.	– Adopt measures to: (a) regulate and reduce pollution of the aquatic ecosystems which should apply to all activities that might have an impact (including fishing, mining, shipping, etc.) and cover all types of pollution including bycatch, discharge of waste, vessel emissions, coastal runoff.	✓	✓	✓	✓	✓	(A2) Chapter 5(5.5.4) (A4) Chapters 5(5.4–5.7) and 6(6.1–6.5) (B1) Sections 44, 49 and 68 (C3) Regulations 59 and 60 (D3) Section 89 (E1) Regulation 6(1)	
		(b) promote energy efficiency and reduce emissions that are applicable to fishing vessels, merchant shipping vessels and extractive industries, including through fuel efficiency standards, vessel size limitations and equipment restrictions for fishing vessels.	✓*	X*	X*	✓	●	(A4) Chapter 5(5.9) (D5) Section 49	
		(c) prevent and eliminate ghost fishing with the prohibition of the abandonment of fishing gear, notification of authorities when fishing gear is lost, regulation of materials used in the manufacture of gear.	X	✓	✓	●	●	(B1) Section 43 (C3) Regulations 59, 60 and 66	
	58.	– Require authorization prior to the planned introduction of any species, including species meant for aquaculture or fish stocking, taking into account the precautionary approach, and establish measures to prevent the escape of exotic species into the wild.	X	✓	X	●	✓	(B1) Sections 40(1)(g) and 66(1)(a) (E1) Regulation 6(1)(b)(c)	
C.16 EIS or EIA	59.	– Regulate marine extractive activities (e.g. marine mining for minerals or petroleum, harvesting of marine plants) and other potentially harmful activities, including the construction of	X	X	X	✓	●	(D3) Section 45	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
		installations for use by industry, laying of underwater cables, military exercises, shipping.							
	60.	– Require EIS or EIAs for activities that have the potential to affect ecosystems that support fisheries (e.g. fishing, aquaculture, mining, petroleum extraction, coastal development).	✓	✓	X	✓	✓	(A4) Chapter 5(5.6) (B1) Section 48 (D5) Sections 42(1) and 58(2) (E5) Regulation 4	
	61.	– Detail components of EIS or EIA, which should at least discuss the purpose/need for the activity, the ecosystem that may be affected, potential impacts of the proposed activity and potential alternatives or mitigation and rehabilitation measures.	X	X*	X*	✓	✓	(D5) Section 59(1) (E5) Regulations 16 and 18	
	62.	– Establish process for submission, review and decision-making on the EIS or EIA, with designation of authority responsible for receiving, reviewing and deciding upon the EIS or EIA (e.g. the minister responsible for environment), opportunity for public participation (e.g. comment periods and hearings), consultation with other relevant government institutions or localities, and determination of adequate mitigation measures.	X	∅*	X*	✓	✓	(B1) Section 48 (D5) Sections 58(2)–(9) and 59–64 (E5) Regulations 11–23	Provision in (B1) lacks review of the process and consultation
		<b>Fishery monitoring and research</b>							
C.13 EAF research	63.	– Establish research programme for furthering the knowledge and understanding of EAF.	✓	X	X*	✓	●*	(A1) Page 72 (A4) Chapter 7(7.1) (A5) Chapters 4(4.1) and 5(5.1) (D3) Section 52	
	64.	– Designate authority for conducting and involving stakeholders in the research programme.	✓	✓	X*	✓	●*	(A5) Addendum 3 (B1) Sections 9(g) and 30(b)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
								(D3) Sections 5(g) and 50–52 (D5) Section 9(2)(h)	
	65.	– Ensure the research programme’s objectives are based on EAF principles, which may include research on inter-species interactions, the impact of fishing on target and non-target stocks, the identification of spawning and nursery areas, areas of critical habitat, rates of bycatch and discards per fishery, the incidence and effect of pollution on fisheries, the status of ecosystem biodiversity, the social and economic dimensions (such as employment, food security), income distribution and other considerations.	✓	X	X*	✓	●*	(A5) Chapter 4(4.1) (D3) Section 52	
	66.	– Consider the findings of the EAF research in the adoption of conservation and management measures.	✓	✓	X*	✓	●*	(A5) Chapter 4(4.1 and 4.2.2) (B1) Section 39(3)(i) (D3) Section 7(l)	
		<b>MCSE</b>							
C.11 MCSE	67.	– Outline an observer scheme with details on the categories of vessels/fisheries that it applies to and the role that observers play (which may be tailored to the category of vessel or the type of fishery and may be limited to the collection of catch/effort data and the collection of scientific samples, or may include the authority to register and/or report violation of management measures).	X	✓	X	N/A	N/A	(B1) Sections 138 and 147–149	
	68.	– Ensure observers have full access to all parts of the vessel and its equipment and to any place in the country where fish that have been caught in national waters are uploaded, processed, stored or transhipped.	X	✓	✓	N/A	N/A	(B1) Sections 99(1)(c) and 151-152 (C1) Regulation 56B(1)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
69.	– Design the scheme in line with regional or international requirements, taking into account relevant regional observer programs.		∅	✓	X	N/A	N/A	(A5) Chapter 5(5.5.3 and 5.6.2) and Addendum 1(1.1.3) (B1) Section 149	References in (A5) addresses regional and/or international cooperation in MCS initiatives.
70.	– Ensure VMS is required for vessels licensed to fish in national waters and ABNJ, detailing specific categories of fishing vessels and/or fisheries to which it applies.		X	✓	X	N/A	N/A	(B1) Sections 99(1)(b) and 157	
71.	– Ensure reporting of catch and effort data, clearly identifying the vessels that are expected to report (at least all commercial fishing vessels that fish within national waters and all nationally-flagged vessels authorized to fish within waters under national jurisdiction and in ABNJ), to whom they are required to report (the designated authority), the frequency and timing of their reports, and the method or format in which they are required to report (e.g. weight of fish caught, including percentage of bycatch, species, dates of fishing, fishing zones, gear/methods employed, type of vessel, time of departure from national waters and catch status at that time).		X	✓	X	N/A	N/A	(B1) Sections 99(1)(a)(d), 100, 102(1)(a)(c)(d)	
72.	– Ensure the establishment and maintenance of a record of fishing vessels licensed to fish in waters under national jurisdiction and nationally flagged vessels authorised to fish in ABNJ with the designation of the authority responsible for its maintenance and information to be recorded for each category of vessel.		X	✓	X	N/A	N/A	(B1) Section 104 (D4) Section 25	Provision in (D4) is about the register of Kenya ships maintained by the Registrar of Ships
73.	– Ensure the records of industrial fishing vessels include the name of the vessel, the flag state and any previous flag states, the radio call sign, the International Maritime Organization (IMO) number, the automatic identification system (AIS) and the VMS, if relevant the vessel length and tonnage, if relevant the fishing methods and gear used, the name and nationality of		X	✓	X	N/A	N/A	(B1) Section 104(5)(6)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	operator and beneficial owners of the vessel, and any transgressions of fisheries legislation associated with the vessel.							
74.	– Broadly detail the registration process and ensure registration of all fishing vessels with the relevant fisheries or maritime authority, including information on the name of vessel, the flag state and any previous flag states, the radio call sign, if relevant the IMO number, the AIS and VMS, if relevant the vessel length and tonnage, the name and nationality of the beneficial owners of the vessel, and any transgressions of fisheries legislation associated with the vessel.	X	✓	✓	N/A	N/A	(B1) Sections 98(1)(c)(d) and 101(1)(c) (c3) Regulations 3 and 4	
75.	– Detail the specifications for marking vessels and fishing gear in accordance with internationally approved standards.	X	✓	∅	N/A	N/A	(B1) Sections 98(1)(a), 101(1)(b), 106(1)(b) (c3) Regulations 44 and 63 (D4) Section 48	Provisions in (c3) are limited to marking of buoying of fishing gear and private marks to be assigned by the Director to each fisherman.  Provision in (D4) details on marking of fishing vessels.
76.	– Ensure cooperation and coordination between fisheries and maritime authorities throughout the registration process.	X	✓	X	N/A	N/A	(B1) Sections 9(v), 20(2)(b) and 21	
77.	– Ensure authorized officers have enforcement powers, allowing them to board and search vessels (at sea and in port) and other premises related with fishing, to examine logbooks, records, gear and catch, to investigate and collect evidence, to seize fish, gear and vessels, and to interrogate, detain and arrest persons associated with reasonably suspected violations.	X	✓	✓	N/A	N/A	(B1) Sections 136–146, 151, 153–156 (c3) Regulation 68	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	78.	– Ensure the controls placed on landing and transshipping of fish, both at sea and in port, and by national and foreign vessels, is in accordance with regional and international instruments.	X	✓	∅	N/A	N/A	(B1) Sections 53, 99(j)(k), 101(1)(d), 102(1)(b), 107 and 127 (C3) Regulations 42 and 43(5)	Provisions in (C3) are limited to landing restrictions.
	79.	– Provide additional VMS specifications and specific details on the registration process.	X*	✓	X	N/A	N/A	(B1) Section 157	
	<b>Enforcement processes and sanctions scheme</b>								
C.12 Offences, penalties and administrative and judicial processes	80.	– Detail the fisheries-related offences (civil or criminal) and corresponding penalties, weighted depending on the level of severity of the offence but outlined in a way that maintains their strength over time (e.g. utilize formulas such as a percentage of the total market value of the sale of the illegal catch, or penalty units).	X	✓	✓	✓	●	(B1) Various sections (C3) Various regulations (D3) Sections 88–106 (D5) Sections 137–146	Provisions on sanctions are scattered throughout B1 which in various instances provides for the offences together with the prohibition.
	81.	– Establish transparent and equitable administrative processes for determining and confirming offences, applying relevant penalties, with provision for compounding of offences/out-of-court settlement.	X	✓	X	●	●	(B1) Sections 163–172 and 182–183	
	82.	– Establish judicial processes used for determining and confirming offences and applying relevant penalties to the offending parties, allowing for a right of appeal.	X	✓	X	✓	●	(B1) Sections 163, 173–81, 183 (8) and 184–197 (D1) Sections 119–125 (D5) Sections 125–136	





The ecosystem approach to fisheries (EAF) is a risk-based management process for the planning, management, development, regulation and monitoring of fishing and fishing-related activities. EAF addresses ecological consequences of fishing as well as social, economic and institutional aspects of fisheries sustainability. Adequate legislation and regulatory frameworks are key to successful implementation of the EAF. The continuous review and update of information on legislation and regulatory instruments require the analysis of existing legal frameworks at all levels of governance, to assess whether they remain in force, valid and aligned with international fisheries law standards, including the EAF. The present work was prepared with a view to assess the level of alignment of national policy and legal frameworks of Kenya. Based on this preliminary assessment, policy-makers, legal practitioners and fisheries managers can take the necessary steps for improving the EAF implementation in their country. These steps could involve the amendment of existing legislation and/or enactment of new legislation and development of new policies to bring fully in line with the EAF.

**For more information:**

**The EAF-Nansen Programme**

Fisheries and aquaculture - Natural Resources and Sustainable Production  
Food and Agriculture Organization of the United Nations

**Contact:** info-eaf-nansen@fao.org  
**Website:** <http://www.fao.org/in-action/eaf-nansen/en/>



**Food and Agriculture  
Organization of the  
United Nations**



**Norad**



ISBN 978-92-5-136756-8



9 789251 367568

CC1550EN/1/08.22