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**REPUBLIC OF KENYA**

**PARLIAMENT**

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**NATIONAL ASSEMBLY BILLS**

*(Bill No. 29 of 2023)*

**THE FISHERIES MANAGEMENT AND  
DEVELOPMENT BILL, 2023**

(A Bill published in the Kenya Gazette Supplement No. 91 of 2023 and passed  
by the National Assembly, with amendments, on August 5<sup>th</sup>, 2026)

**N.A./B/No. 29/2023**

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**THE FISHERIES MANAGEMENT AND DEVELOPMENT  
BILL, 2023**

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**THE FISHERIES MANAGEMENT AND  
DEVELOPMENT BILL, 2023**

**A Bill for**

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

**ENACTED** by the Parliament of Kenya as follows—

**PART I—PRELIMINARY**

1. This Act may be cited as the Fisheries Management and Development Act, 2023 and shall come into force upon publication in the *Gazette*.

Citation and  
commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“access agreement or arrangement” means any agreement or arrangement entered into pursuant to section 131;

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

“agent” means any person or unit appointed by the Board or Director-General to execute designated functions under this Act, or such other agent as may be appointed in accordance with section 22 (1) (c);

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

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

“artisanal fishing vessel” means any local fishing vessel, canoe or un-decked vessel with a length overall of not more than ten meters, which is motorised or not motorised by an outboard or inboard engine not exceeding

forty horsepower, or powered by sails or paddles, but does not include decked or undecked semi-industrial fishing vessels or vessels used for recreational fishing;

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

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

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

“authorized officer” means a fisheries officer, fish inspector, coast guard officer, a police officer of or above the rank of inspector, an officer of the Kenya Navy or any other person appointed by the Cabinet Secretary under section 23;

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

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

“Board” means the Fisheries Service Board established by section 13;

“buy” includes—

- (a) purchase;
- (b) receive on account or consignment;
- (c) receive in order to send, forward or deliver for

sale;

(d) broker a sale;

(e) purchase for future goods or for any consideration of value; and

(f) purchase as an agent for another person;

“Board of the Institute” means the Board of the Kenya Marine and Fisheries Research Institute established under section 34;

“buyer” means any person who buys;

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

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

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

“commercial fishing” means fishing for sale, barter or trade;

“county fisheries officer” means an officer within a county designated by the respective county executive committee member;

“County Director” means the County Director responsible for matters relating to fisheries appointed by the respective county public service board

“county executive committee member” means the county executive committee member responsible for matters relating to fisheries in the respective county;

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

“dealing in fish” includes collecting, transporting, storing, drying, transshipping, buying or selling fish or fish

products for purposes of trade;

“designated fish habitat” means any areas on which fish depend directly or indirectly in order to carry out their life processes including spawning grounds, nursery, rearing, food supply areas and migration routes;

“designated Fishing Port” means fishing port established under section 78 (1) (b);

“Director-General” means the person appointed as such under section 19;

“export” in relation to fish or fish products means to—

(a) send or take out of Kenya; or

(b) carry or transport out of the country;

“Director-General of the Institute” means the Director General of the Institute appointed under section 44;

“exclusive economic zone” has the same meaning assigned to it under the Maritime Zones Act;

Cap.371.

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

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

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

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

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

“fish processing” means any process that adds value to

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

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

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

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

“fishery” means—

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

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

“fishing” means attempting, attracting, searching for, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attempting, attracting, searching for, locating, catching, taking or harvesting of fish;

“fishing gear” means any equipment, implement, structure, construction, installation or other article that can be used in the act of fishing, whether or not it is used in

connection with a vessel, including any fishing net, line, float, cork, buoy, basket, light, winch, boat or aircraft;

“fish inspector” means a person appointed for the purposes of inspections in fish safety and quality or aquaculture or monitoring, control and surveillance activities under this Act;

“fish landing station” means a designated coastal or inland shore area gazetted by the Cabinet Secretary where fishing vessels anchor to unload, sell or process their catch;

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

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

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

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

“fish stock” means a group of fish that share similar biological characteristics, occupy a particular geographic area or designated fish habitat, and reproduce within that population;

Cap.4D.

“fishing vessel” means any vessel whether artisanal, semi-industrial or industrial used for, equipped to be used for, or of a type that is normally used for fishing;

“flag State” in relation to a vessel that is not a Kenya fishing vessel means the State in which the vessel is

registered, provided it is registered in only one State;

“foreign fishing vessel” means any fishing vessel not registered in Kenya; Cap. 371

“Fund” means the Fish Levy Development Fund established under section 31;

“genetic resource” includes germplasm of plants, animals or other organisms containing useful characters of actual or potential value; Cap.389.

“Government” means the Government of Kenya;

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

“illegal fishing” includes—

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

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

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

“Institute” means the Kenya Marine and Fisheries

Research Institute established under section 31; and

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

“international conservation and management measures” means measures which are notified in the *Gazette* in accordance with section 56;

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

“Kenya fishing vessel” means a fishing vessel which is registered under the Merchant Shipping Act, and does not hold any other registration, or is wholly owned and crewed by residents of Kenya or by other persons gazetted by the Service as persons who traditionally fish in Kenya fishery waters, and which meets such other conditions as may be prescribed; Cap.234.

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

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

“locally based foreign fishing vessel” means any foreign fishing vessel which—

- (a) is based in and fully controlled or operated from Kenya;
- (b) fishes exclusively in the Kenya fishery waters; and
- (c) lands all of its catch or a substantial part of its catch in Kenya;

“marine park” means a protected marine area where no fishing, construction work or any disturbance is allowed unless with written permission under the Wildlife

Conservation and Management Act;

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

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

Cap.376.

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

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

“pollution” shall have the meaning assigned to it under the Environmental Management and Co-ordination Act;

“recreational fishing” means fishing activities using authorized gear for the purpose of leisure, recreation or sport that may involve the use of a pleasure craft but does not include the selling of fish;

“sell” includes—

- (a) any method of disposition for consideration of anything which has value or which can be exchanged for cash or barter;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to dispose of for value or receiving or having in possession for disposal for value or displaying for disposal for value, or sending or delivering for disposal for value or causing or permitting to be sending or delivering for disposal for value, or causing or permitting to be disposed for value, offered or displayed for

Cap.376.

disposal for value; and

- (d) disposition by way of raffle, lottery, or other game of chance under the Gambling and Control Act; and

“sell” and “sold” have a corresponding meaning;

“semi- industrial fishing vessel” includes—

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

“subsistence fishing” means local or non-commercial fishing, not for recreation but for sourcing of fish for consumption by the fishers, their dependants or community;

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

“Service” means the Kenya Fisheries Service established under section 10;

“supply vessel” means any vessel used for, equipped to be used for or intended to be used for fishing related activities;

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

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

“territorial waters” shall have the meaning assigned to it under the Maritime Zones Act; Cap. 371.

“transshipment” means the direct transfer of any quantity of fish onboard from one vessel to another vessel regardless of the location of the event, without the fish being recorded as landed;

“unregulated fishing” includes—

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

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

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

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

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

Jurisdiction and  
sovereign rights of  
Kenya.  
Cap.371.

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

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

vessel monitoring system, is vested in the Government.

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

Application.

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

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

Objective and guiding principles.

communities and to enhance food security.

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

- (a) long-term sustainable use, conservation and management of fisheries resources and habitat, and adoption and implementation of management measures in such a manner as to ensure that the fisheries resources and habitat are not overexploited, threatened or endangered;
- (b) allocation and access to the fisheries resources in a manner that achieves optimum utilization, equitable distribution and long-term sustainable development of fisheries resources to achieve economic growth, human resource development, employment creation, a sound ecological balance and generational and gender equity;
- (c) conservation and protection of fisheries habitats;
- (d) ensuring the effective application of the ecosystem approach to fisheries management;
- (e) ensuring that biodiversity and genetic diversity in the marine environment is maintained and enhanced;
- (f) fostering recreational and ornamental fishing, aquaculture and commercial fishing activities for the benefit of the country;
- (g) facilitating the participation of users of the fisheries resources, and the general community, in the management of fisheries;
- (h) ensuring that management measures are based on the best scientific evidence available and are designed to maintain or restore stocks capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international standards;
- (i) application of the precautionary approach to the management and development of the fisheries at

no less standard than is set out in any international agreement;

- (j) managing fisheries resources in an efficient and cost effective manner, including setting targets for the recovery of management costs;
- (k) collection and, as appropriate sharing, in a timely manner complete and accurate data and information concerning fishing activities and fisheries;
- (l) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance;
- (m) promotion of sustainable aquaculture in appropriate zones including amongst local communities as a viable option to contribute to food security, replenishing natural habitats through diversification from capture fisheries and wealth generation in a manner that recognizes and protects artisanal fisheries;
- (n) minimization of wastage, bycatch, discards, catch by lost or abandoned gear, pollution and the promotion of development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (o) prevention or elimination of over-fishing and excess capacity and managing levels of fishing efforts so they do not exceed levels commensurate with sustainable use of fishery resources;
- (p) effective implementation of international agreements and relevant international laws in conformity with the Treaty Making and Ratification Act; Cap.4D.
- (q) ensuring effective co-operation between the National Government and county governments, coastal states, fishing states and competent organizations in the sustainable development, management, utilization and conservation of fisheries and other aquatic resources;

- (r) the promotion of blue economy; and
- (s) ensuring that the livelihood of fishers is enhanced.

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

**6.** Where any conflict arises between the provisions of this Act and any other law in matters relating to fisheries, the provisions of this Act shall prevail.

Supersession.

**7.** (1) The Cabinet Secretary shall, in accordance with Article 10 of the Constitution and through public participation, formulate a National Blue Economy Strategy.

National Blue Economy strategy.

(2) The Cabinet Secretary shall submit an annual report to the National Assembly on the implementation of the Blue Economy strategy including implementation of international agreements and obligations.

(3) The Cabinet Secretary shall, in every five year period, review and update the National Blue Economy Strategy.

**8.** (1) The Cabinet Secretary may establish such directorates as may be necessary for the performance of the functions under this Act.

Directorates.

(2) Without prejudice to the provisions of subsection (1), the Cabinet Secretary shall establish directorates for—

- (a) blue economy development;
- (b) aquaculture development; and
- (c) fisheries.

**9.** The Directorates established under section 8 shall—

Role of the Directorates.

- (a) formulate and monitor the implementation of policies regarding the conservation, management and utilization of all fisheries resources and blue economy within the scope of this Act;
- (b) co-ordinate the development of national blue

- economy strategy and policy;
- (c) promote the sustainable transformation and diversification of the ocean's economy by promoting research and innovation;
- (d) formulate policy on the development of fishing ports and related infrastructure;
- (e) conduct capacity building for sustainable exploitation of agro-based marine resources;
- (f) coordinate matters of regional and international blue economy protocols, conventions, declarations and standards for shared blue economy resources;
- (g) coordinate inter-governmental relations in between the national government, county governments, relevant stakeholders and internationally in blue economy development;
- (h) co-ordinate mobilization of resources and implementation of programmes, projects for the blue economy Development;
- (i) increase local participation and investment in the blue economy through public private sector partnerships and international partnerships;
- (j) develop, implement and co-ordinate a national fish marketing strategy;
- (k) identify national and international fish market needs and trends and advise fisheries stakeholders accordingly;
- (l) in co-ordination with the institute promote and oversee research on fisheries and aquaculture development;
- (m) co-ordinate resource mobilization and supervise implementation of fisheries and aquaculture management and development;
- (n) in collaboration with county governments and relevant stakeholders identify opportunities and promote all aspects of fisheries marketing;
- (o) develop and maintain a fisheries and aquaculture database, knowledge management, sharing and streamlined dissemination of information;
- (p) arrange and enter into joint ventures or any other forms of investment arrangement for purposes of

performing any of its functions;

- (q) act on behalf of the government, subject to the Treaty Making and Ratification Act in relation to any domestic or international agreement relating to fishing, fishing related activities or any matter falling within the scope of this Act, to which Kenya is or may become a party; and
- (r) perform such other functions consistent with the provisions of this Act as may be necessary to carry out the objectives and provisions of this Act.

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## **PART II —THE KENYA FISHERIES SERVICE**

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

Establishment and status.

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

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

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

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

Headquarters.

**12.** The functions of the Service shall be to—

Functions of Service.

- (a) ensure the appropriate conservation, sustainable use, development and protection of fisheries resources;
- (b) implement policies regarding the conservation, management and utilization of all fisheries

resources within the scope of this Act;

- (c) develop standards for the management of all fisheries and aquaculture activities and fishing related activities within the scope of this Act;
- (d) develop guidelines for the preparation of fisheries specific management plans for the Kenya fishery waters;
- (e) provide education to create public awareness and support for fisheries conservation, management, development and sustainable use;
- (f) set and meet goals for fisheries conservation, management, development and sustainable use and promotion of livelihoods of local fishing communities;
- (g) in consultation with the Kenya Marine and Fisheries Research Institute, co-ordinate research activities in relation to matters falling within the scope of this Act;
- (h) collect and analyse data in relation to resources and activities falling with the scope of this Act;
- (i) identify manpower requirements and recruit manpower at all levels for the Service;
- (j) liaise as appropriate with agencies and persons, including stakeholders, industry, government agencies, regional and international organisations and experts, whether local or foreign, on matters falling within the scope of this Act;
- (k) administer and co-ordinate international protocols, conventions and treaties regarding fisheries in all its aspects in consultation with the Cabinet Secretary pursuant to the Treaty Making and Ratification Act;
- (l) control and regulate fish safety and quality subject to the Public Health Act and the Food, Drugs and Chemical Substance Act;
- (m) raise revenue through levies, fees, investments and other means in accordance with this Act and the Constitution, including solicitation by public

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appeal or otherwise, and accept and receive subscriptions, donations, devices and bequests, whether of movable or immovable property and whether absolute or unconditional for the general or special purposes of the Service or subject to any trust;

- (n) undertake the development of appropriate fisheries infrastructure, that relates to its mandate under this Act;
- (o) facilitate investment in commercial fisheries, in collaboration with relevant agencies, persons or bodies, including Government departments;
- (p) promote development and introduction of appropriate technologies in aquaculture production, processing and preservation in collaboration with relevant agencies, county governments and stakeholder
- (q) support artisanal fisheries;
- (r) identify and promote construction of any works deemed necessary for the sustainable protection, development and economic utilization of fisheries resources;
- (s) facilitate access of fish and fishery products from Kenya at local, national, regional and international levels;
- (t) in collaboration with county governments and relevant stakeholders identify opportunities and promote all aspects of fisheries marketing;
- (u) arrange and enter into joint ventures or any other forms of investment arrangement for purposes of performing any of its functions;
- (v) co-ordinate fish quality assurance and operations of the marine and coastal fisheries, aquaculture and inland and riverine fisheries;
- (w) coordinate and or undertake monitoring, control and surveillance of all activities within the scope of this Act in consultation with county

governments and relevant stakeholders;

(x) promote the sustainable use of fish by preventing, deterring and eliminating to the extent possible trade in illegal, unreported and unregulated fishing; and

(y) perform such other duties and functions consistent with the provisions of this Act as may be necessary to carry out the objectives and provisions of this Act.

**13.** (1) There shall be a Board of Directors of the Service, which shall—

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

(a) provide general control over and be accountable to the Cabinet Secretary for the exercise of the functions and powers of the Service;

(b) advise the Cabinet Secretary on all matters pertaining to the conservation, management standards, development, marketing and sustainable use of fisheries resources;

(c) provide recommendations to the Cabinet Secretary for overall policy in matters within the scope of this Act;

(d) collaborate with the relevant stakeholders to ensure that trade in fish is carried out in accordance with the provision of this Act;

(e) approve the annual budget and financial plan of the Service and otherwise provide oversight for all financial matters;

(f) endorse the annual report of the Service required under section 30 and transmit it through the Cabinet Secretary to Parliament;

(g) establish an open, competitive, transparent and objective selection process, and required qualifications for, the Director-General, and as appropriate for other persons employed by the Service;

(h) establish an open, competitive employment policies, a transparent and objective selection process and general terms and conditions for

employees of the Service;

- (i) provide policy guidance over the exercise of the functions and powers of the Service; and
- (j) perform any other function which the Cabinet Secretary may by notice in the *Gazette* prescribe.

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

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

- (a) act in good faith and in what the member believes to be the best interests of the Service;
- (b) comply with the provisions of this Act;
- (c) exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, among other things—
  - (i) the nature of the Service;
  - (ii) the nature of the decision; and
  - (iii) the position of member and the nature of the responsibilities undertaken by him or her; and
  - (iv) the national values and principles of governance set out in Article 10 of the Constitution.
- (d) rely on reports, statements and financial data and other information officially provided to the Board by the Director-General and other government entities.

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

Membership of  
the Board.

- (a) a chairperson recruited through a competitive process, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to fisheries or a representative designated in writing;
- (c) the Principal Secretary responsible for matters relating to finance or a representative designated in

writing;

- (d) the Principal Secretary responsible for matters relating to defence or a representative designated in writing;
- (e) the Attorney-General or a representative designated in writing;
- (f) a person nominated by the Council of County Governors and appointed by the Cabinet Secretary;
- (g) three other persons, not being public officers, with knowledge and experience in the conservation, management, development and sustainable use of fisheries resources appointed by the Cabinet Secretary; and
- (h) the Director-General, who shall be an *ex-officio* member.

(2) The members of the Board shall at their first meeting after appointment, elect a vice-chairperson from amongst their numbers:

Provided that the Chairperson and Vice- Chairperson shall not be of the same gender.

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

(4) A person shall be qualified to be appointed under subsection (1) (a), (f) and (g) if such person—

- (a) holds a degree from a university recognized in Kenya in—
  - (i) natural resource or environmental management, development or science;
  - (ii) fisheries studies, including fisheries governance, management,

development or science;

(iii) marine affairs;

(iv) port management;

(v) aquatic science; or

(vi) a field related to the functions of the Board;

(b) has served in a senior management position for at least five years; and

(c) meets the requirements of Chapter Six of the Constitution

(5) The Chairperson and members of the Board appointed under subsection (1) (a), (f) and (g) shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

(6) The respective appointing authority shall appoint the Chairperson and members of the Board, by name and by notice in the *Gazette*.

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

(a) resigns from office by notice in writing addressed to the Chairperson, who shall transmit such resignation to the Cabinet Secretary;

(b) is removed from office by the Cabinet Secretary if the member—

(i) has been absent from three consecutive meetings of the Board without notifying the Chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

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

(iv) is convicted of a criminal offence;

(v) is unable to, by reason of mental or physical infirmity to discharge functions as a member

Termination  
of appointment as  
a member of the  
Board.

of the Board;

- (vi) is found to have acted in a manner prejudicial to the aims and objectives of this Act; or
- (vii) fails to comply with the provisions of this Act relating to disclosure.

(2) Where a vacancy occurs in the membership of the Board, the appointing authority shall appoint a new member in accordance with the provisions of this Act.

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

**16.** (1) A member of the Board shall declare his or her interest in any matter falling within the functions of the Board in which the member of the Board knows or ought to have reasonably known that an interest exists as described in subsection (4).

Disclosure of  
interest.

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

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

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

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

- (a) could benefit directly or indirectly from a decision on a matter over which he or she has influence or control, or if a matter over which that member has influence or control relates in

any way to—

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

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

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

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

“family member” shall mean a parent, brother, sister, spouse, cousin, aunt, uncle, nephew, niece or child including a person who is adopted legally or for whom care was given by the member such that there exists a relationship in the nature of parent and child, and shall also mean a spouse of any person referred to in this definition and their children and any other member of a person’s immediate family;

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

“member” or “member of the Board” means any

member of the Board of Directors; and

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

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

Meetings of the Board.

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

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

(3) At a meeting of the Board—

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

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

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

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

meetings—

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

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

(8) The Board may from time to time, establish such advisory sub-committees as it considers necessary in relation to its functions and powers for the purpose of making reports and recommendations to the Board and sub-committees shall be comprised of Board members.

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

**18.** (1) The conduct and regulation of the business of the Board shall be as provided in the First Schedule.

Conduct of  
business and  
affairs of the  
Board.

(2) Except as provided in the First Schedule, the Board may regulate its own procedure and the procedure of any committee constituted under this Act.

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

Appointment of  
the Director-  
General.

(2) A person shall be qualified to be appointed under subsection (1) if such person—

- (a) holds a post graduate degree from a university recognized in Kenya in
  - (i) natural resource or environmental management, development or science;
  - (ii) fisheries studies, including fisheries governance, management, development or science;
  - (iii) aquatic science; or

- (iv) any other related field;
- (b) has at least ten years' experience in a senior management position in a public or private institution; and
- (c) meets the requirements of Chapter Six of the Constitution.

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

Functions of the  
Director-General.

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

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

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

**21.** (1) There shall be a Corporation Secretary who

Corporation  
Secretary.

shall be competitively recruited and appointed by the Board on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.

(2)A person qualifies for appointment as the Corporation Secretary if that person—

- (a)holds a bachelor's degree in law from a university recognized in Kenya;
- (b)is an Advocate of the High Court of Kenya;
- (d)is a member in good standing of the Institute of Certified Public Secretaries of Kenya; and
- (e)meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be the Secretary to the Board and shall—

- (a) in consultation with the Chairperson of the Board, issue notices for meetings of the Board;
- (b) provide guidance to the Board on their duties and responsibilities on matters relating to governance
- (c) ensure the timely preparation and circulation of documents and minutes of the Board;
- (d) be the custodian of the seal of the Institute and account to the Board on its use;
- (e) ensure that members of the Board are aware of all relevant laws affecting the Institute;
- (f) except in exceptional circumstances, ensure that Board papers are circulated in advance of any meeting; and
- (g) perform any other function that may be assigned by the Board.

**22.** (1) The Board may, on such terms and conditions as it deems fit, appoint—

Other staff of the Service.

- (a) such officers of the Service as are specified in Part A of the Second Schedule; and
- (b) such disciplined officers of the unit established under section 24 as are specified in Part B of the Second Schedule; and
- (c) such other employees, agents, servants or consultants of the Service, as may be necessary for the performance of the functions of the Service.

(2) Every person appointed under subsection (1) (b) shall take and subscribe to the oath of allegiance set out in Part C of the Second Schedule.

(3) The provisions Part D of the Second Schedule have effect with respect to the Service.

(4) The Board shall within a reasonable time provide for a staff superannuation scheme to determine service for the employees of the Service.

**23.** (1) The Cabinet Secretary may, on the recommendation of the Director-General and by notice in the *Gazette* appoint an authorized officer for purposes of this Act.

Authorized officers.

(2) A person appointed under subsection (1), shall perform such functions as the Board may specify.

(3) Notwithstanding subsection (1), a County Executive Committee Member may within their respective county and in consultation with the County Director responsible for fisheries, appoint a county fisheries officer for purposes of performance of functions assigned to counties under this Act.

**24.** (1) There is established a unit within the Service to be known as the Monitoring, Control and Surveillance Unit.

Establishment of Monitoring, Control and Surveillance Unit.

(2) The Monitoring, Control and Surveillance Unit shall have the functions of—

- (a) monitoring, control and surveillance, including enforcement, and compliance with this Act and

any other legislation relating to activities falling within the scope of this Act; and

- (b) cooperating and coordinating with and performing relevant functions within the broader system of monitoring, control and surveillance at bilateral, sub-regional, regional and international levels to implement agreements or measures which are binding upon Kenya or which the Cabinet Secretary, as appropriate in consultation with the Cabinet Secretaries responsible for internal security and defence, directs subject to the Treaty Making and Ratification Act. Cap.4D.

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

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

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

**25. (1)** The Cabinet Secretary may make regulations establishing and assigning functions to an Inter-agency Monitoring Control and Surveillance Unit.

Inter-agency  
monitoring,  
control and  
surveillance unit.

(2) The Inter-agency Monitoring, Control and Surveillance Unit shall comprise members specified in Part D of the Second Schedule and such other persons as the

Cabinet Secretary may co-opt thereto.

(3) The principal function of the Inter-agency Monitoring, Control and Surveillance Unit shall be to ensure coordinated and effective inter-agency enforcement of and compliance with this Act, including cooperation of the Service and the Kenya Coast Guard Service established under the Kenya Coast Guard Service Act in the protection of maritime resources including fisheries, fishers and Kenya fishery waters.

(4) The Director-General shall serve as the Chairperson, and the Service shall be the secretariat of the Inter-agency Monitoring, Control and Surveillance Unit.

### **PART III—FINANCIAL AND ADMINISTRATIVE PROVISIONS**

**26.** (1) The funds of the Service shall consist of—

Funds of the  
Service.

- (a) such monies as may be appropriated by Parliament;
  - (b) such monies or assets as may accrue to or vest in the Service in the course of the exercise of its powers and the performance of its functions under this Act; and
  - (c) all monies from any other source provided for or donated or lent to the Service.
- (2) The moneys of the Service shall be expended in accordance with this Act, and only in payment for—
- (a) discharge of expenses, obligations and liabilities of the Service;
  - (b) the remuneration of the staff of the Service and for allowances to the members of the Board;
  - (c) contracts for technical consultants, observers, researchers and other personnel, activities or operations which support the functions and programmes of the Service;
  - (d) travel expenses relating to official functions;
  - (e) training and education courses or programmes for purposes relating to the objectives of the Service,

and the functions and programmes of the Service;

- (f) financial assistance for management and development activities in the Counties consistent with the functions of the Service;
- (g) grants to institutions, agencies, associations or other organizations for the purpose of promoting fisheries conservation and management;
- (h) rewards for information leading to convictions for offences under this Act in accordance with such requirements as may be prescribed;
- (i) purchase of capital items necessary to carry out the functions and duties of the Service;
- (j) contributions to donor aid projects as agreed with the donor agency;
- (k) establishment of standards for ensuring equitable access to fisheries resources, including navigation space, fishing space, access to other resources and establishment of an inshore exclusive zone;
- (l) such other purposes as are consistent with the functions and powers of the Service as the Board, after consultation with the Director-General, shall determine.

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

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

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

Financial Year.

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

Annual estimates.

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

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

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

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

Accounts and audit.

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

Cap.412B.

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

Director-General to report to the Board.

- (a) an annual report on the progress and the performance of the Service in relation to its functions and the exercise of its powers; and
- (b) a financial report, audited by an auditor appointed by the Board, for the year ended 30<sup>th</sup> June previously in accordance with the requirements in section 29(2).

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

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

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

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

**31.** (1) There is established a fund to be known as the Fish Levy Development Fund which shall be the successor of the Fish Levy Trust Fund established under the Fisheries Management and Development (Fish Levy Trust Fund) Order, 2024.

Fish Levy and  
Development  
Fund.

(2) The Fund is a body corporate with perpetual succession and a common seal and shall have power, in its corporate name, to do all such things as may lawfully be done or permitted by a body corporate—

- (a) suing and being sued; and
- (b) in the exercise and performance of its powers and functions, to do and perform all such other things as may lawfully be done or permitted by a body corporate.

(3) The purpose of the Fund is to—

- (a) provide for the sustainable management, conservation and development of fisheries resources and the blue economy;
- (b) provide funding for activities geared towards management, governance, development, fish stock assessments, research, capacity building, awards and urgent mitigation to ensure sustainability of the fisheries resource;
- (c) provide support for artisanal fishing; and
- (d) such other purposes as may be provided for the implementation of this Act.

(4) The Fund shall be administered by a five-member Board of Trustees which shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(5) A person is qualified for appointment as a Trustees if that person —

- (a) holds a degree from a university recognized in

Kenya in fisheries science, marine science, law, economics or natural resource management ;

(b) has at least ten years working experience in a relevant field; and

(c) meets the requirements of Chapter Six of the Constitution .

(6) In appointing the members of the Board of Trustees under subsection (4), the Cabinet Secretary shall take into account gender equity, youth representation, ethnic and regional balance in accordance with the Constitution.

(7) The members of the Board of Trustees shall hold office for a term of three years and may be eligible for re-appointment to a further and final term of three years.

(8) The Fund shall have a Chief Executive Officer who shall be appointed by the Board of Trustees on such terms and conditions of service as the Board of Trustees may determine.

(9) The Chief Executive Officer shall be the administrator of the Fund and subject to the directions of the Board of Trustees, shall be responsible for the management of the affairs of the Fund.

(10) The Board of Trustees may appoint such officers and other staff of the Fund as may be necessary for the proper discharge of the functions of the Fund, on such terms and conditions of service as the Board of Trustees may determine.

(11) The monies of the Fund shall consist of—

(a) monies appropriated by the National Assembly;

(b) monies received by the Fund from donations, grants, and bequests from other lawful sources;

(c) the proceeds of the levy imposed under subsection (12); and

(d) funds payable into the Fund under any Act.

(12) The Cabinet Secretary may, by regulations, prescribe a levy to be paid by persons engaged in fishing or fishing related activities, the proceeds of which shall be paid into the Fund established under subsection (1).

(13) The Levy collected under subsection (12) shall be apportioned as follows—

- (a) twenty per centum shall be applied for research and innovation in blue economy and fisheries allocated to the Kenya Marine and Fisheries Research Institute;
- (b) twenty per centum shall be applied for fish stock assessment allocated to the Kenya Marine and Fisheries Research Institute;
- (c) ten per centum shall be applied for monitoring, control and surveillance allocated to the Kenya Fisheries Service;
- (d) ten per centum shall be applied for artisanal fishing programmes including issuance of credit facilities, search and rescue and other emergency interventions;
- (e) five per centum shall be applied to the fisheries observer programme allocated to the Kenya Fisheries Service;
- (f) five per centum shall be applied to blue economy fisheries management and governance allocated to the State Department responsible for matters relating to blue economy and fisheries; and
- (g) twenty per centum shall be applied for capacity building, scholarships, awards and urgent mitigation to ensure sustainability of the blue economy and fisheries resource and shall be administered by the Fund; and
- (h) ten per centum shall be applied for the administration of the Fund.

#### **PART IV—KENYA MARINE AND FISHERIES RESEARCH INSTITUTE**

**32. (1)** There is established an institute to be known as the Kenya Marine and Fisheries Research Institute, which shall be a successor of the Kenya Marine and Fisheries Research Institute established under paragraph 4 of the Fourth Schedule to the Science Technology and Innovation Act.

Establishment of the Kenya Marine and Fisheries Research Institute. Cap.511.

(2) The Institute may establish research centres, innovation and incubation hubs within the counties in Kenya.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

**33.** (1) The Institute shall be the lead government agency in marine and fisheries research and development and shall—

Functions of the Institute.

- (a) develop research and development programmes and technologies for the sustainable development of fisheries and allied blue economy resources;
- (b) conduct national and regional expert training courses in marine, fisheries and the blue economy;
- (c) disseminate research findings to support fisheries and blue economy development in the country; and
- (d) establish partnerships and cooperate with other research organisations and institutions of higher learning in joint research and training.

(2) Without prejudice to the generality of subsection (1), the Institute shall—

- (a) conduct research in order to generate scientific data and information in marine and freshwater fisheries, aquaculture, socioeconomics, environmental and ecological studies, and marine research including chemical and physical oceanography and hydrography, marine geology, minerology, bio-prospecting,

- and energy, for sustainable development of the blue economy;
- (b) participate in the development and monitoring of national standards for fisheries and blue economy;
- (c) collect and disseminate scientific information on fisheries and other aquatic resources and related naturaproducts;
- (d) study and identify suitable species for culture including development, adoption and transfer of rearing technology and procedure;
- (e) assess, map, control and develop procedures for the control of invasive fish species;
- (f) carry out socio-economic research on aspects relevant to fisheries, marine and other aquatic resources;
- (g) offer training facilities to aquatic scientists;
- (h) conduct research on fish quality control, post-harvest preservation and value addition technologies;
- (i) conduct research on blue economy;
- (j) collaborate with other organizations and institutions of higher learning in competitive capacity development for exploitation of the blue economy;
- (k) develop and promote technologies for upscaling commercial aquaculture and industrial fishing;
- (l) maintain a database for scientific blue economy research information;
- (m) undertake policy research in marine, fisheries and blue economy resources;
- (n) transfer of scientific knowledge and appropriate technologies in the blue economy, marine and freshwater fisheries and aquaculture including information on appropriate fishing methods and gears to relevant stakeholders for the promotion of sustainable conservation and management of fishing in Kenya;
- (o) conduct capacity development on fisheries resources including community participation and outreach programmes;
- (p) conduct research and develop models and methodologies of blue economy carbon

trading, quantification, financing and fish marketing in collaboration with relevant stakeholders;

- (q) promote local, regional and international collaboration and partnerships blue economy research including marine and freshwater fisheries and aquaculture;
- (r) report annually to the Cabinet Secretary on matters related to marine and fisheries research and development; and
- (s) perform such other functions as may be assigned to it by this Act or any other written law.

(3) The Institute, in consultation with the Ministry responsible for matters related to education, may establish a fisheries research graduate school, to facilitate research components of master's and doctorate levels academic programmes on marine, fisheries, aquaculture and blue economy.

**34.** The management of the Institute shall vest in a <sup>Board of the</sup> Board of the Institute, which shall comprise of—  
Institute.

- (a) a chairperson recruited through a competitive process and appointed by the President;
- (b) the Principal Secretary responsible for matters relating to fisheries and blue economy or a representative designated in writing;
- (c) the Principal Secretary responsible for matters relating to finance or a representative designated in writing;
- (d) the Attorney-General or a representative designated in writing;
- (e) the Director-General of the Kenya Fisheries Service or a representative designated in writing;
- (f) the Director-General of the National Commission for Science, Technology and Innovation or a representative designated in writing;
- (g) three other persons, not being public officers, with knowledge and experience relevant to the Institute's functions, appointed by the Cabinet Secretary; and
- (h) the Director-General, who shall be an *ex-officio* member of the Board with no right to vote.

**35.** (1) A person is qualified for appointment under section 34 (a) and (g) if that person—

Qualifications for Appointment as a member of the Board of the Institute.

- (a) has a post graduate degree in a relevant field from a university recognised in Kenya;
- (b) has proven management or other relevant professional experience;
- (c) has served in a senior management position for at least six years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) The appointment of the Chairperson and members of the Board of the Institute shall be by name and by notice in the *Gazette*.

**36.** (1) The Chairperson and member of the Board of the Institute appointed under section 34 (a) and (g) shall hold office for a term of three years and shall be eligible for reappointment for one other term of three years.

Tenure of office of members of the Board of the Institute.

(2) The members of the Board shall be appointed at different times so that their terms of office expire at different times.

**37.** A member of the Board of the Institute shall be paid such allowances or other remuneration as the Cabinet Secretary may, on the advice of the Salaries and Remuneration Commission, determine.

Remuneration of members of the Board of the Institute.

**38.** (1) The office of the chairperson or member of the Board of the Institute shall become vacant if the holder—

Vacancy in the Board of the Institute.

- (a) dies;
- (b) is absent from three consecutive meetings of the Board of the Institute without reasonable cause;
- (c) resigns from office by notice in writing addressed to the appointing authority;
- (d) is unable to perform the functions of the office arising out of physical or mental infirmity;
- (e) is negligent or incompetent in the performance of his or her functions;

- (f) is adjudged or otherwise declared bankrupt by a competent court;
- (g) violates Chapter Six of the Constitution; or
- (h) is convicted of a criminal offence and sentenced to imprisonment for a term of not less than six months.

(2) Where a vacancy occurs in the membership of the Board of the Institute under subsection (1), the appointing authority shall appoint a new member in accordance with the provisions of this Act.

**39.** The Board of the Institute shall—

Functions of the Board of the Institute.

- (a) review, approve and oversee the implementation of research programs, strategies, policies and plans of the Institute;
- (b) consider and approve the budget of the Institute;
- (c) facilitate the mobilisation of resources for the Institute.
- (d) approve the organisational structure and other human resources management policies, guidelines, procedures and manuals of the Institute;
- (e) monitor and evaluate the performance and ensure the sustainability of the Institute;
- (f) formulate policies for the administration and management of the graduate school;
- (g) enhance the corporate image of the Institute and ensure effective communication with stakeholders; and
- (h) carry out any other function for the purposes of promoting and facilitating the objects of the Institute.

**40.** The Board of the Institute shall have all the powers necessary for the proper performance of the functions of the Institute and the Board shall have the powers to—

Powers of the Board of the Institute.

- (a) acquire immovable and movable property and funds of the Institute in a manner and for the purposes which shall promote the interests of the Institute;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves

- of the Institute;
- (c) receive on behalf of the Institute, fees, donations, endowments, gifts, grants or other moneys and make disbursements therefrom in accordance with the law;
- (d) invest any moneys of the Institute not immediately required in furtherance of its objects; and
- (e) do any other thing which is necessary or convenient to be done in connection with or incidental to its functions.

**41.** (1) The business and affairs of the Board of the Institute shall be conducted in accordance with the First Schedule. Procedure of the Board of the Institute.

(2) Notwithstanding subsection (1), the Board of the Institute may regulate its own procedure.

**42.** The Board of the Institute may, by resolution, either generally or in any case, delegate to any committee of the Board of the Institute or to any member, officer, or employee of the Institute, exercise of any of its powers or the performance of any of its functions. Delegation by the Board of the Institute.

**43.** (1) The Board of the Institute may, establish committees for the effective discharge of its functions. Committees of the Board of the Institute.

(2) The Board of the Institute may, by resolution, either generally or in any case, delegate to a committee of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board of the Institute.

(3) The Board of the Institute may co-opt into the membership of a committee established under subsection (1), any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Institute for a specified period.

(4) Subject to any specific or general direction of the Board, any committee established under subsection (1) may regulate its own procedure.

(5) Any person co-opted into a committee under subsection (3) may attend the meetings of the committee and participate in its deliberations but shall not vote at such meeting.

**44.** (1) There shall be a Director-General of the <sup>Director-General of the Institute.</sup> Institute who shall be competitively recruited and appointed by the Board of the Institute.

(2) A person qualifies for appointment as the Director General of the Institute, if that person—

(a) holds a doctorate degree from a university recognized in Kenya in—

- (i) fisheries;
- (ii) aquaculture;
- (iii) aquatic sciences;
- (iv) marine sciences;
- (v) environmental science;
- (vi) economics in natural resources, fisheries, and environment; or
- (vii) any other related courses or equivalent from a recognized institution;

(b) has at least fifteen years' professional experience in research in matters related to fisheries, marine and blue economy, five of which shall be at a senior management level;

(c) is a member of a relevant professional body in good standing; and

(d) meets the requirements of Chapter Six of the Constitution.

(3) The Director-General of the Institute shall be responsible to the Board for—

- (a) implementation of the decisions of the Board;
- (b) the day-to-day management of the Institute;
- (c) overall responsibility for the objectives, policy direction, administration and programs of the Institute;
- (d) preparation of the strategic plan, annual plan, budget and audited accounts of the Institute for the approval of the Board; and
- (e) perform such other duties as may be assigned by the Board.

(4) The Director-General of the Institute shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(5) The Director-General of the Institute may be removed from office for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
  - (b) gross misconduct;
  - (c) incompetence or negligence of duty; or
  - (d) any other ground that would justify the removal from office under the terms and conditions of service or under any written law.
- (6) Where the question of the removal of the Director-General of the Institute under subsection (5) arises, the Board of the Institute shall—
- (a) inform the Director General of the Institute in writing of the reasons for the intended removal; and
  - (b) give the Director-General of the Institute an opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution and the Fair Administrative Action Act. Cap.7L.

**45.** (1) There shall be a Corporation Secretary of the Institute who shall be appointed by the Board of the Institute on such terms as the Board of the Institute may, on the advice of the Salaries and Remuneration Commission, determine. Corporation Secretary of the Institute.

(2) A person qualifies for appointment as the Corporation Secretary of the Institute under subsection (1) if the person—

- (a) holds a degree in law from a university recognized in Kenya;
- (b) is a member in good standing of the Institute of Certified Public Secretaries of Kenya; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary of the Institute shall, subject to the direction of the Board of the Institute —

- (a) provide guidance to the Board on their duties and responsibilities on matters relating to governance;
- (b) ensure the timely preparation and circulation of documents and minutes of the Board of the Institute;
- (c) be the custodian of the seal of the Institute and account to the Board of the Institute for its use;

- (d) ensure that members of the Board are aware of all relevant laws affecting the Institute;
- (e) except in exceptional circumstances, ensure that Board of the Institute papers are circulated in advance of any meeting; and
- (f) perform any other function that may be assigned by the Board of the Institute.

**46.** The Board of the Institute may recruit such officers and other staff of the Institute as are necessary for the proper and effective performance of the functions of the Institute, upon such terms and conditions of service as the Board of the Institute, on the recommendation of the Salaries and Remuneration Commission, may determine.

Officers and staff of the Institute.

**47.** Nothing done by a member of the Board of the Institute or by any person working under the instructions of the Board of the Institute shall, if done in good faith for the purpose of executing the powers, functions or duties of the Institute under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

Protection from personal liability.

- 48.** The funds of the Institute shall include—
- (a) such monies as may be appropriated by National Assembly for the purposes of the Institute;
  - (b) such monies as may accrue or vest in the Institute during the exercise of its powers or the performance of its functions under this Act or any other written law;
  - (c) gifts, grants or donations made to the Institute; and
  - (d) such monies from any public funds that may be created by law for the purposes of the promotion of all the objects and functions of the Institute.

Funds of the Institute.

**49.** (1) At least two months before the end of each financial year, the Board of the Institute shall cause to be prepared estimates of the revenue and expenditure of the Institute for that financial year.

Annual Estimates of the Institute.

(2) The annual estimates shall make provision for all estimated expenditure of the Institute in the financial year for the fulfilment of its functions.

(3) The annual estimates for the Institute shall be submitted to the Cabinet Secretary for approval.

(4) No expenditure shall be incurred for the purposes of the Institute except in accordance with the annual estimates submitted under subsection (3), or in pursuance of an authorization of the Board of the Institute.

**50.** (1) The Board of the Institute may invest any surplus funds of the Institute which are not immediately required for its purposes in such securities as the National Treasury may, from time to time, approve.

Investment of the surplus funds.

(2) The Board of the Institute may place on deposit with such bank or banks as it may determine any monies not immediately required for the purposes of the Institute.

**51.** (1) Where the rights to any invention or innovation have been vested in the Institute, the Board of the Institute may award to the inventor or innovator such bonus as it may deem fit or make provision for financial participation by the inventor or innovator in the profits derived from the invention or innovation.

Award to inventor or innovator.

(2) The Institute may apply for a patent in respect of any invention or innovation contemplated in subsection (1) and shall for purposes of the Copyright Act, and the Industrial Property Act, be regarded as the assignee of the inventor or innovator of the invention or innovation.

Cap.130.  
Cap.509.

**52.** (1) All rights in any discoveries, inventions, innovation, improvements and intellectual property rights in respect of processes, products, apparatus and machines made for or on behalf of the Institute shall vest in the Institute.

Discoveries, inventions, etc o vest in the Institute.

(2) Without prejudice to the generality of subsection (1), the Institute and any other entity may jointly own any discoveries, inventions, innovation, improvements and intellectual property rights pursuant to a funding agreement between the Institute and any other entity

**53.** The Cabinet Secretary shall, in consultation with the Board of the Institute, prescribe the fees and other charges payable for any service or facility offered by the

Fees and other charges for services or facilities offered by the Institute.

Institute.

**PART V—FISHERIES CONSERVATION,  
MANAGEMENT AND DEVELOPMENT**

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

Fisheries vest in the State.

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

*Fisheries Development Measures*

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

Fisheries development measures.

- (a) providing a national framework of extension and training services;
- (b) conducting research and surveys;
- (c) promoting co-operation among fishers;
- (d) spearheading arrangements for the orderly marketing of fish;
- (e) stocking waters with fish and supplying fish for stocking;
- (f) promoting and supporting the adoption of modern or alternative means of livelihood amongst fishers;
- (g) promoting the development of ornamental fisheries;
- (h) promoting the development of other sustainable methods of *insitu* and *exsitu* fishing;
- (i) providing for the establishment of investor friendly licensing and approval systems;

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

*International fisheries conservation and management measures*

**56.** (1) The Director-General shall by notice in the *Gazette* give notice of any international agreements and conservation and management measures to which Kenya is a party to for purposes of this Act.

Notification by the Director-General.

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

(3) The Director-General shall identify and implement appropriate measures necessary for the implementation of international agreements and conservation and management measures to which Kenya is a party to.

**57.** (1) Where the Director-General has reason to

Implementation of international

suspect that a foreign fishing vessel is, or has been, involved in the contravention of an international conservation or management measure in areas beyond the national jurisdiction of Kenya, the Director-General may, and in cases where such measure has been notified pursuant to section 55(1) —

conservation and management measures.

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

*Co-ordination of Fisheries Management with the Counties*

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

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

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

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

County may develop fisheries management plans.

(2) In developing the management measures and

plans under subsection (1), the county governments shall—

- (a) take into consideration, to the extent possible, elements of national fisheries management plan; and
- (b) ensure that such measures are consistent with the provisions of this Act, including its objective and principles, and that they take into account relevant measures taken, information and data available, and the economic and social value of the resource pursuant to this Act.

**60.** Each fisheries management plan developed by authorities in each County shall—

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

- (a) take into consideration, to the extent possible, elements of a fisheries management plan described in section 66; and
- (b) take into account any recommendations that may be made by the Director-General with respect to the plan.

**61.** (1) Where there is any conflict between the national and county management plans, the national management plan shall prevail.

Relations between National and County governments.

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

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

**62.** (1) The National Government and County Governments shall, in the exercise of their respective functions under this Act, coordinate and harmonize taxes,

Harmonization of taxes, fees and charges.

fees, charges and licensing requirements applicable to fisheries activities in accordance with the Constitution.

(2) In carrying out their functions under subsection (1), the National Government and County Governments shall take measures to—

- (a) promote efficiency and transparency in the administration of taxes, fees, charges and licensing requirements;
- (b) avoid the duplication of taxes, fees, charges and licensing requirements in respect of the same fishing or fishing related activity; and
- (c) minimise the administrative burden on fishers or other persons engaged in fishing or fishing related activities.

(3) A county government shall not impose a tax, fee, charge or licensing requirement in respect of a matter for which a tax, fee, charge or licensing requirement has been imposed by the national government under this Act for the same regulatory purpose.

**63.** (1) The Cabinet Secretary shall for purposes of ensuring structured community participation in fisheries management, in consultation with the Council of County Governors, make regulations for the management of beach management units established by the county governments.

Establishment of  
Beach  
Management  
Units.

(2) Each County Executive Committee Member shall establish a beach management unit within its area of jurisdiction and provide for their remuneration ensuring structured community participation in fisheries management.

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

- (a) objectives, structure, areas of jurisdiction and mandate in co-management;
- (b) minimum standards in the general administration of the beach management units;
- (c) standards to be adhered to by beach management units in imposing levies and charges and the

management and utilization of such funds;

- (d) such other standards which the Cabinet Secretary may consider necessary for the effective administration and management of the beach management unit;
- (e) the protection of vulnerable groups, especially youth, women and children;
- (f) processes necessary to ensure that not more than two thirds of Beach Management Units are of the same gender and to ensure the inclusion of youth, persons with disability and local communities in leadership;
- (g) a record of members and residents of the beach management unit showing the national identification numbers or other officially recognized form of identification;
- (h) remuneration of beach management units; and
- (i) conflict management between inter and intra-county beach management units.

**64.** A county government shall, within its respective area of jurisdiction and subject to the Fourth Schedule to the Constitution and any other relevant laws, facilitate the provision of social amenities including, health facilities, sanitation and other necessary infrastructure for the social and economic welfare of beach management units and local fishing communities.

Role of County Governments in provision of social amenities.

#### *Fisheries Conservation and Management*

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

Responsibility for planning fisheries management.

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

Fisheries management plans.

- (a) is important to the national interest; and

- (b) requires special conservation and management measures for effective sustainable use of the fisheries resources.
- (2) The Director-General shall, in consultation with the relevant county governments—
  - (a) prepare, keep under review and be responsible for the implementation of fisheries management plans for the conservation management, development and sustainable use of each designated fishery in the Kenya fishery waters;
  - (b) prepare, keep under review and be responsible for the implementation of fisheries management plans for any other fisheries in the Kenya fishery waters as may be necessary and practicable; and
  - (c) determine the priority for the preparation of fisheries management plans, taking into account the advice of any committee established and carrying out functions under this Act and of other relevant stakeholders.
- (3) The Director General shall, in consultation with the counties, beach management units and other stakeholders, develop guidelines and standards for the development of fisheries management plans that must conform to this Act and shall include—
  - (a) identification of the fisheries resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem;
  - (b) an assessment of the present state of exploitation of the fisheries resource and potential average annual yields;
  - (c) the objectives to be achieved in the management and development of the fishery;
  - (d) the best information on all relevant biological, social, economic and other applicable factors, determine the maximum sustainable yield;
  - (e) the measures, if any, to be taken to promote the development of Kenya fisheries;
  - (f) any relevant traditional fishing rights, methods

or principles including designation of fishing areas for artisanal and cage fishers;

- (g) the impact of the plan upon the fishery or fisheries involved, associated and dependent species, habitat, the ecosystem in general and any other area determined relevant;
- (h) management measures;
- (i) any research necessary to enhance management of the fisheries;
- (j) the information and other data required to be given or reported for effective management and development;
- (k) an implementation strategy which explains how the objectives are to be achieved including through stakeholder consultations;
- (l) a plan for monitoring and assessment of the implementation of the fisheries management plan;
- (m) a process for amending or repealing the plan, including the consultation and other processes to be followed; and
- (n) social impact assessment of the plan with reference to disadvantaged groups including children, women, persons with disability and the youth.

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

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

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

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

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

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

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

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

67. (1) The Director-General shall in accordance with the best scientific advice and such other relevant information as may be available, with the approval of the Cabinet Secretary and in consultation with county governments and after public participation, by notice in the Gazette, impose, among others, any measures for the conservation and management of any fishery including—

- (a) prohibited fishing areas for all or designated species of fish or methods of fishing;
- (b) limitations on the types of gear, including mesh sizes of nets, that may be used for fishing;
- (c) limitations on the types or number of fishing vessels permitted to engage in fishing provided that customary fishing rights are protected;
- (d) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or

Fisheries  
management  
measures.

traded;

- (e) regulate the landing of fish and provide for the management of fishing ports and fish landing stations;
- (f) designate specific areas and times for fishing by fishers specializing in different types and methods of fishing;
- (g) designate by regulation, the space allowable for cage farming, artisanal and other types of fishing;
- (h) control of the introduction into, or harvesting or removal from Kenya fishery waters of any species of fish, including aquatic plants;
- (i) define and identify fragile aquatic ecosystems and provide structures to enable collaborative protection;
- (j) regulate trade in endangered species of fish and fish products;
- (k) prohibit the possession, trade in or manufacture of prohibited gear in a specified area or areas; and
- (l) any other measures consistent with the objective and principles of this Act.

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

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

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

**68.(1)** The Director-General may take fisheries management measures to limit fishing and fishing related activities in accordance with the objective and principles of

Limitation of  
fishing and  
fishing related  
activities

this Act and shall communicate such measures by notice in writing to the persons affected.

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

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

Prohibited fishing gear and methods.

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

established under this Part.

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

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

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

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

(5) No person shall—

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

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

both in respect to artisanal fishing.

(7) The Cabinet Secretary shall develop guidelines on mesh size for fishing nets for specific water bodies and fish species.

**70.** (1) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, introduce incentives—

Incentives for fishing gear.

(a) for locally produced and imported fishing gear; and

(b) to expand private investment in production and manufacture of fish gear.

(2) The incentives under subsection (1) shall apply to—

(a) importers of fishing gear; and

(b) private investors to expand investment in production and manufacture of fishing gear.

(3) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, prescribe incentives and make regulations for the production and manufacture of fishing gear.

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

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

(a) any fishing gear that he or she does not own or use or that is not associated with such vessel;

(b) any other vessel and persons thereon; or

(c) any persons on any other vessel or otherwise in the Kenya fishery waters.

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

(a) undertake to minimize any damage caused by the gear;

- (b) where practicable return the gear to the Kenya fishery waters and log the position; and
- (c) make a full report of the incident and steps taken by him or her to the Director-General at the earliest opportunity.

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

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

(4) A person who contravenes sub-section (1), (2) or (3) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year or to both, and in addition that person shall fully compensate the owner of the fishing gear for any damage or injury caused under civil law as a consequence of the action unless there is sufficient proof that the damage, destruction, interference or endangerment took place in an area where the person or vessel that caused such consequence were legally entitled to be at that time and it was not reasonably possible to detect the fishing gear or vessel and any relevant fishing gear was not marked in accordance with the requirements pursuant to this Act.

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

person shall compensate the estate of the deceased under civil law.

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

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

Leaving or  
abandoning  
objects in the sea  
Prohibited.

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

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

Declaration of  
endangered  
species of fish.

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

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

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

- (b) a fine not exceeding fifty thousand shillings or a term of imprisonment not exceeding six months in respect of artisanal fishing.

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

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

Prohibitions and requirements for marine mammals.

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

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

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

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

Marine Protected Areas.

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

- (i) procedures for conflict resolution; and
- (j) procedures for monitoring and review.

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

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

Fisheries impact assessments.

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

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

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

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

**77.** (1) No person shall prepare for the introduction of, attempt to introduce or introduce into the Kenya fishery waters, directly, indirectly, deliberately, any deleterious article or substance, including articles or substances which may have toxic, hazardous or other harmful properties or

Pollution of the Kenya Fishery Waters.

effects in relation to fish or the marine environment, and which may adversely affect the habitat or health of the fish.

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

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

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

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

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

**78.** (1) The Cabinet Secretary may, on the recommendation of the Director-General by notice in the *Gazette* provide for— Fish landing stations, etc.

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

Provided that in the case of fish landing stations the Cabinet Secretary shall consult the county

governments in the respective area of jurisdiction.

(2) Notwithstanding subsection (1), any designated fishing port which immediately before the commencement of this Act, was gazetted or declared as a designated fishing port set out in the Third Schedule shall be deemed to be a designated fishing port under this Act.

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

(4) A person who contravenes the provisions of subsection (3) commits an offence and is liable, on conviction—

- (a) in the case of a fish landing station to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three months or to both; or
- (b) in case of designated fishing ports to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

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

Placing of live fish.

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

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

**80.** (1) In addition to the information requirements specified in Part VIII, the Director-General may by notice in writing direct any person whom he is satisfied is suitably qualified to undertake the periodic stock assessment of all

Director-General to direct stock assessments, collection and analysis of other information and

the fishery waters and collect and analyze statistical and other data and information on activities under the scope of this Act and forward the same to the Board.

forward to the Board.

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

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

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

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

- (a) cause or permit a person acting on his or her behalf, or
- (b) use or permit a vessel to engage in fishing or related activity, to take, import, export, tranship, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation, or any applicable international conservation management measures adopted by a relevant regional fisheries management organization and management measures in line with section 56 of this Act.

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

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

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

exceeding six months or to both, in relation to artisanal fishing.

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

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

Import and release of fish.

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

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

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

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

(6) A person who contravenes the provisions of subsections (1) and (2) commits an offence and is liable on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding three years, or to both.

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

Export of fish.

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

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

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

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

**85.** The Director-General may, in consultation with relevant stakeholders, for the purposes of promotion of fish production and marketing—

Promotion of fish production and marketing.

- (a) enter into arrangements and agreements with registered associations or institutions for the management development and administration of fisheries, and
- (b) facilitate the establishment of fish market management units and aquaculture production units.

## **PART VII —FISH QUALITY AND SAFETY**

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

Competent authority.

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

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

- (a) monitor the production of fish products and fish feed with a view to assessing risks to humans;
- (b) regulate fish handling, landing, transportation, processing and marketing;
- (c) work in collaboration with other Government agencies in matters related to this section;
- (d) carry out inspection of operational fishery enterprises for compliance with fish safety regulations issued by the Cabinet Secretary;
- (e) lay down all procedures to be followed for compliance with provisions under paragraph (f);
- (f) specify conditions for the placing on the market of fish, fish products and fish feed;

- (g) maintain a register of fishery enterprises approved by the competent authority.
- (h) issue health certification of fish, fish products and fish feed subject to the consignment meeting set requirements;
- (i) conduct audits of the traceability mechanisms established by a person who engages in the handling, landing, transportation, processing or marketing of fish or fish products;
- (j) perform such other functions as may be necessary or expedient for food safety conditions of fish products in accordance with this Act.

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

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

Harmonization of fish safety and quality standards. Cap.4D.

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

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

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

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

person shall be forfeited.

### **PART VIII—AQUACULTURE**

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

Aquaculture  
activities  
requirements.

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

**90.** (1) The Cabinet Secretary shall, in consultation with the Service and county governments, prepare a national aquaculture development plan for promoting the sustainable development of aquaculture in Kenya in accordance with the principles and objectives of this Act

Aquaculture  
development plan.

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

(3) The aquaculture development plan shall include—

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

- (h) any other matter concerning aquaculture which the Board or Director-General considers appropriate.

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

(5) Each county government may develop a county aquaculture development plan taking into consideration the national aquaculture development plan.

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

Collaboration with Counties.

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

**92.** (1) No person shall, by carrying out aquaculture activities, deprive a local community of its traditional access to fishing grounds.

Prohibited to deprive community of traditional access to fisheries.

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

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

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

(2) Where any person or any County government has cause to believe that any fish and fish products from any waters used for aquaculture activities are infected with a disease which can reasonably be foreseen to become, or which has become, of epidemic proportions, such County government shall in consultation with the Cabinet

Secretary, give notice in writing to the owner of the relevant waters requiring the destruction of all fish and fish products in the said waters or the taking of such other measures as the county government may specify in the notice.

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

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

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

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

Permission of  
Director-General  
and approval by  
Board required.

- (a) introduce or cause to be introduced into Kenya or the Kenya fishery waters any exotic species of fish or any genetically modified fish;
  - (b) transfer any eggs, fingerlings or seed of exotic or genetically modified species or such adult species of fish from one aquaculture establishment in Kenya to another or from any location in Kenya to another;
  - (c) import or export live fish for the purpose of aquaculture; or
  - (d) release into the fishery waters any fish except for indigenous wild fish caught in Kenya.
- (2) Permission for any activity in subsection (1) may

be granted subject to such conditions as the Director-General, with the written approval of the Board, considers appropriate and after an environmental impact assessment and public consultation has been undertaken.

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

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

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

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

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

Aquaculture waste.

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

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

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

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

fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding five years or to both, and in addition shall be responsible for compensation for the costs of restoring the applicable area as required pursuant to subsection (2).

**97.** (1) A person wishing to engage in commercial aquaculture shall provide a bond or some other form of financial security to be known as an environmental protection bond to the National Environment and Management Authority sufficient to cover the costs related to the implementation of the environmental and rehabilitation obligations under this Act including waste management.

Environmental protection bond for commercial aquaculture.

(2) An environmental protection bond required under subsection (1) shall be in a form and for an amount as may be prescribed in regulations by the Cabinet Secretary having regard to the particular characteristics of the nature and size of the commercial aquaculture activities.

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

Escapement.

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

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

- (a) the species of fish affected;
- (b) the date or an estimate of the date on which the

escape or damage took place;

- (c) the number and biomass or an estimate of the number and biomass of the fish that have escaped; and
- (d) the age or developmental stage of the fish at the time of their escape and details of the circumstances in which the escape or damage took place.

(4) A person required to make a notification under subsection (3) shall within seven days after becoming aware of the escape of hatchery reared aquaculture stock or damage to a farming structure, notify the Director-General and the County Director in writing of the action taken to deal with it.

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

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

Use of drug, chemical, etc. restricted.

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

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

Information on wild, genetically modified fish species.

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

Interfering with aquaculture establishment prohibited.

- (a) interfere with or harvest the product of an aquaculture establishment without the written authority of the licensee;
- (b) place any object in the water, or promote or undertake any activity in a manner so as to obstruct an aquaculture operation being carried

out by another person;

- (c) destroy, damage, displace or alter the position of any equipment lawfully deployed in connection with an aquaculture licence; or
- (d) without lawful excuse cause the release of any product of an aquaculture establishment.

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

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

Transboundary  
aquaculture  
ecosystems.

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

**103.** (1) The Cabinet Secretary may in consultation with county governments make Regulations for the better carrying out of the provisions of this Act.

Regulations for  
Aquaculture.

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

- (a) fish hatchery standards;
- (b) qualifications of persons authorized to offer aquaculture extension services;
- (c) the mode of establishment of fish cages or any such form of aquaculture establishment in Kenya fishery waters including sizes, and navigation

routes by artisanal fishers;

- (d) aquaculture extension systems;
- (e) fish disease surveillance, control and management in aquaculture establishments;
- (f) the use of biotechnology to increase productivity;
- (g) codes of practice for fish farmers;
- (h) environmental protection bonds for commercial aquaculture activities including amounts to be paid;
- (i) the methodology for calculating licence and permits fees for aquaculture activities including exemptions or reduced fees for aquaculture operators below prescribed production levels;
- (j) single permit agreement for aquaculture operators, for movement, harvesting and processing and related operational activities;
- (k) the categorisation of aquaculture establishments based on production capacity for purpose of differentiated licences;
- (l) excluded areas for establishment of aquaculture including areas located directly in front of existing commercial developments including hotels or other tourism facilities; and
- (m) any other measure that he deems necessary for the proper management of aquaculture.

#### **PART IX —ARTISANAL FISHERIES DEVELOPMENT, PROTECTION AND WELFARE**

**104.** (1) The State shall recognize artisanal fishers as key stakeholders in fisheries management and as contributors to food security, livelihoods, poverty reduction, cultural heritage, and sustainable utilization of fisheries resources.

Recognition of  
artisanal fishers.

(2) All fisheries policies, plans, and programmes shall give due consideration to the interests, welfare, and participation of artisanal fishers and their communities.

**105.** (1) The Cabinet Secretary shall, in consultation

Protection of  
traditional fishing

with county governments, beach management units, and artisanal fishers, identify and gazette traditional fishing grounds used by artisanal fishers. grounds.

(2) No aquaculture, mariculture, commercial fishing operation, conservation project or other related activity shall be established within a designated traditional fishing ground where such activity would substantially interfere with artisanal fishing without prior consultation, environmental assessment, and fair compensation.

(3) The national government and county governments shall give access to designated traditional fishing grounds to artisanal fishers on a priority basis.

**106.** (1) The State shall take measures to restore, conserve, and sustainably manage fish stocks upon which artisanal fishers depend Sustainable management of fish stocks.

(2) The measures under subsection (1) may include stock enhancement programmes, habitat restoration, control of illegal fishing practices and establishment of fisheries conservation zones.

(3) The national government and county governments shall ensure participation of artisanal fishers in the formulation and implementation of fisheries management plans affecting their fishing areas.

**107.** (1) The Director-General, in consultation with the county governments and with the beach management units, shall take measures to prevent conflict overfishing space including establishment of mechanisms for the equitable allocation of designated fishing areas and fishing times for fishing different fish species or use of different fishing methods. Resolution of fishing space conflicts.

(2) A county government and a beach management unit within its area of jurisdiction shall establish a county mediation committee that shall facilitate mediation and dispute resolution among fishers within the respective jurisdiction.

(3) The Cabinet Secretary may make regulations to prescribe navigation routes, fishing areas, fishing times, gear restrictions, and conflict management measures to ensure equitable access to fisheries resources

**108.** (1) No person shall steal, destroy, damage, interfere with or unlawfully remove fishing nets, boats, engines, traps or other fishing equipment of an artisanal fisher.

Protection against theft and destruction of fishing gear.

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

(3) The Cabinet Secretary may establish a fisheries asset registration system to facilitate ownership verification and recovery of stolen fishing gear or equipment under this section

**109.** (1) An artisanal fisher engaged by a boat owner or fishing enterprise shall be entitled to fair remuneration, safe working conditions, and equitable sharing of fishing proceeds.

Labour rights of fishers.

(2) No boat owner shall exploit, coerce, underpay, or subject a fisher to unfair labour practices.

(3) The Cabinet Secretary shall prescribe minimum standards for employment and profit-sharing arrangements in artisanal fisheries

**110.** (1) An owner of a fishing vessel shall have the right to the diligent performance of duties by any fisher on the vessel.

Rights of boat owners.

(2) A fisher employed under subsection (1) shall comply with lawful instructions, observe safety requirements, exercise reasonable care in the handling of fishing equipment and catch and refrain from theft, fraud, negligence, or misconduct.

(3) Nothing in this section shall be construed as limiting the rights of fishers to fair remuneration, safe working conditions, freedom from exploitation, and protection under the law.

**111.** (1) A fisheries officer and any other authorized person under this Act shall carry out their duties in a lawful, humane, transparent, and accountable manner.

Protection from harassment and arbitrary enforcement.

(2) No artisanal fisher shall be subjected to arbitrary arrest, unlawful confiscation of equipment, extortion, intimidation, or harassment by a fisheries officer or any other authorized person under this Act.

(3) The Director-General shall establish a Fisheries Complaints and Ombudsman Office to receive and investigate complaints by fishers against enforcement authorities.

**112.** (1) The Cabinet Secretary shall, in consultation with relevant State agencies, promote bilateral and regional agreements for the protection of Kenyan artisanal fishers operating in shared fisheries ecosystems and transboundary waters.

Cross-border  
fisheries  
cooperation.

(2) An agreement under subsection (1) shall provide for—

- (a) recognition of traditional fishing practices;
- (b) prevention of harassment and unlawful detention of fishers;
- (c) joint fisheries patrols and enforcement mechanisms;
- (d) cross-border conflict resolution procedures;
- (e) compensation and repatriation mechanisms for affected fishers; and
- (f) harmonisation of fisheries regulations.

(3) Where a Kenyan fisher is arrested, detained, or has equipment confiscated by a foreign authority in a shared fishery, the National Government shall take reasonable diplomatic and legal measures to protect the rights of the fisher.

**113.** (1) The State shall establish mechanisms to enhance access to domestic, regional, and international markets for fish and fish products for artisanal fishers.

Fisheries  
marketing and  
value addition.

(2) A county government may, within its area of jurisdiction, establish fish collection centers, cold storage facilities, processing plants and market information systems for the benefit of artisanal fishers.

(3) A county government may establish mechanisms to support beach management to undertake

value addition and collective marketing.

**114.** (1) The National Government and County Governments may establish subsidy programs for artisanal fishers including women, youth, persons with disabilities and other vulnerable groups.

Subsidies and financial support.

(2) A subsidy under subsection (1) may include support for fishing gear, engines, safety equipment, fuel, insurance, fish preservation facilities, credit facilities, medical clinics in fish landing stations and fisheries infrastructure.

## **PART X —INFORMATION, DATA AND RECORDS**

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

Information, data and records.

- (a) any information and data, including information relating to fishing, fisheries, aquaculture, landing, research, storage, food safety, processing, buying, selling, exports and other related transactions;
- (b) accounts, records, returns, documents; and
- (c) any other information in relation to activities falling within the scope of this Act additional to that specified under this Act.

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

- (a) holders of licences or authorizations issued under this Act;
- (b) owners, operators, legal representatives, and masters of vessels licensed or authorized under this Act;
- (c) owners and persons in charge of any premises where fish or fish products are received, bought, stored, transported, processed, sold, or otherwise disposed of;

- (d) persons who engage in the receiving, buying, selling, transporting, processing, storage, export, import or disposal of fish or fish products;
- (e) persons who engage in commercial aquaculture activities;
- (f) persons engaged in recreational fishing;
- (g) beach management units;
- (h) persons engaged in fishing otherwise than for the purpose of sale of the fish caught, including research; and
- (i) such other persons who may be required to do so by the Director-General pursuant to this Act.

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

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

(4) A person who—

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

commits an offence and shall be liable on conviction

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

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

Ownership of information.

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

Information in partnership agreements between vessel agents and vessel owners.

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

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

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

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

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

- (a) that the fish were harvested in the Kenya fishery waters, irrespective of the flag State of the vessel or nationality of any person involved in the production of such fish, and shall not indicate in any way that such fish is the product of any State

other than Kenya;

- (b) the name of the fishing vessel that harvested the fish;
- (c) the name of the company that is the owner or operator of the fishing vessel; and
- (d) such other information that may be prescribed.

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

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

Information to be true, complete and correct.

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

**120.** (1) No person carrying out duties or responsibilities under this Act, including the Cabinet Secretary, Board members and Director-General shall, unless authorized or otherwise provided or directed in accordance with this Act, reveal information or other data of a confidential nature or designated as confidential in accordance with this Act, acquired by virtue of their said authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.

Confidential information.

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

(3) The Director-General or County Director as the

case may be, may authorise in writing any person to—

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

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

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

(5) Information may be disclosed to the extent—

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

- (f) necessary to enable advice to be given to the Cabinet Secretary.

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

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

(7) Any information designated as confidential shall maintain such classification for a period of five years from the time of such designation, and at the expiry of five years, the Cabinet Secretary in consultation with the Director-General may extend such classification for a further period of up to five years or more as they may deem necessary for purposes relating to the objectives and enforcement of this Act.

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

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

Registers of  
licences and  
authorizations.

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

- (a) information on applications for licences and authorizations under this Act;
- (b) information on each licence and authorization issued, renewed, suspended or cancelled under

this Act, including the activity, date and duration;

- (c) information on each licensed or authorized person;
- (d) information on the relevant vessel, facility, or licensed or authorized activity;
- (e) any record of non-compliance with the licence or authorization;
- (f) any record of action taken as a result of non-compliance;
- (g) the requirements of any relevant international conservation and management measures of an organization of which Kenya is a member or cooperating non-member; and
- (h) such other information that may be prescribed or required by the Director-General.

(3) The register established under subsection (1) shall contain information relating to fishing vessels licensed to engage in fishing or fishing related activities in Kenya fishery waters and to Kenya fishing vessels authorized to operate in areas beyond national jurisdiction.

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

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

(6) The Director-General shall ensure that, where appropriate, information is released from the database and communicated to other States and regional and international organizations in a timely manner to ensure the discharge of the regional and international obligations of

Kenya including as a flag State and as a member of regional fisheries management organizations.

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

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

**122.** (1) The County Director shall establish and maintain a County register of licences and authorizations issued in accordance with the provisions of this Act.

County Register of licences and authorizations.

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

- (a) information on applications for licences and authorizations under this Act;
- (b) information on each licence and authorization issued, renewed, suspended or cancelled under this Act, including the activity, date and duration;
- (c) information on each licensed or authorized person;
- (d) information on the relevant vessel, facility and licensed or authorized activity;
- (e) any record of non-compliance with the licence or authorization; and
- (f) any record of action taken as a result of such other information that may be prescribed or required by the County Director.

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

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

**124.** The Director-General and County Director shall make information available to the public and as may be necessary disseminate relevant information to stakeholders for purposes of fisheries conservation, management and development, including regional and international organizations, except for such information that may be designated confidential in accordance with section 120.

Information available to the public.

## **PART XI— LICENSING AND REGISTRATION**

### *Licences, authorizations and registration*

**125.** (1) A valid and applicable licence issued in accordance with section 127 (1) shall be required for—

Licences and authorizations required.

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

(2) The respective county governments shall be responsible for issuing licenses with respect to using any vessel for recreational fishing in the Kenya fishery waters.

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

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

- (a) criteria for the registration of a vessel and issuance of a licence to an applicant for a licence under subsection (2);
- (b) information required to be submitted by an applicant for registration or issuance of a licence;
- (c) process of determination of an application;
- (d) conditions for the issuance or renewal of a licence under this Act;

- (e) grounds for the rejection of an application or cancellation of a licence issued under this Act; and
- (f) process of application for the renewal of licences, de-registration of a vessel and revocation of a licence issued to an applicant by the county government.

(5) A valid and applicable written authorization issued in accordance with sections 129 and 130 shall be required for—

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

(6) Any requirement for registration under this section shall be with respect to undertake fishing or related activities and shall not be construed as registration of the vessel and no registration fee for the vessel shall be payable under this Act in respect of a vessel registered under the Merchant Shipping Act.

Cap.234.

**126.** (1) Any person engaged in subsistence fishing shall be exempted from the requirement for a license but shall be registered.

Subsistence exemption from licence requirements.

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

areas of Kenya.

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

Cap.63.

**127.** (1) The Director-General may approve the grant or renewal of licences or authorizations for any purpose specified in section 129 after all inspections, verifications and other pre-licensing requirements under this Act have been discharged.

Grant, renewal and issuance of licences and authorizations.

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

(3) The Director-General shall, in approving or renewing a licence under subsection (1), act in accordance with the procedures required pursuant to this Act and such other transparent and accountable standards as may be determined and published.

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

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

**128.** (1) In approving or renewing licences and authorizations pursuant to this Act, and in setting the level of any performance bond required pursuant to section 175, the Director-General shall take into account the extent to which the relevant fishing vessel, including its operator or other relevant person, as appropriate, has—

Standards for approval, renewal and issuance of licences and authorizations.

- (a) the ability to comply with, or has complied with this Act, relevant laws of Kenya and any applicable licensing terms and conditions or fisheries management plan and such other standards as may be required in writing by the

Director-General;

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

Cap.234.

(2) In approving or renewing licences and authorizations in respect of any fishing vessel other than a Kenya fishing vessel pursuant to this Act, and in setting the level of any performance bond required pursuant to section 175, the Director-General shall take into account the ability of the relevant flag State to ensure compliance by its fishing vessels with the laws of Kenya.

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

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

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

Requirements for  
denial of licences  
and  
authorizations.

- (a) a relevant vessel is not intended for use as a fishing vessel;
- (b) a relevant vessel does not hold a valid and applicable registration, or holds more than one registration;
- (c) a relevant vessel is not a Kenya vessel and does not have a valid and applicable authorization or licence from its flag State to fish in areas beyond national jurisdiction;
- (d) the issuance of a licence would be contrary to any applicable fisheries management plan or an aquaculture development plan;
- (e) the applicant for a commercial aquaculture licence has not undertaken an environmental impact assessment as required in respect of an aquaculture licence, or that such an assessment concludes that a licence should not be approved, endorsed, issued or renewed;
- (f) the species of fish that the applicant for a commercial aquaculture licence proposes to farm, the method of aquaculture that the applicant proposes to employ or the proposed site for aquaculture do not meet standards or requirements that may be prescribed or publicly notified for aquaculture;
- (g) within the previous six years, the applicant, or a vessel or person closely connected with the applicant in respect of activities falling within the scope of this Act, has been convicted of a serious

offence pursuant to this Act, any relevant international conservation and management measures or any international agreement and has not complied with a judgment or administrative determination unless, in respect of a vessel there has been a change of ownership of the vessel and there is no connection between the former owner and the new owner, and the new owner do not have a history of engaging in illegal, unreported or unregulated fishing;

- (h) the applicant, vessel, or associated person has been charged with an offence pursuant to this Act more than three times and has—
  - (i) not submitted to judicial or administrative procedures; or,
  - (ii) has submitted to judicial or administrative procedures but has not fully complied with the final decision or determination;
- (i) the issuance of the licence or authorization would be inconsistent with an international agreement to which Kenya is party;
- (j) the operator of the fishing vessel has not provided a performance bond if so, required pursuant to section 175;
- (k) the activity is likely to threaten the sustainability of a fishery resource;
- (l) in the case of a foreign fishing vessel, an agent has not been appointed; or
- (m) the vessel in respect of which the licence is sought has been included on a list of illegal, unreported and unregulated fishing vessels established and maintained by a competent regional fishery body in accordance with its rules and procedures.

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

and management measures, and, as a consequence—

- (a) the foreign State suspended such licence or authorization because of illegal, unreported or unregulated fishing activities by the vessel, and the suspension has not expired;
- (b) the foreign State within the last three years preceding the application for a licence under this Act withdrew such licence or authorization for illegal, unreported or unregulated fishing activities;
- (c) no fishing licence shall be issued to a fishing vessel that has changed the flag within the same fishing season; or
- (d) fishing vessel which was previously convicted of a serious crime pursuant to this Act and has changed the flag and retained the ownership, shall not be licensed as a fishing vessel.

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

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

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

Application for the grant or renewal of licences or authorizations.

- (a) contain such information as may be required in this Act or in writing by the Director-General or as may be prescribed;
- (b) be in such form as may be prescribed or such other form as may be approved by the Director-General;
- (c) in the case of industrial fishing vessels, be accompanied by an International Tonnage Certificate showing the gross tonnage issued under the International Tonnage Rules;
- (d) be accompanied for the case of fishing vessels by

a fishing plan which shall specify for each month of the full period of validity of a licence or authorization, a fishing plan including the—

- (i) fishing gear to be used;
  - (ii) species to be targeted for fishing, and expected quantity;
  - (iii) species that will constitute bycatch and expected quantity; and
  - (iv) area in which fishing or fishing related activities will take place; and
- (e) be made in accordance with such procedures and other requirements as may be approved by the Director- General.

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

(3) Where—

- (a) the Director-General considers that an application has been made for an inappropriate class of licence;
- (b) there is insufficient evidence or information accompanying the application upon which to make a recommendation regarding the application;
- (c) the information accompanying the application appears to be false, misleading or inaccurate; or
- (d) upon such other grounds as may be approved by the Board,

the Director-General shall return the application to the applicant with details of her or his reasons for returning the application, and the applicant may submit a revised application with such additional evidence or information as may be appropriate.

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

information is discovered to be false, misleading or inaccurate after the grant of the licence or authorization, the Director-General may suspend or cancel the licence or authorization.

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

Terms and conditions of licences and authorizations.

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

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

- (a) the approved fee and other required charges have been paid at the required time; and
- (b) where applicable—
  - (i) a performance bond has been issued as required pursuant to section 175 and notified to the Director-General; and
  - (ii) any access fee or other charges or levies payable under any relevant access agreement or arrangement, right or licence have been paid.

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

- (a) comply with this Act, the laws of Kenya, any applicable access agreement, fisheries management plan, and international conservation and management measures;
- (b) comply with all relevant provisions of national

law relating to navigational standards and the safety of vessels at sea; standards relating to work conditions on board fishing vessels; and

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

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

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

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

**132.** (1) Where commercial employment is foreseen in relation to the activity for which the licence or authorization is sought, it shall be a condition of the licence or authorization that citizens of Kenya possessing the necessary qualifications and experience shall be given preference for employment, and such employment shall be in accordance with the applicable labour laws and any other laws governing safety at sea.

Preference for  
employment of  
citizens of Kenya

- (2) A licensee shall not—

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

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

(3) Where the applicant for a licence or authorization is partly or wholly a foreign citizen or company, or where an applicable fisheries access agreement, arrangement, right, licence or authorization has been entered into pursuant to sections 129 and 130, such applicant shall be required, to the extent possible and in such manner as the Director-General may in consultation with the Cabinet Secretary approve, to contribute to the training and employment of Kenya citizens taking into account the requirements of safety and the need to maintain acceptable standards of efficiency in the conduct of the operations.

(4) Notwithstanding subsection (3), the operator of a foreign fishing vessel granted authorization or an access right under this Act, shall employ such number of Kenyan citizens as may be prescribed under section 139(3).

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

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

Period of validity of licences and authorizations.

(2) An authorization issued pursuant to section 125 (5) shall be valid for a period prescribed by the Director-General

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

Fees, charges or levies.

- (a) such licence fee prescribed for that class of licence as may be prescribed; and

- (b) such other fees, charges or levies as are set out in this Act, or as may be prescribed or required by the Director -General or the county government by public notice.

(2) A levy prescribed under this section shall not be imposed on fish at the point of landing or on fish harvested from an aquaculture establishment.

(3) Notwithstanding subsection (2), the Cabinet Secretary may prescribe by regulations, a levy in respect of fish processing, value addition or other fish processing activities in relation to aquaculture carried out under this Act.

(4) The Cabinet Secretary in prescribing a levy under subsection (3), shall have regard to—

- (a) the need to promote investment, competitiveness and sustainable development of fishing and aquaculture;
- (b) the avoidance of multiple or duplicative fees, charges or levies payable under this Act or any other written law; and
- (c) the costs of regulating the activity in respect of which the levy is imposed.

(5) The Director-General may, as a component of the licence or authorization fee for any fishing vessels, charge for the costs relating to observers described in section 189 (b) of this Act, and shall deposit such component into a designated account in the Fund established in section 31 and use such component solely for the purposes of the observer programme set out in section 188 and to pay the observer costs identified in section 193.

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

(7) Unless otherwise prescribed or required, the amounts payable pursuant to subsections (1), (5) and (6) shall be paid as a condition of the issuance of a licence and no licence shall be issued unless they have been paid in full.

**135.** (1) The Director-General may, by written notice to the holder of a licence or authorization or that person's

Suspension or  
cancellation of  
licence or

agent, suspend or cancel any licence or authorization issued pursuant to this Act for any of the following reasons— authorization.

- (a) there has been a contravention of the licence or authorization, this Act, an applicable international agreement or international conservation and management measures or relevant applicable law of a third country in respect of which the licence or authorization was given, and—
  - (i) any applicable law or international agreement providing for such suspension or cancellation;
  - (ii) the relevant person or persons involved in such contravention has or have not submitted to the legal or administrative process, or complied with the requirements of an applicable fine, penalty or other determination; or
  - (iii) the Director-General, having regard to the nature and seriousness of the contravention, considers it appropriate to suspend or cancel the licence or authorization;
- (b) there has been a failure to maintain or comply with, or there has been any material change or change in circumstances affecting the eligibility criteria for the licence or authorization, in the—
  - (i) registration of a company or a vessel;
  - (ii) ownership or beneficial ownership or control of a company or vessel since the time of licence approval; or
  - (iii) characteristics, identification markings, or gear of any licensed industrial fishing vessel;
- (c) the licence or authorization holder has furnished information, which is untrue, incomplete or misleading in connection with the licence application;
- (d) where a licence or authorization may be transferred, this has been done without the written approval of the Director-General and endorsement

by the Cabinet Secretary;

- (e) any fees, charges or levies required to be paid after the issuance of the licence or authorization have not been paid as required;
- (f) it is necessary to do so to implement conservation and management measures under this Act, in accordance with its objective and principles;
- (g) in the case of a commercial aquaculture licence, the licence holder fails to establish the aquaculture operation within the time specified by the Director-General; or
- (h) such other reasons as may be prescribed or provided in relevant laws of Kenya.

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

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

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

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

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

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

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

Termination of  
licences and  
authorizations.

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

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

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

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

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

Transfer of  
licences and  
authorizations.

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

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

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

Right of appeal.

(2) A person who is —

- (a) aggrieved by a decision not to grant or renew any licence or authorization under this Act;
- (b) aggrieved by a decision to suspend or cancel a licence or authorization, may appeal to the County Director within thirty days of receiving notification of such decision, and may further appeal to the County Executive Committee Member within thirty days of receiving notification of the County Director's decision.

(3) A person aggrieved by a decision of the Cabinet Secretary or County Executive Committee Member may appeal to the Tribunal within thirty days of receipt of the decision.

*Fishing, transshipment and fish aggregating devices*

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

Conditions for fishing for industrial or semi-industrial fishing vessels.

- (a) the fishing vessel shall clearly display at all times such markings as may be prescribed and shall not change such markings without written permission from the Director-General;
- (b) the fishing vessel shall at all times fly the flag of the State of which it is national;
- (c) the operator shall hold a valid registration in respect of the fishing vessel as may be required by the flag State or entity for that type of vessel and issued by such flag State or entity;
- (d) the operator shall hold only one valid registration in respect of the fishing vessel and shall not at the same time hold more than one such registration;
- (e) the operator shall comply at all times with such requirements for trawling gear as may be prescribed;
- (f) the operator shall not carry on board the fishing vessel any fishing gear that has not been approved for fishing activities pursuant to the fishing licence

or authorization;

- (g) the operator shall not carry firearms aboard unless authorized by the Director-General;
- (h) unless otherwise authorized by the Director-General, the operator shall ensure that at least a percentage of the crew members on board each fishing vessel are citizens of Kenya;
- (i) the operator shall comply with all relevant provisions of national law relating to navigational standards, standards relating to work conditions on board fishing vessels and the safety of vessels at sea;
- (j) the operator shall comply with any direction given by the Director-General for inspection of the vessel prior to departing from the Kenya fishery waters; and
- (k) such other conditions that are required pursuant to this Act, or that may be required by Public Notice by the Cabinet Secretary by notice in the Gazette or as may be prescribed.

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

(3) The Cabinet Secretary shall by notice in the *Gazette*, prescribe the percentage of Kenyan citizens to be employed as crew members on fishing vessels under this Act, which percentage shall be not less than twenty per cent of Kenyan citizens for foreign fishing vessels granted authorization or an access right under this Act.

**140.** (1) In addition to the conditions specified in section 131, licences issued to industrial fishing vessels for fishing or fishing related activities shall be subject to the following conditions—

Conditions for  
industrial fishing  
vessels.

- (a) the operator shall maintain fishing and navigational logbooks at all times in the English language with such information and in the format

as may be prescribed or required by the Cabinet Secretary;

- (b) the operator shall install, maintain and operate, in accordance with the requirements of this Act, an automatic location communicator or such other equipment integral to a vessel monitoring system as the Cabinet Secretary may require;
- (c) the operator shall carry on board an observer designated by the Director-General and comply with all requirements relating to observers set out in this Act;
- (d) the operator shall report in writing the vessel's position, catch and such other information that may be required by the Director-General to the Kenya Fisheries Service every twenty-four hours while in the Kenya fishery waters;
- (e) the operator shall continually monitor the international distress and call frequency and the international safety and calling frequency;
- (f) the operator shall ensure that a recent and up-to-date copy of the International Code of Signals be carried on board and accessible at all times;
- (g) the operator shall ensure that a recent and up-to-date set of charts showing the Kenya fishery waters is carried on board at all times;
- (h) the operator shall not at any time, except for purposes of steaming directly into port with all gear stowed, cause or allow the fishing vessel to enter, be present in, engage in fishing for or take or carry on board or possess fish taken from the territorial sea or other area closed to fishing;
- (i) the operator shall not at any time cause or allow the fishing vessel to engage in fishing for or take or carry on board or possess fish taken from a closed area or from any marine protected area declared pursuant to this Act where such fish are protected;
- (j) the operator shall retain no more than thirty percent of the bycatch, or such other amount as

maybe prescribed and the remaining portion of the bycatch shall be landed as required pursuant to subparagraph (k);

- (k) except where transshipment has been authorized, all catch, or a designated portion, shall be landed for fish processing and sale in the local market at such places as may be designated in the licence or directed in writing by the Director-General, and unless otherwise prescribed shall include the following landing obligations for each designated class of vessel in respect of the total fish catch taken from Kenya's Economic Exclusive Zone on a yearly basis—

- (i) purse seiners: 30%
- (ii) long liners 30%
- (iii) shrimp trawlers: 70% of the bycatch  
5% of the shrimp

- (l) no person shall use a Kenya fishing vessel, being an industrial fishing vessel, except with a valid and applicable authorization issued pursuant to an application made in accordance with such form as may be prescribed, for fishing or fishing related activities—

- (i) on the high seas;
- (ii) in areas under the national jurisdiction of any other State except in accordance with the laws of that State; or
- (iii) that do not comply with an applicable international agreement or undermine the effectiveness of international conservation and management measures;

- (m) no person shall use a Kenya fishing vessel, being an industrial fishing vessel, during the period of validity of the licence—

- (i) for fishing or fishing related activities on the high seas for fishing related activities in areas subject to international conservation and management measures unless the licence or

authorization has been endorsed to authorise such fishing;

- (ii) in areas of national jurisdiction of other States except in accordance with a licence or authorization and the laws of that State; or
- (iii) to engage in any activity on the high seas or in areas of national jurisdiction of other States which does not comply with an applicable international agreement or undermines the effectiveness of international conservation and management measures in an area to which such measures apply;
- (n) unless the Director-General otherwise directs in writing or unless the master of the fishing vessel is able to communicate effectively in English, the operator shall ensure that the fishing vessel has on board at all times while in the Kenya fishery waters a person who is able to communicate effectively in English and in the language of the master; and
- (o) such other conditions that may be required by public notice by the Cabinet Secretary or prescribed in accordance with this Act.

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

**141.** (1) In addition to the conditions described in sections 131 and 143, the operator of each industrial fishing vessel shall make such reports as may be prescribed or required by the Director-General as a condition of licence or authorization, which shall include—

Reporting requirements for industrial fishing vessels.

- (a) maintaining a fishing logbook for each fishing trip in the area to which the relevant licence applies in the English language or other language approved by the Director-General, which shall include—
  - (i) the gear type used;
  - (ii) the noon position of the vessel and, where

- applicable, the set position of the fishing gear and soak time or the number of hooks and the sea surface temperature;
  - (iii) the total number of hauls per day, aggregate time for each haul and total number of days fished per fishing trip;
  - (iv) the species of fish taken and the size and quantity of each species by weight or number as may be specified in the relevant reporting form;
  - (v) the species of fish returned from the vessel to the sea, the reason for the discard, the quantity of each species by weight or number;
  - (vi) by catches of non-target species; and
  - (vii) such other information as may be prescribed or as the Director-General may require.
- (b) reporting information as may be prescribed or required approved by the Director-General relating to the position of, and the catch on board, the vessel and such other information that may be required by this Act or the Director-General at the following times—
- (i) at least twenty-four hours prior to the estimated time of entry into and departure from the Kenya fishery waters;
  - (ii) each day while the vessel is in the Kenya fishery waters;
  - (iii) at least twenty-four hours prior to the estimated time of entry or departure from port; and
  - (iv) upon entry into or departure from a closed area or marine protected area.
- (c) ensuring that any information or data which may be required to be transmitted by radio communication, a transponder, automatic location communicator or other component of a vessel monitoring system is transmitted

continuously, accurately and effectively to the designated receiver;

- (i) providing such daily information as and in the form the Cabinet Secretary may require to give effect to its duty under international agreements and law; and
- (ii) certifying that all information provided pursuant to subparagraphs (a), (b) and (c) is true, complete and correct.

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

**142.** (1) In addition to the conditions described in section 140, licences issued to semi-industrial fishing vessels for fishing or related activities shall be subject to the following conditions—

Conditions for  
semi-industrial  
fishing vessels.

- (a) no person shall use a semi-industrial fishing vessel during the period of validity of the licence-
  - (i) for fishing or fishing related activities in areas under the national jurisdiction of other States unless the licence or authorization has been endorsed to authorise such fishing or fishing related activities; or
  - (ii) in areas of national jurisdiction of any other State except in accordance with laws of that State;
- (b) every semi-industrial fishing vessel shall be marked with a registration number and such other identification markings as may be prescribed or required in writing by the Director-General;
- (c) on receipt of an application for registration of a semi-industrial fishing vessel made under this Act, the Director-General shall, as soon as practicable, cause the vessel to which the application refers to be inspected and if, upon such inspection, the vessel is found to be fit for fishing and meets the prescribed safety standards,

the Director-General shall assign identification markings to the vessel and on payment by the applicant of the prescribed registration fee, issue to the owner of the vessel a certificate of registration;

- (d) except where transshipment has been authorized, all catch, or such portion as may be prescribed or required by the Cabinet Secretary, shall be landed for sale in the local market at such places as may be designated in the licence or directed in writing by the Cabinet Secretary, and shall include the following landing obligations for each designated class of vessel in respect of the total fish catch for each fishing trip, unless otherwise prescribed—
  - (i) undecked semi-industrial fishing vessels: 100%; and
  - (ii) decked semi-industrial fishing vessels: 50%;
- (e) no person using an undecked semi-industrial fishing vessel shall carry gear that exceeds such amount and dimensions as may be prescribed.

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

**143.** (1) In addition to the conditions described in sections 140 and 148 the operator of each semi-industrial fishing vessel shall make such reports as may be prescribed or required by the Director-General, monthly or at such earlier time as may be required by the Director-General, as a condition of licence or authorization, which shall include—

Reporting requirements for semi-industrial fishing vessels.

- (a) maintaining a fishing log for each fishing trip in the area to which the relevant licence applies, in the English language or other language approved by the Director-General, which shall include—
  - (i) the date of fishing;
  - (ii) the gear type used;

- (iii) the species of fish taken and the size and quantity of each species by weight or number as may be prescribed or the Director-General may require; and
- (iv) the species of fish returned from the vessel to the sea, the reason for the discard, the quantity of each species by weight or number;
- (b) the place of landing or transshipment;
- (c) such other information as may be prescribed or as the Cabinet Secretary may require; and
- (d) certifying that information provided pursuant to paragraphs (a), (b) and (c) is true, complete and correct.

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

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

Registration of artisanal fishing vessels.

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

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

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

**145.** (1) Subject to subsection (2) and in addition to the provisions of **section 166**, no fishing vessel shall be operated in the Kenya fishery waters, and no Kenyan fishing vessel shall be used in or outside the Kenya fishery waters for fishing or fishing related activity, unless such fishing vessel has been registered by the Board in accordance with this section, notwithstanding that it holds a valid and applicable registration as may be required under any other law of Kenya.

Registration of vessels.

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

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

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

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

(a) the name, street address, telephone number, fax number and email address of the owner and, where applicable, the previous owner;

(b) the name and any previous name of the vessel;

(c) the year and place of manufacture;

(d) the flag country and previous flag country if any;

(e) type of gear used;

(f) radio call sign;

(g) vessel tonnage;

(h) vessel length;

(i) fish hold volume;

(j) fish carrying capacity;

(k) IMO number as applicable;

(l) vessel identifier issued by an RFMO as applicable;  
and

(m) national registration number.

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

(7) In any judicial or administrative proceedings

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

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

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

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

Applications for licences, etc.

**147.** (1) A Licences issued to recreational fishing vessel for fishing or fishing related activities shall be subject to the following conditions that—

Conditions for recreational fishing vessels.

- (a) the vessel shall be duly registered in accordance with this Act;
- (b) the registration number shall be prominently displayed thereon in a manner and format prescribed;
- (c) the vessel be inspected;
- (d) payment of the prescribed fees; and
- (e) such other requirements as may be prescribed or required by regulations.

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

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

Requirements for transhipment.

- (a) only tranship—

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

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

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

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

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

(5) The operator of a fishing vessel shall-

- (a) not tranship at sea under any circumstances unless authorized by the Director-General;
- (b) only tranship at the time and port or other place

authorized by the Director-General for transshipment;

- (c) cause the fish being loaded to be accurately weighed and recorded by species on board the vessel, and furnish the Director-General with daily copies of these records; and
- (d) during the transshipment operation give every assistance to any authorized officer, inspector or other person designated by the Ministry in the performance of official duties, including verification of the species and weight of the fish and determining when the transshipment operation has been completed.

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

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

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

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

Deployment and maintenance of a fish aggregating device.

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

- (a) the method of use of the fish aggregating device;

- (b) its location;
- (c) the times during which it may be used; and
- (d) the markings or colourings to be adopted.

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

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

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

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

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

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

Designated fish  
aggregating  
device.

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

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

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

term of imprisonment not exceeding one year or to both.

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

Markings,  
equipment for fish  
aggregating  
devices.

- (a) is clearly marked with the name of the owner and of the vessel from which such device was placed; and
- (b) is equipped with a radar reflector and such lights as are clearly visible at night from a distance of one nautical mile; and
- (c) has such other equipment or markings as the Director-General may from time to time require.

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

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

Disposal of  
unauthorized fish  
aggregating  
devices.

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

*Fish processing and marketing*

**153.** (1) A licence to operate a fish processing establishment shall be issued by the respective county government subject to subject to the following conditions in addition to any other conditions required pursuant to this Act—

Conditions for  
fish processing  
licence.

- (a) the fish processed shall not exceed the total amount permitted for that operation, including such limits on species and quantity as the respective county executive committee member responsible for fisheries may, in consultation with Director-General may set;
- (b) the operator of the fish processing facility shall

ensure that—

- (i) all relevant health, hygiene and environmental laws and standards of Kenya are complied with; and
  - (ii) no fish is accepted for processing which has been caught in illegal, unreported or unregulated fishing operations.
- (c) any change in the information submitted in the application form shall be notified to the respective county executive committee member responsible for fisheries as soon as practicable and in any case not later than three working days from the date of change; and
- (d) each licensee shall comply with the requirements of applicable laws in Kenya relating to food safety.

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

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

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

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

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

(3) Notwithstanding any other provision of this Act, a fish processing licence may be suspended or terminated

where there has been non-compliance with this Act, the conditions of the licence or any other law of Kenya and the cause of such non-compliance has not been rectified and any fine, penalty, damages or determination made under the law have not been duly paid.

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

Inspectors to request information and keep records.

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

- (a) name of the seller;
- (b) name of the County;
- (c) name of the village the seller is from;
- (d) species of fish being sold;
- (e) number of fish being sold;
- (f) type of product being sold;
- (g) destination of the shipment;
- (h) name of the buyer;
- (i) date of sale;
- (j) date of shipment;
- (k) total weight of species being sold;
- (l) price per kilogram;
- (m) price of shipment;
- (n) means of transportation;
- (o) name of ship or plane;
- (p) number of flight or voyage;
- (q) customs requirement; and
- (r) the origin of fish or fish consignments.

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

information.

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

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

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

Returns.

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

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

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

#### *Aquaculture*

**157.** (1) No person shall establish or operate a commercial aquaculture establishment otherwise than under the authority of, and in accordance with the conditions of, an aquaculture licence granted by the Director-General under section 163.

Establishment and operation of aquaculture.

- (2) Any person who—
- (a) establishes or operates an aquaculture establishment in contravention of subsection (1); or
  - (b) harvests the products of such an establishment without the authority of the owner thereof

commits an offence and shall be liable, for a first offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

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

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

Registration of  
Aquaculture  
Establishment,  
notice of transfer.

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

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

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

Aquaculture  
permits.

(2) An aquaculture permit shall—

- (a) confer on the holder exclusive rights to harvest the products of the aquaculture establishment within the area specified in the permit;
- (b) be subject to such conditions as appear to the Director-General to be necessary or expedient for the regulation of aquaculture, the management of fisheries or for the economic benefit of Kenya and, without prejudice to the generality of the foregoing, may contain conditions relating to—
  - (i) the siting, design and materials used in the construction of the aquaculture establishment;
  - (ii) sanitary conditions for fish and fish products;

- (iii) measures for the prevention of the escape of fish farmed for aquaculture;
- (iv) measures for the prevention of fish diseases;
- (v) the marketing of the fish and fish products of the aquaculture establishment; and
- (vi) measures to be taken to minimize the escape of waste products and the pollution of land and water.

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

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

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

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

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

(4) The applicant shall give notice of the application,

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

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

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

**161.** (1) When considering an application submitted pursuant to section 163, the Director-General may have regard to—

Standards for approval of aquaculture licence.

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

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

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

Inspection of proposed site.

(2) The Director-General may require an applicant to

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

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

Conditions for  
aquaculture  
licences.

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

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

or promoting growth;

- (o) the disposal of dead or diseased aquaculture products, material or waste resulting from aquaculture;
- (p) the keeping of records;
- (q) compliance with conditions under other relevant legislation in Kenya; and
- (r) such other conditions as may be required or prescribed.

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

- (a) such licence for aquaculture automatically terminate if the facility is not developed within the period of time specified on the licence;
- (b) the cost of any destruction or damage during the licensing period that is caused by the negligence or malpractice of the licence holder, including the endemic spread of diseases, shall be borne by the licence holder; or
- (c) measure to be taken to minimize the escape of waste products and the pollution of land and water.

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

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

Exclusive rights.

## **PART XII—COMPLIANCE WITH, LICENCES, AUTHORIZATIONS AND REQUIREMENTS FOR FISHING VESSELS**

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

Unlicensed  
activities  
prohibited.

- (a) on the person's own account or in any other capacity, engage in any activity;

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

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

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

**166.** Where a foreign fishing vessel—

Foreign fishing vessels.

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

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

**167.** (1) The operator and master of a—

Stowage of fishing gear.

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

shall ensure that all fishing gear on board is at all

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

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

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

Transshipment at sea prohibited.

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

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

**169.** (1) The Cabinet Secretary may, on the recommendation of the Director-General, on behalf of the Government of Kenya and in accordance with the provisions of this Act, any applicable international agreement and national policies and strategies, permit access by foreign fishing vessels to the fishery waters for fishing or fishing related activities.

Fisheries access.

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

- (a) such international agreement, fisheries partnership agreement, joint venture or other written agreement or arrangement setting out the terms and conditions of fisheries access as are required pursuant to this Act and additional terms and conditions as may be recommended by the Director-General, with—
  - (i) States or regional economic integration organisations;
  - (ii) any fishing association or similar body;

- (iii) a publicly incorporated company; or
- (iv) such other persons or bodies as the Cabinet Secretary considers appropriate;
- (b) an access right granted by the Cabinet Secretary, taking into account the provisions of subsections (1) and (2) and in consultation with the Director-General, in accordance with such conditions as may be prescribed, including the—
  - (i) maximum number of such rights to be granted for a given period of time;
  - (ii) maximum period of time not exceeding six months during which such right can be held;
  - (iii) the authorized fish catch quantity not exceeding three hundred metric tonnes;
  - (iv) fishery or fisheries to which rights-based access applies;
  - (v) qualifications of applicants for such rights;
  - (vi) procedures for application for such rights;
  - (vii) criteria for the grant of such rights;
  - (viii) conditions for the use of such rights;
  - (ix) transferability of such rights; and
  - (x) conditions for the cancellation or revocation of such rights; or
- (c) a determination by the Cabinet Secretary, on the recommendation of the Director-General, that each vessel meets the requirements under this Act for licence issuance, including the standards for licence approval in section 131 and such other requirements that may be prescribed or required by national policy or by notice in the *Gazette* and—
  - (i) the vessel, its operator, master and beneficial owner have not engaged in or were not reasonably suspected to have engaged in illegal, unreported or unregulated fishing in any place during the five-year period prior to application for the license; and
  - (ii) the Cabinet Secretary determines there are

clear benefits to Kenya for issuing such a licence.

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

(4) The total quota allocated to foreign vessels under this section shall not exceed ten percent of the total available quota in any calendar year.

(5) An access right granted under this section by a foreign fishing vessel shall be valid for a period not exceeding six months and shall not be renewable.

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

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

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

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

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

Fisheries access requirements.

- (a) the operator to comply with all laws of Kenya;
- (b) the operator to hold, in respect of the vessel, a valid and applicable licence or authorization from the State in which it is registered to carry out

fishing or fishing related activities in the fisheries waters;

- (c) the operator to hold, in respect of the vessel, a valid and applicable license for fishing or fishing related activities issued in Kenya;
- (d) that the vessel is included on a list of authorized vessels maintained by any competent regional fishery body to which Kenya is a party or a cooperating non-party in accordance with the rules of that body;
- (e) that the vessel is not included on a list of illegal, unreported or unregulated fishing vessels maintained by any competent regional fishery body to which Kenya is a party or a cooperating non-party in accordance with the rules of that body, and that that access shall automatically terminate should the vessel be included on such a list;
- (f) the other party to take all measures required to ensure compliance with the requirements for fisheries access and otherwise pursuant to this Act, including by posting a performance bond in accordance with section 175 if required;
- (g) where fisheries access is agreed with a corporation, association or other body acting on behalf of its members or other persons, it shall be liable for the undischarged liabilities of its members or other persons arising out of any operations under the agreement and the agreement itself, including fees;
- (h) that any trade-related undertakings are consistent with the rules of the World Trade Organization;
- (i) the flag States of the vessels to fully comply with their duties and responsibilities as flag States under international law and standards as reflected in international fisheries instruments;
- (j) fees, levies and other charges to be fully paid at the required time, and all other undertakings are discharged within a stated time, or access will

automatically terminate should this not be done;  
and

- (k) such other requirements that may be made in accordance with the principles and objectives of this Act and as appropriate to implement any international obligation or undertaking of Kenya.

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

Fisheries access  
review.

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

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

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

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

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

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

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

- (a) a charter agreement vests operational control of the foreign fishing vessel in a Kenya citizen, resident or registered company;
- (b) the joint venture or charter agreement provides clearly identifiable benefits with no adverse effects to Kenya, its fisheries or its marine environment, including—
  - (i) development of the Kenya fishing industry;
  - (ii) training of Kenya citizens;
  - (iii) foreign exchange earnings for Kenya;
  - (iv) investment in Kenya;
  - (v) landing and domestic distribution activities; and
  - (vi) development of export activities;
- (c) establishment of a company under the Companies Act, with specified ownership, control and equity by Kenya citizens;
- (d) the joint venture, charter agreement, right or vessel approved under this Act, is in full compliance with all applicable laws in Kenya;
- (e) full and complete evidence is submitted, as the Cabinet Secretary may require, that all financial obligations of the foreign fishing vessel will be met promptly and effectively, including payment of all fees and any applicable fine, penalty or other determination which may result from the vessel's activities; and
- (f) in respect of a charter agreement, that the flag

State is responsible for exercising full and effective control over the vessel when it is in areas beyond the national jurisdiction of Kenya.

(3) Unless a company is otherwise established under a joint venture or charter agreement, where the operator of the foreign fishing vessel is a company incorporated outside Kenya and doing business in Kenya, it shall establish a place of business in Kenya that includes the requirements for significant benefit to Kenya under subsection (2)(b) and shall comply with the requirements of Part XVIII of the Companies Act. Cap 486.

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

**173.** (1) The operator of each foreign fishing vessel licensed pursuant to section 161 shall designate an agent in accordance with the terms of such agreement authorised to accept on behalf of the company service of process and any notices required to be served on the company and to provide such information as may be required under this Act with respect to the vessel and its activities, operator, master and crew members. Agents or companies to designated for purposes of legal process, information.

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

- (a) the full address of the registered or principal office of the company and their principal place of business in Kenya;
- (b) the present name and any former forename or surname, address and occupation of the person authorised to manage the company in Kenya;
- (c) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company; and

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

Cap. 486

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

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

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

(5) The operator of each foreign fishing vessel required to designate an agent pursuant to subsection (1) or

(2) shall ensure that the agent—

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

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

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

- (a) suspended for such period as the Director-General, in consultation with the Cabinet Secretary, thinks fit, but not less than one month; or
- (b) revoked, and the operator shall fully disclose information regarding the agreement between the operator and the agent in addition to the requirements of section 170 of this Act.

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

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

Preference for  
Kenya products.

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

**175.** (1) The Cabinet Secretary shall require either as a precondition of issuing a licence to any fishing vessel other than a Kenya fishing vessel, or at any time during the

Performance  
bond.

licensing period, that a performance bond be provided by the applicant in accordance with such procedures and in such form as may be prescribed.

(2) Performance bonds prescribed under subsection (1) shall serve as a financial assurance for the fulfilment of all obligations arising out of the licence and this Act, including potential costs relating to rescue, recovery of other costs and fines, penalties or compensation for violations against this Act, compensation to the crew of the fishing vessel for the loss of life or damage to their belongings on board as a consequence of a fishing vessel's foundering, piracy, fire or other loss affecting the vessel and shall be drawn upon in such manner as may be prescribed.

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

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

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

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

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

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

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

**176.** (1) Nothing in this Act or regulations made thereunder affects the entry of a vessel into a port in accordance with the laws of Kenya for reasons of *force majeure* or distress.

*Force majeure* or distress.

(2) The Director-General may grant a vessel that falls within the provisions of this Act, entry into port for reasons of force majeure or distress, provided that—

- (a) the vessel may enter port under its claim of force majeure or distress for such period of time necessary to remedy such claim; and
- (b) the vessel is permitted entry exclusively for the purpose of rendering assistance to persons or vessels in danger or distress.

#### **PART XIV— MONITORING, CONTROL AND SURVEILLANCE**

##### *Powers of authorized officers*

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

Authority and general powers of authorized officers.

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

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

(4) Where an authorized officer is required to

undertake duties in areas beyond national jurisdiction, unless provided otherwise in an international agreement or arrangement, the provisions of this Act are applicable as if the duties were performed within areas under national jurisdiction.

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

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

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

Identification of authorized officers.

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

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

Declaration of boarding and inspection.

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

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

Powers of hot pursuit.

**181.** (1) An authorized officer may, in the performance of his functions under this Act, without a warrant at any reasonable time—

Powers of entry and search of authorized officers.

- (a) stop, enter, board, stay on board, examine and search any vessel, vehicle or aircraft, including—
  - (i) any Kenya fishing vessel within and outside the Kenya fisheries waters; and
  - (ii) any other vessel to which this Act or any international agreement applies;
- (b) enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, or which are part of or attached to a dwelling house, which the authorized officer reasonably suspects are used for activities falling within the scope of this Act and—
  - (i) in or on which he has reason to suspect that evidence of an offence against this Act may be found; or
  - (ii) which it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with;
- (c) stop any person and examine any record, article, container, gear, apparatus, device, or fish in the possession of that person; and

- (d) pass across any land, and may examine and search any document, record, article, container, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.

(2) An authorized officer may detain any person, vessel, vehicle, or aircraft, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable the authorized officer to carry out an examination or search under this section.

(3) An authorized officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this section with a warrant issued by a court of competent jurisdiction.

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

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

- (a) inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;
- (b) make or take copies of any record, and for this purpose may take possession of and remove from the place where they are kept any such records, for such period of time as is reasonable in the circumstances;
- (c) if necessary, require a person to reproduce, or assist the authorized officer to produce in a useable form, information recorded or stored in a document;
- (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this Act, to provide such information as may be reasonably required for the monitoring or enforcement of this Act; and
- (e) otherwise remove and secure any item that may

reasonably be considered to be evidence of an offence against this Act.

(2) Where an authorized officer is questioning a person pursuant to subsection (1), among other things—

- (a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, buying, trade, import, export or possession of any fish; and
- (b) require that person or any other person to produce any permit, authority, approval, permission, licence, certificate or other document issued in relation to any vessel or person.

**183.** (1) An authorized officer may, arrest any person— Power of arrest.

- (a) whom he believes, on reasonable grounds, is committing or has committed an offence under this Act; or
- (b) who assaults him or any other authorised officer, inspector, observer or fishery dock observer in the exercise of his powers or performance of his functions under this Act.

(2) If an authorized officer arrests a person under subsection (1) the authorized officer shall cause the person to be delivered into the custody of a member of the Kenya Police Force as soon as practicable and that person shall thereafter be dealt with in accordance with the relevant law or laws,

**184.** (1) An authorized officer may, if he believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any license, authorization, authority, approval, permission, registration or certificate issued or otherwise effected under this Act— Power to give direction.

- (a) order the vessel as soon as reasonably practicable to the nearest available port in Kenya or such port as may be agreed between the master and the authorized officer; and

- (b) remain in control of the vessel at such port for such period as may be reasonably necessary for the purpose of the authorized officer to exercise any other powers under this Act, until the authorized officer permits the master to depart from that place, provided that the period shall not exceed seventy-two hours in total where there are no reasonable grounds to suspect contravention of this Act.

(2) After an authorized officer has given a direction under subsection (1), the authorized officer may also give to the master or any other person on board the vessel any reasonable direction in respect of any activity, method, procedure, item, gear, document, fish, property or thing while the vessel is proceeding to or remains in port.

**185.** (1) For the purposes of this section—

Seizure of vessels,  
etc.

- (a) a vessel's equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel;
- (b) aircraft operating independently of a vessel shall be subject to this section; and
- (c) "Court" means the High Court.

(2) An authorized officer may seize—

- (a) any vessel or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment or thing which the authorized officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act;
- (b) any fish which the authorized officer believes on reasonable grounds is being, or has been taken, killed, transported, bought, sold or found in the possession of any person in contravention of this Act and any other fish with which such fish is intermixed;
- (c) any article, record or thing which the authorized officer believes on reasonable grounds may be or may contain evidence of an offence against this Act;

- (d) retain any passport and seaman's book—
  - (i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;
  - (ii) of any person arrested, until that person is brought before a court; or
  - (iii) pursuant to any order of the Court; and
- (e) any other item which the authorized officer has reasonable grounds to believe—
  - (i) has been or is being used in the commission of an offence against this Act;
  - (ii) has been seized or forfeited under this Act; or
  - (iii) has been unlawfully removed from the custody under this Act.

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

(4) The authorized officer shall supply a written notice of seizure stating the reasons thereof to the person from whom any article or thing is seized or any person whom the authorized officer believes is the owner or is otherwise entitled to possession of the article or thing seized.

**186.** (1) An authorized officer may remove any part from the vessel seized pursuant to this Act for the purpose of immobilizing that vessel where the operator fails to co-operate but, in any event, the authorized officer shall take reasonable measures to ensure that such removal shall not cause a permanent or material damage to the vessel.

Removal of parts  
from seized  
vessels, etc.

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

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

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

- (b) hold or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or
- (c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilised pursuant to this Act.

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

**187.** (1) Where an authorized officer has reason to believe that any fishing vessel, fishing gear, fish or fish product has been abandoned for the purpose of avoiding prosecution, he shall apply to the Court for an Order to dispose of the fishing vessel, fishing gear, fish or fish product.

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

(2) Where a fishing vessel or fishing gear or fish product is abandoned, and an authorized officer or inspector believes that any person is liable to be investigated, searched or arrested in connection with a commission of an offence under this Act, or that such person has absconded to any place within or outside Kenya, or has concealed himself so that he cannot be searched, arrested or otherwise investigated, the authorized officer or inspector may cause investigation measures to be taken in relation to the area or premises and property previously in possession, occupation or under control of the suspect.

*Appointment and functions of, observers and inspectors*

**188.** (1) There shall be established an observer programme for the purpose of collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including, among other things—

Observer programme.

- (a) the species, quantity, size, age, and condition of fish taken;
- (b) the methods by which, the areas in which, and the depths at which, fish are taken;
- (c) the effects of fishing methods on fish, and the

environment;

- (d) all aspects of the operation of any vessel;
- (e) processing, transportation, transshipment, storage, or disposal of any fish;
- (f) monitoring the implementation of management measures and applicable international conservation and management measures; and
- (g) any other matter that may assist the Director-General to obtain, analyse, or verify information for fisheries scientific, management, and compliance purposes.

(2) An observer may be deployed as may be directed by the Director-General in accordance with this Act, or any applicable international agreement or arrangements, including an agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or in co-operation with the Government of Kenya, or any international conservation and management measures on any vessel used for fishing, transshipment, transportation or landing of fish within and beyond the Kenyan fishery waters and such other uses as may fall within the scope of this Act.

(3) An observer shall provide proof of identification to the person in control of a vessel under subsection (2).

**189.** (1) The Director-General may, in writing, appoint—

- (a) inspectors for purposes of monitoring compliance and management and auditing, including inspections of vessels, premises and facilities and aquaculture establishments to gather information, and report on the fulfilment of pre-licensing requirements and any obligations pursuant to this Act; and
- (b) observers for purposes of the observer programme established under section 188, in accordance with such standards and procedures as may be prescribed or approved by the Director-General.

Appointment of,  
and identification  
by inspectors and  
observers.

(2) An inspector or observer shall on request identify himself and produce proof of identification as an inspector or observer.

**190.** Any observer who performs duties in areas beyond national jurisdiction in accordance with this Act, any international agreement or international conservation and management measures shall, unless the contrary is provided, continue to be subject to all provisions of this Act, and all proof of identification as an operators, crew members or other relevant persons towards such observer under this Act shall be fully applicable.

Application of Act to observers in areas beyond national jurisdiction.

**191.** (1) The operator of any fishing vessel required as a condition of licence granted to it to land all or part of its catch in Kenya shall cause such landings to take place only where an observer or inspector is present to monitor the offloading and otherwise perform his or her functions pursuant to this Act.

Requirements for monitoring of offloading.

(2) An operator who does not comply with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, and in addition the applicable licence shall be cancelled and no further licence shall be issued for at least one year from the time of the offence in respect of the vessel or operator.

**192.** (1) The operator and each crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed or to which an inspector or fishery dock observer has been assigned, shall allow and assist the inspector, observer or fishery dock observer, in the performance of his official duties, and shall allow the inspector, observer or dock observer to—

Duties of operators, etc, to inspectors and observers.

- (a) board such vessel at such time and place as the Director-General may require;
- (b) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;
- (c) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as he may have taken or used on board the vessel;

- (d) gather such information relating to fisheries as may be required for purposes of carrying out the objectives of this Act; and
  - (e) disembark at such time and place as the Director-General may require or in accordance with an applicable access agreement, provided it is in accordance with the safe operation of the vessel.
- (2) The provisions of subsection (1) shall apply—
- (a) when the vessel is at any place in the fisheries waters or such other place where fish taken from the fisheries waters is unloaded or transhipped as may be required in the applicable licence, access agreement or international conservation and management measures, or as may be otherwise authorized under any applicable access or other agreement, or in the applicable licence; and
  - (b) in the case of a Kenya fishing vessel operating under an authorization to fish in the high seas in areas subject to international conservation and management measures, when the vessel is on the high seas in an area subject to such international conservation and management measures or otherwise in accordance with such measures or the applicable license or authorization.
- (3) An operator and crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed or an inspector is assigned in accordance with this Act who does not comply with subsection (1) commits an offence and shall be liable on conviction to a fine not less than ten million shillings or to a term of imprisonment not less than five years or to both.

**193.** (1) The operator and licence holder in respect of any vessel on which an observer is placed shall—

Conditions for  
observers.

- (a) provide full board, accommodation and access to any (cooking and toilet) facilities and amenities at officer level or similar standard approved in writing by the Director-General and free of charge at all times;
- (b) provide a safe work area adjacent to the sample

collection site, for sampling and storage of fish to be sampled, of 4.5 square meters, including the observer's sampling table and which permits the observer to stand upright and have a work area at least 0.9 m deep in the area front of the table and scale;

- (c) notify the observer at least fifteen minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer;
- (d) collect bycatch when requested by an observer;
- (e) collect and carry baskets of fish when requested by an observer;
- (f) allow an observer to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch;
- (g) take measurements, including of decks, codends, and holding bins; and
- (h) ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of any observer involved.

(2) An operator or licence holder of a vessel who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding three years or to both, and in addition the applicable licence or authorization may be suspended or cancelled.

*Protection of and duties owed to authorized persons*

**194.** For the purposes of this portion, “authorized person” includes any authorized officer, inspector or observer appointed pursuant to this Act.

Authorized persons.

**195.** (1) No liability shall attach to the Service or a county government and their officers, employees or other persons acting under the authority of the Service or a county government, including persons with delegated authority and any person assisting an authorized officer pursuant to section 23, for any damage sustained by any

Protection of authorized persons from liability.

person as a result of any act or omission done or made in good faith in performance of their duties under this Act or any other law relating to fisheries.

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

- (a) and the master is required to remain in control the master shall be responsible for the safety of the vessel and each person on board the vessel until the vessel arrives at the designated place; and
- (b) no claim may be made against any authorized person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.

(3) The State shall not be held directly or indirectly liable for an act or omission of any authorized person or person assisting an authorized officer, unless such person would incur liability for the act or omission.

**196.** The Service or a county government as the case may be, shall ensure full group insurance coverage for all authorized persons.

Insurance for  
authorized  
persons.

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

Obstruction, etc.  
of authorized  
persons.

(2) No person being the operator or a crew member of a vessel shall—

- (a) fail or refuse to allow and assist any person identified as an authorized person—
  - (i) to safe board the vessel;
  - (ii) to have full access to and use of all facilities, gear and equipment on board which such authorized person may determine are necessary to carry out his duties, including full access to the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish; that are not of a specified size or dimension;
  - (iii) to have full access to the vessel’s records including its logs, charts and documentation and other information relating to fishing,

whether required to be carried and maintained under this Act or otherwise, for purposes of carrying out functions and exercising powers under this Act, including records inspection and copying;

- (iv) to have access to all navigational and communications equipment;
- (v) to take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes;
- (vi) where such person is forced by circumstances to stay on board the vessel for a prolonged period of time, provide him, while on board the vessel, with food, accommodation and medical facilities equivalent to that accorded to officers of the vessel, at the expense of the operator; and
- (vii) to safe disembark from the vessel;
- (b) fail or refuse to allow an audit, inspection, examination or search which is authorized by or under this Act to be made or impedes the conduct of such audit examination or search;
- (c) in respect of any premises, facility, including those used for aquaculture, cold storage, export and processing, landing site or other place where person(s) engage in activities within the scope of this Act fail or refuse to facilitate by all reasonable means the entry into and inspection by an authorized person in accordance with this Act of—
  - (i) the entire premises, facility, landing site or other place including storage areas; and
  - (ii) any fish or fish product, fishing gear, equipment or records;
- (d) fail, refuse or neglect to immediately and fully comply with every lawful instruction or direction given by an authorized person;
- (e) deny a request by an authorized person made in

the course of exercising his duties and powers under this Act, including requests for access to records, documents, areas, gear and navigation and communication equipment, and that the equipment be turned on for his or her use;

- (f) when lawfully required to state his name, date of birth and place of abode to an authorized person fail or refuse to do so, or state a false name, date of birth or place of abode to the authorized person;
- (g) when lawfully required by an authorized person to give information, give information which is false, incorrect or misleading in any material respect;
- (h) resist lawful arrest for any act prohibited by this Act;
- (i) aid, incite or encourage another person to assault, resist, intimidate or obstruct an authorized person who is carrying out his or her duties or exercising his powers under this Act, or any person lawfully acting under an authorized officer's instructions or in his or her aid;
- (j) interfere with, delay or prevent by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act in contravention of this Act;
- (k) fail or refuse to allow an authorized person to carry out all duties safely, or to take all reasonable measures to ensure the safety of an authorized person as appropriate in the performance of his duties;
- (l) impersonate or falsely represent himself or herself to be an authorized officer, or to be a person lawfully acting under the Director-General's instructions or in his aid;
- (m) impersonate or falsely represent himself to be the master or an officer, or not to be the master or an officer, of a fishing vessel;
- (n) where the vessel is seized by an authorized person, fail to sail such vessel to a place in Kenya designated by the authorized officer or fail to ensure the safety of all those on board;

- (o) bribe or attempt to bribe an authorized person;
- (p) interfere with an authorized person in the performance of his duties; or in any other way obstruct or hinder an authorized person in the exercise of his powers, duties or functions under this Act;
- (q) use abusive or threatening language or insulting gestures or behave in a threatening or insulting manner towards an authorized person who is carrying out his duties or exercising his or her powers under this Act, or towards any person lawfully acting under the authorized officer's instructions or in his aid; or
- (r) obstruct, resist, delay, refuse boarding to, intimidate, or kidnap an authorized person who is performing his duties or exercising his powers under this Act, or any person lawfully acting under an authorized officer's instructions or in his aid; or
- (s) breach any other duty to an authorized person as required under this Act.

(3) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not less than fifty million shillings or to a term of imprisonment not exceeding ten years or to both, and in addition the applicable licence may be suspended or cancelled.

*Requirements for vessel monitoring systems*

**198.** (1) The Director-General may establish and operate vessel monitoring systems for purposes of monitoring, control and surveillance, and managing the operations of fishing vessels under this Act.

Vessel  
Monitoring  
Systems.

(2) The Director-General may require the operator of any fishing vessel, as a condition of licence or otherwise, to install, maintain and operate in accordance with such conditions as may be prescribed and such other conditions that may be required by the Director-General, a mobile transceiver unit or other device or equipment that is an integral component of a vessel monitoring system at all times while the fishing vessel is in the fishery waters or, in

respect of a Kenya fishing vessel, in areas beyond national jurisdiction or such other area as may be prescribed or agreed in an international agreement or international conservation and management measures.

(3) The operator of each fishing vessel shall comply with all licence conditions and requirements imposed pursuant to subsection (2) and shall, where the mobile transceiver unit or other device or equipment ceases to operate, immediately—

- (a) notify the Director-General when the mobile transceiver unit or other device ceases to operate in accordance with such requirements; and
- (b) cause the vessel to cease fishing except as otherwise authorized by the Director-General.

(4) Where the mobile transceiver unit or other device ceases to operate as required, the operator shall immediately notify the Director-General and submit to him a report of the vessel's name, call sign, position expressed in latitude and longitudes to the minutes of arc and the date and time of the report at intervals of one hour or such other period as the Director-General may notify the operator, and—

- (a) cause the vessel to cease fishing except as otherwise authorized by the Director-General; or
- (b) cause the vessel to immediately return to the port of Mombasa, Lamu and Shimon.

(5) The operator shall comply with such other conditions that may be prescribed and such additional conditions that may be required by the Director-General, including—

- (a) the type of vessel monitoring system equipment to be used;
- (b) installation procedures;
- (c) operational requirements;
- (d) information requirements;
- (e) accuracy requirements;
- (f) confidentiality; and

(g) reports.

(6) No person shall—

- (a) without lawful excuse render inoperative or otherwise interfere with a mobile transceiver unit or other device installed pursuant to this Act so that it fails to operate accurately or in accordance with any prescribed conditions;
- (b) whether within, or in areas beyond, national jurisdiction, intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any part of mobile transceiver unit or vessel monitoring system aboard a vessel licensed pursuant to this Act, or intentionally feed or input into that system information or data which is not officially required or is meaningless; or
- (c) intentionally, recklessly or negligently divulge information or data obtained from a vessel monitoring system or a system of reporting or recording required or permitted under this Act, other than in the course of duty and to a person or persons entitled to receive that information or data.

(7) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not less than ten million shillings or to imprisonment for a term less than ten years or to both, and in addition the applicable licence may be suspended or cancelled.

(8) The Director-General may require the operator of any fishing vessel, as a condition of licence or otherwise, to install, maintain and operate an electronic monitoring system in accordance with such conditions as may be prescribed.

*Requirements for use of ports*

**199.** (1) The Cabinet Secretary shall designate by notice in the *Gazette*, the port or ports to which vessels engaged in fishing and fishing related activities may request entry.

Designation of  
ports.

(2) The Cabinet Secretary shall provide a list of

ports designated pursuant to subsection (1) to the Food and Agriculture Organization of the United Nations and to any regional fisheries management organisation pursuant to applicable conservation and management measures.

**200.** (1) No foreign fishing vessel shall use a port in Kenya for landing, transshipping, packaging, or processing of fish or for other port services including, *inter alia*, refueling and resupplying, maintenance and dry docking, unless—

Use of port without authorization prohibited.

- (a) the port has been designated for use by foreign fishing vessels;
- (b) the operator has given at least forty-eight hours' advance notice or such other notice as may be prescribed or required by the Director-General;
- (c) the operator has provided to the Director-General such information as may be prescribed or required;
- (d) in the case of a foreign fishing vessel, a written authorization for the use of such port has been issued by the Director-General; and

(e) where the Director-General has authorized entry of such vessel into port, the master of the vessel or, in the case of a foreign fishing vessel, the vessel's representative presents the authorization for entry into the port to an authorized officer or other competent officer upon the vessel's arrival at port.

(2) The operator, master and charterer of a vessel which contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

**201.** (1) A vessel seeking to enter a port may be denied entry, where there is evidence that the vessel—

Vessels may be prohibited from entering port.

- (a) has engaged in illegal, unreported and unregulated fishing, or in fishing related activities in support of such fishing; or
- (b) it appears on a list of vessels which have engaged in illegal, unreported and unregulated fishing or

fishing related activities in support of such fishing adopted by a regional fisheries management organization.

(2) Without prejudice to subsection (1), the vessel may be allowed to enter the port for the purpose of –

- (a) inspecting the vessel; and
- (b) taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring or eliminating illegal, unreported and unregulated fishing and fishing-related activities in support of such fishing.

(3) The Director-General shall communicate any decision taken under this section to the vessel or its representative.

(4) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not less than fifty million shillings or to imprisonment for a term not less than ten years or to both.

**202.** (1) Where a foreign fishing vessel has entered one of its ports, the Director-General shall deny that vessel the use of the port for the landing, transshipping, packaging or processing of fish which have not been previously landed, or for refueling, resupplying, maintenance, dry-docking and other port services where—

- (a) the vessel does not have a valid and applicable authorization to engage in fishing or fishing-related activities required by its flag State;
- (b) the vessel has not been granted a valid and applicable licence to engage in fishing or fishing related activities required under this Act;
- (c) there is clear evidence that the fish on board was taken in contravention of applicable requirements of any coastal State in respect of areas under the national jurisdiction of that coastal State;
- (d) the flag State of any foreign fishing vessel does not confirm within a reasonable period of time on the request of the Director-General that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries

Denial of the use of port to a foreign fishing vessel.

management organization; or

- (e) there are reasonable grounds to believe that the vessel was otherwise engaged in illegal, unreported or unregulated fishing or fishing-related activities in support thereof unless the operator of the vessel can establish—
  - (i) that it was acting in a manner consistent with relevant conservation and management measures; or
  - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not at the time of provisioning a vessel referred to in paragraph (e).

(2) Notwithstanding subsection (1), a vessel shall not be denied the use of port services essential to the safety and health of the crew and the safety of the vessel, provided these needs are duly proven, or, where appropriate, for the scrapping of the vessel.

(3) The operator of a vessel which uses a port where such use has been denied pursuant to subsection (1) commits an offence and shall be liable on conviction to a fine not less than fifty million shillings or to imprisonment for a term not less than ten years or to both.

(4) Any person who, knowingly or having reasonable cause to believe that a vessel has been denied the use of port, takes any action in assisting such vessel to use the port, or to provide it with goods or services which have been denied, commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years or to both.

**203.** (1) In carrying out inspections of foreign fishing vessels in port, authorized officers shall follow such procedures as may be prescribed or the Director-General may require to the extent possible, and—

Inspection of  
foreign fishing  
vessels in port.

- (a) present to the master of the vessel an identification document prior to an inspection;

- (b) in case of appropriate arrangements with the flag State of a foreign fishing vessel, invite that State to participate in the inspection;
- (c) not interfere with the ability of the master of a foreign fishing vessel, in conformity with international law, to communicate with the authorities of the flag State;
- (d) make all possible efforts to—
  - (i) avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of authorized officers on board, and to avoid action that would adversely affect the quality of the fish on board;
  - (ii) facilitate communication with the master or senior crew members of the vessel; and
- (e) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel.

(2) A report of the inspection shall promptly be provided to the Director-General in such form as may be prescribed or as the Director-General may require.

#### **PART XV — REQUIREMENTS FOR ARRESTED PERSONS AND SEIZED ITEMS**

**204.** (1) In cases of arrest or detention of foreign fishing vessels for a contravention of this Act, the Director-General shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

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

(2) Any foreign fishing vessel and its crew arrested for the contravention of any provision of this Act that governs any act of fishing or fishing-related activity shall be promptly released upon the posting of a reasonable bond or other security.

(3) In the absence of any agreement to the contrary with the State of which the vessel or its crew are nationals, penalties for violations of this Act in the Kenya Exclusive Economic Zone shall not include imprisonment or any form

of corporal punishment.

**205.** (1) A person arrested under this Act shall promptly be brought before the Court of applicable jurisdiction or be subject to administrative proceedings in accordance with this Act.

Prompt judicial or administrative proceedings for arrested persons.

(2) Where a person is released without being charged or where prosecution is not instituted within thirty days after a person is charged, all items seized shall be returned to the person.

(3) Where a person does not appear to answer a charge within ninety days after her arrest, any item seized from that person shall be forfeited to the State.

**206.** If the master of a fishing vessel is granted bail for an offence under this Act, the court granting bail may, if it thinks it necessary or desirable in the circumstances of the case, impose a condition whereby, pending the conclusion of the case, the accused is denied access to the vessel or is allowed access only on conditions determined by the Court.

Conditions for bail.

**207.** (1) Any item seized pursuant to this Act shall be delivered into the custody of the Director-General.

Delivery and notice for seized items.

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

**208.** (1) Any fish or fish products seized by an authorized officer under this Act may be, at the direction of the Director-General or County Director as the case may be, sold and the proceeds of the sale held and dealt with pursuant to this Act.

Disposal of perishable items.

(2) If any fish or other thing of a perishable nature is seized under this Act, the Director-General or County Director as the case may be may, notwithstanding any other provision of this Act—

- (a) return the fish or other thing to the person from whom it was seized on receiving adequate cash security equivalent to the value of the fish or thing; or

- (b) cause the sale of the fish or other thing at a price which is reasonable in the circumstances, and, if court proceedings are instituted, pay the proceeds of the sale into a suspense account of the Service pending a court order in respect of the forfeiture of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized:

Provided that if, after making all reasonable efforts, the Director-General or County Director as the case may be is unable to sell the fish or other thing, or where such fish or other things are unfit for sale, he may dispose of the same in such other manner as he deems fit, including by destruction.

(3) Where any fish or fish products are sold or otherwise disposed of pursuant to this section, the fisheries inspector shall—

- (a) give the person from whom such fish or perishable goods was seized a receipt stating the date on which the goods were sold or otherwise disposed of, the quantity of such goods, and in the case of a sale, the amount realized; and
- (b) pay the proceeds of sale into Court.

(4) The proceeds of any sale under subsection (3) shall be dealt with by the Court according to law.

**209.** (1) Upon seizure of a vessel, vehicle, aircraft or other item, reasonable efforts shall be made to notify the owner or owners of the property seized or detained pursuant to this Act of the seizure or detention of that property.

Notice of  
detainment or  
seizure of  
property.

- (2) A notice under the section shall—
  - (a) enumerate the reasons for the seizure or detention;
  - (b) describe the steps required for reclamation of the seized and or detained property; and
  - (c) make the owner or owners aware of any deadlines and potential forfeiture of property pursuant to this Act.

**210.** (1) If any vessel, vehicle, aircraft or item has been seized pursuant to this Act, and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within ninety days of the service or attempted service of notice pursuant to this Act, the Director may apply for the items to be forfeited to the State and the Court shall make such order as it shall deem fit.

Treatment of items detained or seized.

(2) If the lawful owner of a vessel, vehicle, aircraft or item seized pursuant to this Act cannot be traced within ninety days of the service or attempted service of notice pursuant to this Act, the seized item shall be forfeited to the State.

(3) If the owner of a vessel, vehicle, aircraft or thing or the person having the possession, care or control of it at the time of its seizure or detention is convicted of an offence in terms of this Act and a fine is imposed, the vessel, vehicle aircraft or thing may be detained until all fines, orders for costs and penalties imposed in terms of this Act are paid.

**211.** (1) The Court may, on application, order the release of any fishing vessel, vehicle, aircraft or other item seized under this Act on receipt of such bond or other form of security as it may determine.

Release of seized goods.

(2) In determining the value of the bond or other form of security in respect of a foreign fishing vessel or a fishing vessel which is not a Kenyan fishing vessel, the Court shall have regard to—

- (a) the aggregate amount of the fair market value of the property to be released;
- (b) an estimated total fine or other penalty provided for the offence or offences charged or likely to be charged;
- (c) the costs the prosecution would be likely to recover if a conviction were entered;
- (d) and any damages and costs assessed as a consequence of the offence or offences charged or likely to be charged and may set the value at such aggregate amount.

(3) Notwithstanding the provisions of subsection (2), the amount determined by the Court under this Act shall not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offence charged, whichever is greater.

(4) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1), the Court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.

(5) The release of any bond or other form of security under this Act shall be conditional upon—

- (a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or in connected with in the commission of an offence under this Act; or
- (b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or in connection with the commission of an offence under this Act—
  - (i) payment in full within thirty days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and
  - (ii) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(6) Nothing in subsection (1) shall require a Court to release any vessel, vehicle, aircraft or other item if it may be required as an exhibit in court proceedings or is reasonably required for any further investigations of offences against this Act.

**212.** Any bond, security or net proceeds of sale held in respect of any vessel, vehicle, aircraft or other item shall be

Application of  
bond, etc.

applied as follows—

- (a) the discharge of any forfeiture ordered under this Act; and
- (b) the payment of all fines or penalties for offences under this Act or penalties imposed under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item.

**213.** (1) No person shall remove a vessel, vehicle, aircraft or other item held under this Act and which is in the custody of the Government whether or not the person knew that the vessel, vehicle, aircraft or other item was held in the custody of the Government.

Unlawful removal of seized goods.

(2) Where any vessel, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of the Government, the vessel, vehicle, aircraft or other item shall be liable to seizure anywhere at any time within the jurisdiction of Kenya.

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

**214.** The State shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other item while in the custody of the State pursuant to this Act, provided that the State takes reasonable care given the circumstances.

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

#### **PART XVI— EVIDENCE**

**215.** The Director-General or any person designated in writing by him may give a certificate stating that—

Certificate evidence.

- (a) a specified vessel was or was not on a specified date or dates a Kenyan fishing vessel or a foreign fishing vessel;
- (b) a person was or was not on a specified date or dates the holder of any specified license, authorization or registration;
- (c) a specified fishing vessel was not on a specified date or dates the subject to a specified license, authorization or registration;
- (d) an appended document is a true copy of the

licence or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;

- (e) a particular location or area of water was on a specified date or dates within the Kenya fishery waters or a closed, limited, restricted or in any other way controlled area of the Kenya fishery waters, or an area of the Kenya fishery waters subject to specified conditions;
- (f) an appended chart shows the boundaries on a specified date or dates of the Kenya fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
- (g) a particular item or piece of equipment is fishing gear;
- (h) the cause and manner of death of or injury to any fish;
- (i) an appended document is a true copy of an approved charter agreement or an access agreement;
- (j) a call sign, name, or number is that of or allotted to a particular vessel under any system of naming or numbering of vessels;
- (k) an appended position or catch report was given for a specified vessel;
- (l) a specified fishing vessel is included on a list of illegal, unreported and unregulated fishing vessels or authorized fishing vessels established by a regional fisheries management organization or pursuant to an international agreement; or
- (m) a certificate as to the condition of fish given under this Act was made in accordance with this Act and was made by the person who is signatory to the certificate.

**216.** (1) Unless the contrary is proved, a document purporting to be a certificate issued under section 217 shall be deemed to be such a certificate and to have been duly

Validity and  
procedure for  
certificate.

issued.

(2) Where a certificate is served on a defendant seven or more days before its production in court in any proceedings under this Act, the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(3) Where a certificate is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing on the prosecutor, then the certificate shall, unless the Court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(4) Where any objection is notified under subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(5) Any certificate shall be titled “Certificate made under section 217, Fisheries Management and Development Act” and no such certificate may be used as conclusive proof of the facts averred therein unless it is served with a copy of sections 217 and 219 of this Act.

(6) Any omission from or mistake made in any certificate issued under section 217 shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced by it.

(7) Where in any proceedings a certificate made under section 217 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.

(8) In this section “certificate” means a certificate issued under section 217.

**217.** (1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence committed, then a place or area stated in a certificate by an authorized officer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the

Certificate as to the location of a vessel.

period of time stated.

(2) An authorized officer shall in a certificate made under subsection (1) state—

- (a) his name, address, official position, country of appointment and provision under which he is appointed;
- (b) the name, if known, and call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits;
- (f) a declaration that the authorized officer checked the position-fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
- (g) where a position fixing instrument which is not judicially noticed as being accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 216 shall apply to a certificate given under this section as if it had been a certificate issued under section 215.

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

**218.** (1) The readings of any mobile transceiver unit or other electronic location device integral to a vessel monitoring system shall be admissible as evidence and may be used as *prima facie* evidence of the facts that they aver.

Electronic  
location device.

(2) The readings of the devices referred to in subsection (1) may be made from a printout or as observed from a visual display unit.

(3) Any electronic location device shall be required to

be capable either wholly or partially in itself of producing the readings concerned and not merely be a receiver of information or data.

**219.** (1) Where a photograph is taken of any fishing or fishing related activity and the date and time on and position from which the photograph is taken are simultaneously superimposed upon the photograph, the date and time shall be *prima facie* evidence that the photograph was taken on the date, at the time and in the position so appearing.

Photographic  
evidence

(2) The provisions of this section shall apply only when—

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
- (b) the instruments which provide the date, time and position are commonly recognised as being accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.

(3) The provisions of this section shall not affect the admissibility of photographic evidence in any way.

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

Presumptions.

(2) All fish found on board any fishing vessel in respect of which false or misleading information or no information has been provided prior to the vessel's entry into port as required pursuant to this Act, shall unless the contrary is proved, be presumed to have been caught during the commission of an offence or during illegal, unreported or unregulated fishing activities.

(3) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took

place.

(4) The production of a written copy or extract of the entry certified by a fisheries inspector as a true copy of the accurate extract shall be *prima facie* evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.

(5) Where in any legal proceedings relating to an offence under this Act—

- (a) an authorized officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters or taken by the use of illegal gear, and
- (b) the Court considers that, having regard to that evidence the grounds are reasonable,

all the fish shall be presumed to have been so taken, unless the contrary is proved.

(6) Where any information is given for a fishing vessel under this Act or an access agreement in relation to any fishing activity of a fishing vessel, it shall be presumed to have been given by the master, owner or charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.

(7) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel, unless proven otherwise.

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

(9) For the purposes of subsection (6), a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any global positioning system.

(10) The readings from any vessel monitoring, communications or navigation equipment required under this Act, either made from a printout or observed from a visual display unit, and which are capable either wholly or

partly of producing the readings concerned and are not merely receivers of information or data, when checked for correct working and read by a competent operator, shall, unless the contrary is proved, be presumed to give accurate readings within the manufacturers specified limits.

(11) Unless the contrary is proved, any person who is found in possession of any illegal fishing gear, including explosives, poison or any device capable of producing an electric shock on or near the fishery waters shall be presumed to be undertaking an unlawful activity contrary to this Act.

**221.** (1) Where, in proceedings under this Act, a person is charged with having committed an offence involving an act for which a license, authorization or other permission is required, the onus shall be on that person to prove that at the relevant time, the requisite license or authorization or other permission was held by that person.

Onus of proof.

(2) Where a person is charged with the contravention of section 161, the onus shall be on that person to prove that his entry into the fishery waters was for a purpose recognized by international law.

(3) Where a person is charged with the contravention of section 120, the onus shall be on that person to prove that the information given was true, complete and correct.

**222.** (1) No person shall, being on board any vessel being pursued, about to be boarded or notified that it shall be boarded by an authorized officer, whether in the Kenya fishery waters or beyond areas under national jurisdiction, throw overboard or destroys any fish, equipment, document, explosive, noxious substance or other item with intent to avoid its seizure or the detection of any offence against this Act.

Interference with evidence and avoidance of seizure.

(2) No person shall destroy or abandon any fish, fishing gear, net or any other fishing appliance, electric shock device, explosive, poison or any other noxious substance, or any other thing with intent to avoid their seizure or the detection of an offence against this Act.

(3) No person shall remove from legal custody any vessel, fish, equipment or other item, or do any act or omission by which a vessel, fish, equipment or other item held in legal custody may be so removed, whether or not he

knew that the vessel, fish, equipment and other item was being held in custody.

(4) No person shall intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any premises or licensed aquaculture establishment.

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

**223.** (1) No person shall tamper with any item, document or thing that may be used in evidence of non-compliance with this Act, including evidence relating to the catching, loading, landing, handling, transshipping, transporting, processing, possession, aquaculture and disposal of fish.

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

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

## **PART XVII —SUMMARY ADMINISTRATIVE PROCEEDINGS**

**224.** (1) The Director-General may, after consultation with the Cabinet Secretary and the written consent of the Director of Public Prosecutions, proceed administratively against any person who has been charged with a contravention of this Act.

Decision to proceed administratively.

(2) The Director-General shall promptly notify the person charged that the person may, within twenty-four hours of receiving such notification, consent to the compounding of the offence under this section

(3) An offence shall be compounded under this section where the person charged—

(a) admits in writing to the offence; and

(b) consents to compounding proceed after being fully informed about these proceedings.

(4) Where a person consents to the compounding of an offence, the person shall—

- (a) not engage in any activity within the scope of this Act until the penalty has been paid in full; and
- (b) be deemed to have consented to any seizure in accordance with this Act in relation to the offence, and to have waived any right to a hearing in the judicial process.

(5) Upon receiving the written consent under subsection (4), the Director-General or his designee may handle the matter in accordance with this Part, in consultation with the Director-General of Public Prosecutions.

(6) Where the person fails to respond to the Director-General's written notice within twenty-four hours, the Director-General shall refer the matter to prosecution.

**225.** (1) The Director-General may, where the person charged has fulfilled the conditions of section 224 (4), dispose of such violation by causing a compounding agreement to be drawn up by the Director of Public Prosecutions to formalise the terms and conditions for the Director-General to accept on behalf of the Government from such person an administrative penalty, the amount of which shall—

Summary  
administrative  
proceedings.

- (a) not exceed the maximum fine or penalty prescribed under this Act, for the offence being compounded, in addition to the fair market value of any fish caught illegally;
- (b) not be less than the minimum level of fine calculated in conformity with the guidelines required pursuant to section 189; and
- (c) where the person charged has committed the same or a similar offence in the past, an amount not less than the fine previously set plus an additional ten per cent.

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

(3) The compounding procedure shall be null and void if the full amount of the penalty as determined under subsection (1) is not paid within three working days of the

notification of the assessment of the penalty assessment to the person charged and the matter shall immediately be referred to the Court.

(4) When the penalty is paid in full under this section, the Director-General may order the release of any article, items, fish or fish products seized under this Act or proceeds of sale of such items, fish or fish products on such conditions as he or she may determine.

(5) Where the person is unable to pay the determination in full, that person may enter into an agreement for payment in instalments with the Director-General and Attorney General.

(6) In any proceedings brought against any person for an offence against this Act, it shall be a defence if such person proves that the offence for which he is charged has been compounded under this section.

(7) The Director-General may confiscate any fishing gear or other appliance used for illegal fishing connected with the vessel.

(8) Any person aggrieved by a decision of the Director-General under this section may appeal to the High Court within thirty days of the Director-General's decision.

#### **PART XVIII —JURISDICTION, PROSECUTION, FORFEITURE, LIABILITIES AND OTHER ACTIONS**

**226.** (1) Any act or omission in contravention of any provision of this Act committed—

Jurisdiction of the  
Court.

- (a) by a person or in respect of a vessel within the Kenya fishery waters;
- (b) outside the Kenya fishery waters by any Kenya citizen, or in respect of a vessel or by person ordinarily resident in Kenya;
- (c) outside the Kenya fishery waters by any person or vessel in contravention of section 104; or
- (d) by any person on board any Kenya fishing vessel, shall be dealt with in a court determined by the Chief Justice, but where a foreign fishing vessel is involved, the matter shall be dealt with by the High Court and the judicial proceedings shall be taken as if the act or omission

had taken place within the of Kenyan fishery waters.

(2) Where an authorized officer is exercising any powers conferred on him outside the Kenya fishery waters in accordance with this Act, any act or omission of any person in contravention of a provision of this Act shall be deemed to have been committed within the Kenya fishery waters.

(3) Notwithstanding any provision of any other law, an information or charge in respect of any offence against this Act may be laid at any time within one year of the commission of the offence.

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

Conduct of  
prosecutions.

Cap. 75.

**228.** (1) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, the Court may order the forfeiture of any of the following—

Forfeiture.

- (a) any fish, fish product, fishing vessel (including its gear, furniture, appurtenances, stores, cargo and aircraft), vehicle, aircraft, gear, equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;
- (b) where a fishing vessel, vehicle or aircraft was used in the commission of an offence, any fish on board such vessel, vehicle or aircraft at the time of the offence;
- (c) where a storage facility was used in the commission of the offence, any fish or fish products in the facility at the time of the commission of the offence; or
- (d) where any fish has been sold under section 165, the proceeds of the sale of the fish.

(2) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, in the

commission of which a foreign fishing vessel was used or was otherwise involved, the Court may order the forfeiture of—

- (a) the fishing vessel;
- (b) any gear and other equipment that was on the vessel concerned at the time of the offence; and
- (c) all fish or fish products on board the vessel at the time of the offence, or where the fish products have been sold, the proceeds of sale.

**229.** (1) Any vessel or other property or security forfeited under this Act becomes the property of the State.

Disposition of  
forfeited property.

(2) Any vessel or other property forfeited under this Act may be—

- (a) retained;
- (b) leased; or
- (c) sold by the State by tender or by agreement approved by the Director-General and endorsed by the Cabinet Secretary,

provided that if such forfeited property is sold by the State, the owner or apparent owner prior to forfeiture shall be afforded a reasonable opportunity to bid on or purchase such property.

(3) The Director-General or any person acting on his behalf shall not be liable in any way of any costs incurred or damages sustained as of a decision taken under subsection (2).

**230.** (1) A Court convicting a person of an offence under this Act may summarily and without pleadings inquire into the pecuniary benefit acquired or saved by the person as a result of the commission of the offence, and may, upon reliable expert evidence otherwise admissible in a court of law and in addition to any other penalty imposed, impose a fine equal to the Court's estimation of that pecuniary benefit, despite any maximum penalty elsewhere provided.

Deprivation of  
monetary  
benefits.

(2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.

**231.** (1) The operator and charterer of a vessel shall

Costs incurred by

jointly and severally bear the cost or expenditure incurred by the Government, upon application by the State and as determined by the Court upon conviction, in connection with—

- (a) the seizure of a fishing vessel, vehicle or aircraft or other an offence against this Act, including any relevant costs of pursuit of the vessel, vehicle or aircraft;
- (b) the prosecution for an offence in accordance with this Act; and
- (c) the repatriation of the master or crew of any vessel seized under this Act.

(2) The amount of any costs or expenditure by the Court under subsection (1) may be recovered in the same manner as a fine and shall be imposed in addition to any fine or penalty that may be ordered by the Court.

(3) Nothing in subsection (1) shall be deemed to allow for the recovery of any cost or expenditure that has already been recovered pursuant to any other order made under this Act.

(4) If it intends to apply for pursuit costs in accordance with subsection (1), the Government shall, fourteen (14) days prior to a trial related to the offence, serve the defendant with written details of those costs.

**232.** All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the State as the nominal plaintiff.

Liability for non-payment of pecuniary penalties

**233.** (1) A person who commits an offence against this Act shall, upon conviction, be liable for any loss or damage caused by the offence and the amount of the loss of such damage may be awarded by the Court as restitution in addition to and recovered in the same manner as a fine.

Liability for loss or damage.

(2) The loss or any damage caused by the offence referred to in subsection (1) shall include, as may be

applicable, any costs incurred in—

- (a) detecting, apprehending, investigating or prosecuting the offence; and
- (b) detaining or seizing any property, fish, article or thing in respect of that offence.

**234.** (1) Subject to subsection (2), in this section, each officer of a partnership, corporation, firm, company or any other business enterprise engaged in activities governed by this Act shall be personally liable for any violation of or offence committed under this title by any member or employee.

Civil liability of officers of companies.

(2) It shall be a defence to liability under this section for the officer referred to in subsection (1) to prove that he or she used due diligence to secure compliance with this Act or that the violation or offence was committed without that officer's knowledge, consent, collusion or collaboration.

**235.** In any proceedings under this Act, the act or omission of a crew member of a fishing vessel or in association with a fishing vessel shall unless otherwise expressly provided, be deemed to be that of the operator of the vessel.

Liability of operators.

**236.** (1) Each day of a continuing offence shall be considered a separate offence.

Continuing offences and repeat offenders.

(2) Where the person charged has committed a similar offence in the past, a fine of an amount not less than that previously penalized plus an additional ten percent shall be charged.

**237.** Where a person has been convicted of an offence against this Act, the Court may in addition to any other penalty or forfeiture, order that for a period not exceeding five years that person be banned from going on or remaining aboard any fishing vessel in the Kenyan fishery waters.

Banning order.

**238.** A person who incurs loss or damage as a result of harmed by a violation of any provision of this Act or the accompanying regulations may bring a civil action in a court of competent jurisdiction against any responsible person.

Citizen suits and civil enforcement.

**239.** A court of competent jurisdiction may issue an

Injunctions.

injunction to enforce any provision of this Act against any person including the Ministry.

**PART XIX—ESTABLISHMENT OF THE  
FISHERIES TRIBUNAL**

**240.** (1) There is established a Fisheries Tribunal.

Establishment of  
the Fisheries  
Tribunal.

(2) The Fisheries Tribunal shall consist of the following members appointed by the Judicial Service Commission—

- (a) a Chairperson who shall be a person qualified for appointment as a judge of the High Court;
- (b) two advocates of the High Court of Kenya, with experience of not less than seven years; and
- (c) two persons who possess a degree from a university recognized in Kenya in matters related to fisheries and at least five years' experience in a relevant field.

(3) The Chairperson and members of the Fisheries Tribunal shall be appointed for a term of three years and shall be eligible for reappointment for one further term of three years.

(4) The Chairperson and members of the Fisheries Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission may, in consultation with the Salaries and Remuneration Commission, determine.

**241.** The staff of the Tribunal shall be appointed, removed from office or otherwise disciplined by the Judicial Service Commission in accordance with Article 172(1)(c) of the Constitution.

Staff of the  
Tribunal.

**242.** (1) The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the instance any person directly affected by the decision or order of the Cabinet Secretary, Director-General, the Service or of any person acting pursuant to the provisions of this Act.,

Jurisdiction of the  
Tribunal.

(2) In addition to the powers set out in subsection (1), the Tribunal shall have the power to hear and determine any dispute concerning fisheries and aquaculture where there is a business contract, unless the parties have

otherwise agreed to an alternative dispute resolution mechanism.

## **PART XX—PROVISION ON DELEGATED POWERS**

**243.** (1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations for any or all of the following purposes—

- (a) prescribing the conditions to be fulfilled by foreign participation in fisheries, including conditions of licensing foreign fishing vessels;
- (b) establishing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (c) prescribing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (d) regulating the handling, storage and processing of fish by prescribing methods of handling, storage and processing of fish;
- (e) prescribing requirements for governing the safety and quality of fish, fish products and fish feed;
- (f) providing for the management and control of fishing ports and fishing waters;
- (g) the licensing of any person to engage in any form of fishing, or of handling, transporting, processing or selling of fish products;
- (h) organizing and regulating the marketing and distribution of fish;
- (i) providing for the registration of private marks to be used to distinguish the ownership of fishing

gear;

- (j) prohibiting or controlling the importation, exportation and introduction into Kenya of live fish of any kind or species;
- (k) promoting and regulating or controlling the development of aquaculture establishments;
- (l) controlling the exploitation of the Exclusive Economic Zone;
- (m) development of recreational and ornamental fisheries and establishment of fishing camps;
- (n) providing for fishing by Kenyan ships in the high seas;
- (o) providing for the management and exploitation of inland, dam and riverine fisheries;
- (p) providing for the management and exploitation of coastal fisheries;
- (q) providing for control of the manufacture, importation, marketing and introduction in Kenya fishery waters of fishing gears;
- (r) prescribing the forms to be used for various matters under the act;
- (s) any other thing he may deem necessary for the promotion of fisheries in Kenya.

#### **PART XXI —REPEALS AND TRANSITIONAL PROVISIONS**

**244.** (1) The Fisheries Management and Development Act is repealed.

Repeals and transitional provisions. Cap 378.

(2) Notwithstanding the provisions of subsection (1)—

- (a) any statutory instruments issued under the provisions of the Fisheries Management and Development Act (Repealed), before the commencement of this Act shall be deemed to be statutory instruments granted by the under the provisions of this Act and shall remain in force until specifically revoked under this Act;

- (b) anything done under the provisions of the Fisheries Management and Development Act (Repealed), before the commencement of this Act shall be deemed to have been done under the provisions of this Act;
- (c) any licence, certificate of approval, approval or permission issued or given by the Kenya Fish Marketing Authority before the commencement of this Act shall be deemed to be issued, given or granted by the Cabinet Secretary responsible for fisheries under the corresponding provisions of this Act and shall remain in force until they expire or are revoked in accordance with the Act subject to any terms set out in the licence, certificate of approval, approval or permission;
- (d) any application for a licence, certificate of approval, approval or permission made to the Kenya Fish Marketing Authority before the commencement of this Act, shall be deemed to have been made to the Cabinet Secretary under the corresponding provisions of this Act and shall be determined by the Cabinet Secretary;
- (e) the Cabinet Secretary to the National Treasury shall by notice in the Gazette, specify the date or dates and the manner in which the assets and liabilities of the Kenya Fish Marketing Authority shall be transferred to and vested in—
  - (i) the Cabinet Secretary for the National Treasury; and
  - (ii) the relevant Ministry;
- (f) a notice under paragraph (e) shall specify the assets and liabilities of the Kenya Fish Marketing Authority which are to be transferred to the Cabinet Secretary for the National Treasury, or the relevant Ministry, as the case may be;
- (g) references in this section to assets and liabilities of the Kenya Fish Marketing Authority shall be references to all such assets and liabilities, whether or not capable of being transferred or assigned by the Kenya Fish Marketing Authority;

- (h) all rights, duties, obligations, and liabilities of the Kenya Fish Marketing Authority shall be automatically and fully transferred to the Principal Secretary responsible for fisheries and any reference to the Kenya Fish Marketing Authority in any contract or document shall for all purposes be deemed to be a reference to the Principal Secretary;
- (i) any legal proceedings pending immediately before the commencement of this Act to which the Kenya Fish Marketing Authority was a party shall be continued as if the Cabinet Secretary is a party thereto in lieu of the Kenya Fish Marketing Authority;
- (j) a person who, immediately before the commencement of this Act, was an employee of the Kenya Fish Marketing Authority and who was serving at the Board shall, upon the commencement of this Act, be redeployed in the public service;
- (k) at the commencement of this Act, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the former Institute, former Service and former Fund shall vest in the Institute, the Service and the Fund respectively;
- (l) all rights, obligations, powers and duties whether arising under any written law or otherwise which immediately before such day were vested in or imposed on the former Institute, former Service and former Fund shall, be deemed to be vested in or imposed on the Institute, the Service and the Fund respectively;
- (m) all actions, suits or legal proceedings by or against the former Institute, former Service and former Fund shall be carried on or prosecuted by or against the Institute, the Service and the Fund respectively and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act;
- (n) all directions, orders and authorizations given, or licenses or permits issued or registrations made by

the former Institute, former Service and former Fund and subsisting or valid immediately before the commencement day, shall be deemed to have been given, issued, or made by the Institute, the Service and the Fund respectively under this Act;

- (o) any administrative directions made by the former Institute, former Service, former Fund or by the Cabinet Secretary which were in force immediately before the coming into operation of this Act shall, on and after such day, have force as if they were directions made by the Board of the Institute, the Service the Fund and the Cabinet Secretary respectively under this Act;
- (p) a contract subsisting between former Institute, former Service or former Fund and another person or entity before the commencement of this Act shall subsist between the Institute, the Service and the Fund respectively, and that person or entity;
- (q) any reference in any written law or in any document or instrument to the former Institute, former Service and former Fund shall on and after the commencement of this Act, be construed to be a reference to the Institute;
- (r) the Chairperson and members of the Board of the former Institute, former Service and former Fund respectively, shall, at the commencement of this Act, be deemed to be the Chairperson and members of the Board of the Institute, the Service and the Fund respectively, for the unexpired period of their term;
- (s) the Director-General of the former Institute and the former Service shall at the commencement of this Act, assume the duties of the Director-General of the Institute and the Service respectively for the remainder of the existing term of contract;
- (t) the Managing Trustee of the former Fund shall at the commencement of this Act, assume the duties of the Chief executive Officer of the Fund for the remainder of the existing term of contract;
- (u) a person who, immediately before the

commencement of this Act, was a member of staff of the former Institute, former Service and former Fund shall be deemed to be a member of staff of the Institute, the Service and the Fund respectively subject to such terms of service as the Board of the Institute, the Board and the Board of Trustees may, on the advice of the Salaries and Remuneration Commission, determine,

Provided that a member of staff of the Institute, the Service and the Fund may exercise the option not to continue in the service of the Institute, the Service and the Fund respectively;

- (v) where, where at the commencement of this Act, any penalty, other than dismissal, has been imposed on any employee of the former Institute, former Service or former Fund pursuant to disciplinary proceedings against the employee, and the penalty has not been or remains to be served by such employee, such employee shall, on their transfer to the Institute, the Service and the Fund serve or continue to serve such penalty to its full term as if it had been imposed by the Institute, the Service and the Fund respectively; and
- (w) nothing in this Act shall affect the pension rights of any employee under the Pensions Act. Cap.189.

(3) In this section—

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

“former Service” means the Kenya Fisheries Service existing immediately before the commencement of this Act; and

“former Fund” means the Fish Levy Trust Fund existing immediately before the commencement of this Act.

(4) Section 41 (1) (e), (h) and (i) of this Act shall not apply for a period of two years from the date of commencement of this Act.

*The Fisheries Management and Development Bill, 2023*

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**245.** The Science, Technology and Innovation Act is amended in—

Amendment to  
Cap.511.

- (a) section 16 by deleting subsection (2); and
- (b) the Fourth Schedule by deleting paragraph 2

**246.** The Fisheries Management and Development (Fish Levy Trust Fund) Order, 2024 is revoked.

Revocation of  
L.N. 123 of 2024.

**FIRST SCHEDULE**

**s. 18**

**CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

**1. Tenure of office and conduct of business of the Board**

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

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

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

**2. Meetings of the Board**

(1) The Board shall meet not less than four times in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next meeting:

Provided that the chairperson may call a special meeting of the Board at any time where he deems it expedient for the transaction of the business of the Board.

(2) Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board by the secretary.

(3) The quorum for the conduct of business of the Board shall be half of the members' and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(4) The Chairperson shall preside over all meetings of the Board in which the Chairperson is present, but in their absence, the vice-chairperson shall preside, and in the absence of the vice-chairperson the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(5) At the first meeting of the Board, the members shall elect a vice-chairperson, not being a public servant, from among its members.

(6) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(7) For purposes of this Schedule the word “Board” includes the Board of the Institute and the Board of Trustees of the Fund.

### **3. Disclosure of interests**

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

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

### **4. Board may regulate procedure**

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

## **SECOND SCHEDULE**

**s. 22(1)**

### **STAFF OF THE SERVICE**

#### **PART A—FISHERIES OFFICERS**

##### **(a) Professional Cadre**

Director-General of Fisheries

Director of Fisheries

Deputy Director of Fisheries

Senior Assistant Director of Fisheries

Assistant Director of Fisheries

Principal Fisheries Officer

Chief Fisheries Officer

Senior Fisheries Officer

Fisheries Officer I

**(b) Technical Cadre**

Principal Assistant Fisheries Officer

Chief Assistant Fisheries Officer

Senior Assistant Fisheries Officer

Assistant Fisheries Officer I

Assistant Fisheries Officer II

Assistant Fisheries Officer III

**B- DISCIPLINED OFFICERS CADRE**

1. Commandant
2. Deputy Commandant
3. Assistant Commandant
4. Senior Superintendent Fisheries Guard
5. Superintendent Fisheries Guard
6. Chief Inspector Fisheries Guard
7. Inspector Fisheries Guard
8. Sergeant Fisheries Guard
9. Corporal Fisheries Guard
10. Constable Fisheries Guard
11. Fisheries Guard Recruit

**OATH OF ALLEGIANCE**

Signature of Declarant.....

Personal Number: .....

Sworn /affirmed before me .....

On the .....

**D- Provisions relating to the officers of the Service**

- (1) The officers of the Service shall, in the performance of the duties

conferred upon them under this Act and any other written law, conform with any lawful instructions, directions or orders which may be given by the Director-General.

(2) The Director-General may, with the consent of the Board, from time to time make and issue administrative orders to be called Service Standing Orders for the general control, direction and information of the officers of the Service.

2. (1) The Director-General shall, with the approval of the Board, issue a Disciplinary Code for Officers of the Service, which shall apply to the disciplined officers of the Service, and which may provide for the following matters—

- (a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceedings;
- (b) disciplinary penalties; and
- (c) any other related matters.

(2) The following disciplinary penalties, or any combination thereof, may be included in the Disciplinary Code for infringement of the Code issued under sub-paragraph (1) —

- (a) dismissal from the Service;
- (b) reduction in rank;
- (c) confinement for not more than fourteen days in a guard room or restriction to the confines of any.

#### **PART D —INTER-AGENCY MCS UNITS    s.25(2)**

The Inter-agency Monitoring, Control and Surveillance Unit established under section 25 shall be composed of representatives of all of the agencies described as 1–7, and such agencies as the Cabinet Secretary may designate described as 8–17 below.

| <b>Members</b>                             | <b>Designation</b> | <b>Status of Membership</b> |
|--------------------------------------------|--------------------|-----------------------------|
| Director-General(Fisheries)                | Chair              | Permanent                   |
| Representative of Police/Internal Security | Member             | Permanent                   |
| Representative of Judiciary                | Member             | Permanent                   |
| Representative of County Government        | Member             | Permanent                   |

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|                                                           |        |           |
|-----------------------------------------------------------|--------|-----------|
| (County Director of Fisheries)                            |        |           |
| Representative of BMUs                                    | Member | Permanent |
| Representative Of NEMA                                    | Member | Permanent |
| Representative of Public Health and Sanitation            | Member | Permanent |
| Representative of Defence                                 | Member | co-opted  |
| Representative of Cooperatives                            | Member | co-opted  |
| Representative of Water                                   | Member | Co-opted  |
| Representative of Immigration                             | Member | Co-opted  |
| Representative of Kenya Revenue Authority                 | Member | Co-opted  |
| Representative of Kenya Coast Guard Service               | Member | Co-opted  |
| Representative of Kenya Wildlife Service                  | Member | Co-opted  |
| Representative Kenya Maritime Authority                   | Member | Co-opted  |
| Representative Kenya Ports Authority                      | Member | Co-opted  |
| Representative of East Africa Community / Foreign Affairs | member | Co-opted  |

**THIRD SCHEDULE**

**s.78(2)**

**DESIGNATED FISH LANDING PORTS**

**1. Indian Ocean**

| <b>S/No.</b> | <b>Name of<br/>Landing site</b> | <b>District</b> | <b>Division/<br/>Location</b> | <b>County</b> |
|--------------|---------------------------------|-----------------|-------------------------------|---------------|
|              | Shimoni                         | Msambweni       | Vanga                         | Kwale         |
|              | Mkokoni                         | Lamu            | Hindi                         | Lamu          |
|              | Mombasa                         | Mvita           | Mvita                         | Mombasa       |