

APPENDICES for

AN EXPLORATION OF FEDERAL FISHERIES MANAGEMENT AGENCIES IN EASTERN AFRICA

APPENDIX 1A: Full text of the Decreto Presidencial n.º 17/2015 from Mozambique. Published March 25, 2015, in the *Boletim da República, I Série, Supplement, No. 24.* (in Portuguese)

APPENDIX 1B: Full text of the Lei n. 22/2013 from Mozambique. Published November 1, 2013 in *Boletim da República No. 88.* (in Portuguese)

APPENDIX 2. Full text of the Fisheries Proclamation (No. 104/1998) from Eritrea. Published May 25, 1998, in the *Gazette of Eritrean Laws*, Vol. 8, No. 4.

APPENDIX 3. Full text of The Deep Sea Fishing Authority Act (Cap. No. 388) from Tanzania. Published March 6, March 2009 in Government Notice No. 48.

APPENDIX 4A. Full text of Executive Order No. 1: Structure of the National Executive of 2013. Published April 18, 2013 in *The Kenya Gazette*, Vol. CXV-No. 61.

APPENDIX 4B. Full text of the Fisheries Act (Cap. 378) from Kenya. Published December 31, 2012 in *Laws of Kenya*.

APPENDIX 4C. Fisheries Management and Development Act No. 35 of 2016

APPENDIX 5A. Full text of the Seychelles Fishing Authority (Establishment) Act, consolidated to 30 June 2014. Published in the *Official Gazette*.

APPENDIX 5B. Full text of the Fisheries Act, 2014 from the Seychelles. Published October 27, 2014 in the *Supplement to Official Gazette*.

APPENDIX 1A

Full text of the Decreto Presidencial n.º 17/2015 from Mozambique. Published March 25, 2015, in the *Boletim da República, I Série, Supplement, No. 24*. (in Portuguese)

ARTIGO 5

(Entrada em vigor)

O presente Decreto Presidencial entra em vigor na data da sua publicação.

Publique-se.

Maputo, aos 25 de Março de 2015.

O Presidente da República, FILIPE JACINTO NYUSI.

Decreto Presidencial n.º 17/2015

de 25 de Março

Havendo necessidade de definir as atribuições e competências do Ministério do Mar, Águas Interiores e Pescas, criado pelo Decreto Presidencial n.º 1/2015, de 16 de Janeiro, ao abrigo do disposto na alínea c) do n.º 1 do artigo 160 da Constituição da República e do n.º 1 do artigo 46 da Lei n.º 7/2012, de 8 de Fevereiro, o Presidente da República decreta:

ARTIGO 1

(Natureza)

O Ministério do Mar, Águas Interiores e Pescas é o órgão central do Estado que, de acordo com os princípios, objectivos, prioridades e tarefas definidos pelo Governo, dirige, coordena, planifica e assegura a execução de políticas, estratégias e planos de actividade nas áreas do mar, águas interiores e pescas.

ARTIGO 2

(Atribuições)

São atribuições do Ministério do Mar, Águas Interiores e Pescas:

- a) Exercício da autoridade do Estado sobre o mar, águas interiores e pescas;
- b) Autorização e fiscalização do ordenamento, concessões, investigação e demais actividades que demandam a utilização do mar, águas interiores e respectivos ecossistemas, em articulação com outros organismos;
- c) Promoção do uso e aproveitamento dos recursos do mar, águas interiores e respectivos ecossistemas;
- d) Promoção e coordenação da regulamentação da utilização sustentável da água, prevenção e redução da poluição do meio aquático e melhoria do estado dos respectivos ecossistemas.

ARTIGO 3

(Competências)

Para o exercício das suas atribuições, compete ao Ministério do Mar, Águas Interiores e Pescas:

a) Na área de administração e segurança nos espaços marítimos, fluviais e lacustres:

- i. Propor a definição de políticas e estratégias sobre assuntos do mar e águas interiores;
- ii. Ordenar os espaços marítimos, fluviais e lacustres e do domínio público da zona costeira, definindo os fins para a sua utilização;
- iii. Pronunciar-se sobre a constituição, gestão responsável e sustentável das áreas de conservação, nas águas marinhas e interiores e respectivos ecossistemas;
- iv. Participar na elaboração de políticas e estratégias de aproveitamento de recursos hídricos;

- v. Enquadrar e coordenar a actuação de organizações da sociedade civil nos assuntos do mar, águas interiores e pescas;
- vi. Aplicar e zelar pelo cumprimento da legislação nacional e das convenções internacionais relativas aos assuntos marítimos que o país tenha ratificado;
- vii. Assegurar a exploração sustentável das massas de água marinhas, fluviais e lacustres para o desenvolvimento da pesca e aquacultura;
- viii. Apreçar e decidir, em coordenação com a entidade do Governo competente, sobre a realização de pesquisas relacionadas com projectos de natureza arqueológica e achados no mar;
- ix. Licenciar, credenciar e proceder ao reconhecimento de sociedades classificadoras de navios e de material marítimo, em coordenação com outros órgãos ou entidades relevantes;
- x. Promover e coordenar as actividades marítimas, fluviais e lacustres de busca e salvamento;
- xi. Emitir pareceres e recomendações sobre planos e projectos de instalação de infra-estruturas e de realização de obras no mar e águas interiores, em coordenação com outros órgãos ou entidades relevantes;
- xii. Assegurar o estabelecimento e manutenção das condições de segurança marítima, fluvial e lacustre para a realização de actividades nos referidos domínios;
- xiii. Licenciar, monitorizar e fiscalizar as actividades de investigação no mar e águas interiores, em coordenação com outros órgãos ou entidades relevantes;
- xiv. Participar na prevenção e combate à poluição marinha, fluvial, lacustre e dos respectivos ecossistemas.

b) Na área de desenvolvimento e gestão de infra-estruturas de apoio à navegação, pesca e aquacultura:

- i. Propor a definição de políticas e estratégias para a implementação de medidas de ordenamento para o desenvolvimento de infra-estruturas;
- ii. Licenciar e inspeccionar as concessões de uso e aproveitamento dos espaços marítimos, fluviais e lacustres;
- iii. Avaliar os impactos de iniciativas de desenvolvimento e de implantação de infra-estruturas, sobre os recursos aquáticos e respectivos ecossistemas, bem como a regulamentação das medidas de redução e mitigação dos impactos negativos;
- iv. Promover o desenvolvimento da indústria naval e das infra-estruturas de apoio e a gestão da sua utilização, no âmbito da construção e reparação naval, actividades pesqueiras e de outros serviços co-relacionados;
- v. Inspeccionar a instalação de infra-estruturas portuárias e de apoio à navegação marítima e actividades afins;
- vi. Assegurar a gestão das infra-estruturas e equipamento pesqueiro públicos, bem como definir o regime da sua exploração;
- vii. Licenciar e inspeccionar o desenvolvimento e exploração de infra-estruturas portuárias de apoio à pesca, aquacultura e actividades afins.

c) Na área de meteorologia marítima e hidrológica:

- i. Assegurar o desenvolvimento de estudos e pesquisa no domínio da meteorologia marítima e hidrológica;

- ii. Monitorar a disponibilização de informação meteorológica e hidrológica, necessária para a segurança no mar e águas interiores.

d) Na área de fiscalização de actividades no mar e águas interiores:

- i. Propor a definição de políticas e estratégias para uma eficaz fiscalização e controlo dos recursos naturais vivos e não vivos;
- ii. Coordenar a fiscalização das actividades de aproveitamento económico dos recursos naturais vivos e não vivos, a investigação, os estudos sísmicos e demais actividades relacionadas com a utilização do mar e águas interiores;
- iii. Emitir licenças de estabelecimentos e respectivo equipamento e material marítimo, bem como fiscalizar o exercício das suas actividades;
- iv. Assegurar a certificação da legalidade das capturas do pescado de acordo com as normas nacionais e internacionais.

e) Na área de administração e gestão de pescarias:

- i. Propor a definição de políticas e estratégias para o desenvolvimento responsável e sustentável da pesca;
- ii. Assegurar a gestão, conservação e exploração sustentável dos recursos biológicos aquáticos e estabelecer mecanismos de monitorização e controlo das actividades de pesca;
- iii. Gerir as operações de pesca levadas a cabo quer nas águas marítimas, quer nas águas interiores sob jurisdição nacional, de acordo com os planos de ordenamento e legislação;
- iv. Promover e apoiar formas institucionais de envolvimento das comunidades pesqueiras, agentes económicos e demais actores na gestão participativa dos recursos pesqueiros;
- v. Regular, licenciar e monitorar a exploração dos recursos pesqueiros.

f) Na área de fomento e extensão:

- i. Propor a definição de políticas, estratégias e programas de fomento e extensão em assuntos do mar, águas interiores e pescas;
- ii. Promover o desenvolvimento da pesca e aquacultura, tendo em vista aumentar a capacidade dos operadores na produção, valorização, gestão e comercialização dos produtos pesqueiros nacionais;
- iii. Promover acções de mobilização de investimentos para o desenvolvimento da indústria de transformação pesqueira;
- iv. Promover acções de extensão com envolvimento directo das comunidades de pescadores e aquacultores de pequena escala.

g) Na área de inspecção e certificação higio-sanitária dos produtos de origem aquática:

- i. Propor a definição de políticas, estratégias e planos no que respeita à qualidade higio-sanitária dos produtos da pesca;
- ii. Propor a aprovação de princípios reguladores e estabelecer normas técnicas das actividades de inspecção dos produtos de origem aquática e de laboratórios;
- iii. Proceder ao licenciamento das unidades produtivas, à inspecção e certificação sanitária dos produtos de origem aquática destinados ao mercado interno e à exportação, assim como dos produtos importados;
- iv. Licenciar e inspecionar estabelecimentos de manuseamento de organismos aquáticos vivos;

- v. Promover e apoiar formas institucionais de envolvimento das comunidades nos sistemas de garantia de qualidade dos produtos alimentares de origem aquática, bem como na cadeia de valor da produção pesqueira.

- vi. Promover a monitorização e a certificação da sanidade dos organismos aquáticos, em coordenação com a Autoridade Veterinária competente.

h) Na área de investigação científica:

- i. Propor a definição de políticas e estratégias orientadas para o desenvolvimento das bases científicas e tecnológicas do conhecimento sobre os espaços marítimos, fluviais e lacustres, bem como dos respectivos ecossistemas;
- ii. Investigar recursos pesqueiros e promover o desenvolvimento das bases científicas e tecnológicas do conhecimento sobre os recursos, bem como disseminar a informação obtida;
- iii. Promover a coordenação e desenvolvimento de acções de investigação científica dos recursos biológicos aquáticos com vista a garantir o conhecimento, o acesso, aproveitamento e sua monitoria;
- iv. Realizar cruzeiros de investigação e avaliação, incluindo a prospecção de novos recursos pesqueiros;
- v. Promover a coordenação de acções de investigação tendentes a conservação e recuperação de ambientes naturais e seus recursos no meio aquático;
- vi. Realizar estudos de diagnóstico, controlo e mitigação da poluição no meio aquático;
- vii. Realizar estudos, pesquisas e exercer a salvaguarda do património cultural e natural aquático, arqueológico, sub-aquático e pesqueiro.

i) Na área de formação marítima e pesqueira:

- i. Propor a definição de políticas e estratégias de formação especializada para o sector do mar, águas interiores e pescas;
- ii. Assegurar, em coordenação com as entidades competentes, a definição de currícula e programas de formação;
- iii. Promover a formação e capacitação de técnicos, tendo em vista o desenvolvimento das profissões marítimas e pesqueiras.

ARTIGO 4

Estatuto Orgânico

Compete ao Ministro do Mar, Águas Interiores e Pescas submeter ao órgão competente a proposta de Estatuto Orgânico do Ministério no prazo de sessenta dias, contados a partir da data da publicação do presente Decreto Presidencial.

ARTIGO 5

Norma revogatória

É revogado o Decreto Presidencial n.º 1/2000, de 17 de Janeiro.

ARTIGO 6

(Entrada em vigor)

O presente Decreto Presidencial entra em vigor na data da sua publicação.

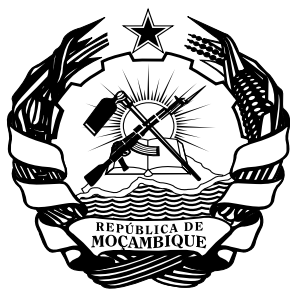
Publique-se.

Maputo, aos 25 de Março de 2015.

O Presidente da República, FILIPE JACINTO NYUSI.

APPENDIX 1B

Full text of the Lei n. 22/2013 from Mozambique. Published November 1, 2013 in Boletim da República No. 88. (in Portuguese)



BOLETIM DA REPÚBLICA

PUBLICAÇÃO OFICIAL DA REPÚBLICA DE MOÇAMBIQUE

IMPRESA NACIONAL DE MOÇAMBIQUE, E.P.

AVISO

A matéria a publicar no «Boletim da República» deve ser remetida em cópia devidamente autenticada, uma por cada assunto, donde conste, além das indicações necessárias para esse efeito, o averbamento seguinte, assinado e autenticado: **Para publicação no «Boletim da República».**

SUMÁRIO

Assembleia da República:

Lei n.º 22/2013:

Aprova a Lei das Pescas e revoga a Lei n.º 3/90, de 26 de Setembro.

Lei n.º 23/2013:

Regula a organização, composição e funcionamento do Conselho Superior da Magistratura Judicial Administrativa e revoga a Lei n.º 9/2009, de 11 de Março.

Lei n.º 24/2013:

Concernente ao melhoramento do controlo da legalidade dos actos administrativos, bem como a fiscalização da legalidade das receitas e despesas públicas e revoga a Lei n.º 25/2009, de 28 de Setembro.

Lei n.º 25/2013:

Aprova o Estatuto do Médico na Administração Pública.

ASSEMBLEIA DA REPÚBLICA

Lei n.º 22/2013

de 1 de Novembro

Havendo necessidade de rever a Lei n.º 3/90, de 26 de Setembro, Lei das Pescas, por forma a adequá-la à actual conjuntura económica, tecnológica e social do País, ao abrigo do preceituado no n.º 1 do artigo 179 da Constituição, a Assembleia da República determina:

TÍTULO I

Disposições gerais

ARTIGO 1

(Objecto)

A presente Lei tem por objecto estabelecer o regime jurídico das actividades pesqueiras e das actividades complementares da pesca, tendo em vista a protecção, conservação e utilização sustentável dos recursos biológicos aquáticos nacionais.

ARTIGO 2

(Âmbito de aplicação)

A presente Lei aplica-se:

- a todas as pessoas que desenvolvem actividades pesqueiras e actividades complementares da pesca na República de Moçambique;
- a todas as pessoas nacionais e estrangeiras, que exerçam a pesca nas águas jurisdicionais moçambicanas;
- a pessoas nacionais que exerçam a pesca usando embarcações matriculadas no País;
- a pessoas estrangeiras que exerçam a pesca no alto mar e que transitem pelo ou para o território moçambicano;
- à pesca nas águas jurisdicionais moçambicanas com embarcações de pesca moçambicanas ou estrangeiras;
- à pesca em águas jurisdicionais de terceiros Estados;
- à pesca em águas jurisdicionais de terceiros países sem prejuízo da legislação de terceiros países, quando exerçam a actividade de pesca em águas jurisdicionais de terceiros países;
- a pesca no alto mar por embarcações de pesca moçambicanas;
- a toda actividade da aquacultura no território moçambicano.

ARTIGO 3

(Definições)

Os termos e as expressões empregues na presente Lei são definidos no Glossário em anexo, que dela é parte integrante.

ARTIGO 4

(Interpretação)

A presente Lei é interpretada em consonância com as directrizes específicas adoptadas em organizações regionais e internacionais de que Moçambique seja parte.

ARTIGO 5

(Princípios gerais)

Com vista a assegurar a pesca e a aquacultura responsáveis, na aplicação da presente Lei e demais regulamentos são observados os princípios a seguir indicados:

- princípio da conservação e utilização adequada dos recursos biológicos aquáticos e dos respectivos ecossistemas, que consiste numa abordagem ecossistémica das pescas e de gestão das pescarias que promova a manutenção da diversidade, qualidade e disponibilidade dos recursos pesqueiros em quantidades suficientes para as gerações presentes e futuras no âmbito da segurança alimentar, redução da

pobreza e do desenvolvimento sustentável, incluindo o direito à educação ambiental através de programas educativos;

- b) princípio da precaução, segundo o qual, tendo em conta o grau de incerteza do conhecimento científico existente em cada momento, a gestão, a conservação e a exploração dos recursos aquáticos vivos têm em vista a sua protecção, conservação e sustentabilidade e o estabelecimento de sistemas de prevenção de actos lesivos ao meio ambiente;
- c) princípio da gestão participativa dos recursos pesqueiros, que consiste no envolvimento dos pescadores, de associações económicas, outros grupos de interesse na pesca e de aquacultores, na gestão dos recursos pesqueiros dos quais dependem, assegurando uma pesca responsável e a sua participação nos processos decisórios;
- d) princípio de alimentos seguros e protecção do consumidor, segundo o qual, a colheita, o manuseamento, a transformação e a distribuição dos produtos da pesca e a sua rastreabilidade permitem manter o seu valor nutricional, qualidade e segurança sanitárias, reduzir o desperdício e minimizar os impactos negativos sobre o meio ambiente;
- e) princípio da defesa dos recursos genéticos, que consiste na protecção da diversidade genética dos recursos biológicos aquáticos;
- f) princípio do poluidor pagador, que consiste na responsabilização de pessoas singulares ou colectivas pelo custo de reposição da qualidade do ambiente danificado e ou pelos custos para a prevenção e eliminação da poluição por si causada, no exercício das actividades pesqueiras e complementares da pesca;
- g) princípio da preferência das pessoas nacionais, que consiste em proteger adequadamente os direitos dos pescadores e aquacultores nacionais, particularmente os envolvidos na pesca e aquacultura de pequena escala, pesca semi-industrial e pesca industrial, para uma vida segura e justa, bem como o acesso preferencial, se for caso disso, a zonas de pesca tradicionais e aos recursos nas águas jurisdicionais;
- h) princípio da cooperação e coordenação institucional, que consiste na estreita relação com as organizações regionais e internacionais e na harmonização de políticas sectoriais internas para garantir uma pesca e aquacultura responsáveis.

ARTIGO 6

(Obrigações do Estado)

Cabe ao Governo, em especial:

1. Assegurar a implementação das medidas de preservação e gestão sustentável dos recursos biológicos aquáticos e do ambiente marinho aquático, bem como de prevenção de perigos para a renovação sustentável dos recursos.
2. Promover a implementação de medidas de política geral para a criação de oportunidades económicas às pessoas nacionais para o acesso às actividades relacionadas com recursos biológicos aquáticos, a salvaguarda dos sistemas de vidas das comunidades piscatórias e a contribuição dessas actividades para a melhoria da segurança alimentar.

3. Assegurar que os regimes de ordenamento das pescas e de concessão dos direitos de pesca contribuam para a defesa da concorrência.

4. Criar condições para a aplicação das convenções internacionais relevantes, em particular, a Convenção das Nações Unidas sobre o Direito do Mar, a Convenção sobre a Diversidade Biológica e a Convenção Internacional para a Prevenção da Poluição por Navios (MARPOL73/78).

5. Incentivar as parcerias público-privadas na gestão e/ou investimento para desenvolvimento de infra-estruturas portuárias de pesca.

ARTIGO 7

(Administração e desenvolvimento das pescas)

1. O Governo estabelece, com vista a uma administração apropriada do sector pesqueiro e no respeito das normas relativas aos órgãos locais do Estado, órgãos de administração das pescas.

2. O Governo, tendo em vista a utilização óptima e racional dos recursos pesqueiros, a valorização dos produtos da pesca e das respectivas actividades complementares, promove o desenvolvimento do sector pesqueiro, garante a monitorização das actividades pesqueiras e a aplicação da presente Lei e demais regulamentos.

TÍTULO II

Actividades pesqueiras e complementares da pesca

CAPÍTULO I

Disposições comuns

ARTIGO 8

(Política pesqueira)

O Governo aprova a política pesqueira que deve ter em consideração, nomeadamente:

- a) a gestão, a conservação e a adaptação da capacidade das frotas de pesca aos recursos pesqueiros e ao meio ambiente;
- b) a monitorização e a fiscalização das actividades pesqueiras;
- c) a promoção e o desenvolvimento da pesca e da aquacultura marinha e de água doce;
- d) a transformação dos produtos da pesca;
- e) a promoção do empresariado nacional;
- f) o controlo hígio-sanitário dos produtos da pesca;
- g) os objectivos da investigação e da extensão pesqueiras;
- h) a gestão participativa e a valorização do saber tradicional das comunidades pesqueiras locais;
- i) o desenvolvimento de infra-estruturas para as actividades complementares da pesca;
- j) a promoção do fomento e o desenvolvimento da pesca de pequena escala;
- k) a comercialização de produto da pesca e da aquacultura.

ARTIGO 9

(Planos de desenvolvimento)

1. O Governo promove a preparação, a adopção e a actualização de planos de desenvolvimento do sector pesqueiro e estabelece as medidas necessárias à sua execução.

2. Os planos de desenvolvimento são elaborados nos termos dum processo que assegure a participação de organismos sociais, profissionais e económicos ligados às actividades pesqueiras e complementares da pesca numa base integrada e descentralizada.

ARTIGO 10

(Propriedade dos recursos pesqueiros)

1. Os recursos pesqueiros existentes nas águas jurisdicionais de Moçambique são propriedade do Estado, que determina as condições do seu uso e aproveitamento.

2. Os produtos da pesca obtidos da apanha ou captura de recursos pesqueiros existentes nas águas jurisdicionais de Moçambique, ou provenientes de animais vivos, nascidos ou criados em território da República de Moçambique, são considerados de origem nacional.

ARTIGO 11

(Classificação e exercício de actividades pesqueiras e complementares da pesca)

1. As actividades pesqueiras classificam-se em:

- a) Extractivas – as que têm por objectivo a captura, com ou sem processamento a bordo, ou a apanha de recursos pesqueiros nas águas marítimas e continentais;
- b) Aquícolas – as relativas à reprodução e ou manutenção em cativeiro, com a intervenção humana, de espécies aquáticas;

2. As actividades complementares da pesca classificam-se em:

- a) Transformadoras – as relacionadas com o enlatamento, a secagem, a fumagem, a salmoura, a refrigeração, a congelação e a qualquer outro processamento de produtos da pesca;
- b) De comercialização – as que referem à primeira venda dos produtos da pesca e ao seu transporte;
- c) Serviços portuários – as que compreendem a acostagem de embarcações, a descarga e o embarque de produtos da pesca ou de mercadorias e insumos destinados à pesca e à aquacultura;
- d) De construção e fabrico – as relativas à construção e reparação naval e ao fabrico de redes de pesca, artefactos, aprestos e outros acessórios.

3. O exercício das actividades pesqueiras e complementares da pesca carece de autorização, nos termos e condições fixados na presente Lei e demais regulamentos aplicáveis.

ARTIGO 12

(Ordenamento das actividades pesqueiras)

1. Com vista a um melhor ordenamento das actividades pesqueiras o Governo adopta, entre outras, medidas relativas:

- a) ao zoneamento das áreas de pesca e de interdição da pesca e à adequação da capacidade da frota pesqueira ao estado de exploração e aproveitamento dos recursos pesqueiros;
- b) à construção, modernização e reconversão de embarcações que permitam a constituição de uma frota de pesca moderna e competitiva;
- c) à extensão, ao fomento e ao desenvolvimento de formas produtivas de pequena escala, na pesca e na aquacultura;
- d) à capacitação dos profissionais do sector pesqueiro, com destaque para a pesca, actividades complementares da pesca, gestão das pescarias e aquacultura de pequena escala;
- e) à determinação de porto base para a frota nacional e de portos acessíveis à frota estrangeira;
- f) ao enquadramento da expansão da frota pesqueira nas pescarias e ao incentivo à participação nacional;

- g) ao estabelecimento de indústrias complementares da pesca;
- h) ao licenciamento das actividades pesqueiras e respectiva fiscalização;
- i) ao licenciamento e fiscalização das actividades pesqueiras;
- j) à determinação das áreas de protecção;
- k) à determinação das espécies de recursos biológicos aquáticos cuja pesca ou apanha seja proibida;
- l) a determinação do total admissível de captura, dos limites de esforço de pesca, do período de veda e malhagens mínimas das artes de pesca por pescaria;
- m) ao licenciamento dos estabelecimentos de processamento e transformação dos produtos da aquacultura;
- n) à fiscalização das actividades de pesca e aquacultura;
- o) à monitorização do estado dos recursos biológicos aquáticos e do ambiente aquático;
- p) à definição de medidas para a promoção e protecção do empresariado moçambicano;
- q) à promoção da formação profissional dos diversos intervenientes na gestão dos recursos pesqueiros;
- r) à definição dos mecanismos de financiamento das actividades de pesca e respectivas infra-estruturas.

2. São consideradas reservas para fins alimentares as lagoas, os cursos de água e outros reservatórios naturais de água que se formam nos rios durante o período em que deixam de ter água corrente.

ARTIGO 13

(Certificação)

O Governo estabelece as normas de certificação para a colocação no mercado de produtos da pesca e seus derivados destinados ao consumo humano e destinados à alimentação de animais.

CAPÍTULO II

Pesca marítima e continental

SECÇÃO I

Recursos pesqueiros

ARTIGO 14

(Medidas de preservação e gestão)

1. As dimensões e ou pesos mínimos das espécies, as espécies a proteger, os períodos de veda e de defeso, as áreas de acesso proibido ou limitado, as características técnicas das artes de pesca, os métodos de pesca autorizados, os mecanismos para a limitação do acesso à pesca e de esforço de pesca e quaisquer outras medidas necessárias à preservação e gestão dos recursos pesqueiros, são estabelecidos pelo Governo.

2. É proibida a posse, o transporte, o armazenamento e processamento, a exposição e venda de produtos da pesca, de qualquer origem ou procedência, que sejam de tamanho ou peso inferior aos permitidos ou de espécies protegidas.

ARTIGO 15

(Gestão das pescarias)

1. O Governo adopta planos de gestão das pescarias em exploração, em regeneração ou em desenvolvimento incipiente.

2. Os planos de gestão têm em consideração, entre outros, os seguintes aspectos:

- a) os objectivos de desenvolvimento da gestão, tendo em conta os aspectos biológicos, económicos, sociais e ambientais;

- b) a descrição da pescaria e das espécies que a enformam, sua localização geográfica e zonas de pesca;
- c) a abordagem ecossistémica da pesca, o ciclo de vida das espécies que constituem a pescaria e respectivas estratégias de exploração;
- d) as medidas de preservação e o regime de acesso aplicável, incluindo a fixação dos totais admissíveis de captura e dos totais admissíveis de esforço;
- e) as acções de investigação e formas de monitorização e de avaliação.

3. Os planos de gestão das pescarias são públicos e a sua consulta é livre.

ARTIGO 16

(Zonas de conservação dos recursos pesqueiros)

1. Nas águas marítimas e continentais podem ser declaradas zonas de conservação dos recursos pesqueiros para favorecer a sua protecção e regeneração.

2. As zonas de conservação são classificadas de acordo com a finalidade específica, regeneração ou restauração dos ecossistemas e os interesses sócio-económicos das comunidades.

3. Compete ao Governo regulamentar a definição, condições e a forma de declaração das zonas de protecção dos recursos.

ARTIGO 17

(Protecção do ambiente aquático)

1. No decurso das actividades pesqueiras e complementares da pesca é proibido introduzir nas águas jurisdicionais de Moçambique quaisquer substâncias ou objectos tóxicos provenientes de qualquer fonte, susceptíveis de causar danos ou poluir o ambiente, afectar, envenenar ou destruir os recursos pesqueiros e a biodiversidade.

2. Qualquer empreendimento que vise a dejectação de águas residuais nas águas marítimas ou continentais carece de autorização prévia das autoridades competentes.

3. Quem poluir constitui-se na obrigação de, a expensas suas, reconstituir a situação anterior à acção ou omissão causadora de poluição, sem prejuízo de responsabilidade civil, criminal e disciplinar que couber.

ARTIGO 18

(Propriedade de espécies raras)

Todo o exemplar, capturado ou apanhado durante a actividade de pesca, cuja importância do ponto de vista de investigação científica ou da raridade justifique a sua preservação, é propriedade do Estado a quem deve ser entregue, livre de quaisquer despesas e nas melhores condições de conservação.

SECÇÃO II

Ordenamento e Gestão

ARTIGO 19

(Classificação da pesca)

1. A pesca classifica-se em:

- a) marítima ou continental, consoante se realize nas águas marítimas ou nas águas continentais ou interiores;
- b) comercial ou não comercial, se prossegue ou não fins lucrativos. A pesca não comercial subdivide-se em pesca de subsistência, pesca de investigação científica, pesca experimental e pesca recreativa e desportiva;
- c) local, costeira, longínqua ou do alto, conforme a zona de pesca onde é exercida;
- d) artesanal, semi-industrial ou industrial, consoante a complexidade dos meios empregues na captura e na sua conservação a bordo.

2. O Governo define os tipos de pesca classificados no número anterior tomando em consideração, entre outros, as zonas de pesca, a complexidade e as especificações técnicas das embarcações, a sua autonomia, o tipo de artes de pesca empregues, os meios de conservação usados, a finalidade lúdica ou de competição, assim como a evolução das diferentes frotas de pesca.

ARTIGO 20

(Pesca de pequena escala)

1. O Governo incentiva e apoia o desenvolvimento das formas produtivas de pequena escala, com destaque para a pesca artesanal e actividades de pequena produção que lhe estão associadas.

2. Como parte integrante do desenvolvimento rural, o Governo define as linhas gerais de desenvolvimento da pesca artesanal, nomeadamente:

- a) a realização de estudos destinados ao estabelecimento de políticas e estratégias, planos e programas, de desenvolvimento da pequena produção pesqueira, incluindo os aspectos sócio-económicos e as tecnologias a empregar;
- b) o estabelecimento, sempre que necessário, de áreas de pesca destinadas, exclusivamente, à pesca artesanal praticada por cidadãos nacionais;
- c) a promoção de acções de fomento pesqueiro e de formação de profissionais para o desenvolvimento de pequena produção pesqueira;
- d) a promoção de actividades de extensão pesqueira, bem como a alocação de parte de receitas de exploração de recursos pesqueiros para o financiamento directo da pesca de pequena escala.

ARTIGO 21

(Pesca recreativa e desportiva)

Compete à Administração das Pescas garantir a gestão das pescarias objecto da pesca recreativa e desportiva cuja actividade é regida pela presente Lei e demais regulamentos.

ARTIGO 22

(Registo administrativo)

1. Sem prejuízo do registo marítimo previsto em legislação específica, é estabelecido e mantido um registo administrativo obrigatório de todas as empresas, artes de pesca e embarcações de pesca que operam nas águas marítimas e continentais de Moçambique, assim como das embarcações de pesca moçambicanas que operam no alto mar.

2. Todas as embarcações de pesca ou aquelas que pretendam ser utilizadas na pesca e as artes de pesca sem embarcação devem estar inscritas no registo administrativo.

3. A inscrição é obrigatória e é condição necessária para o licenciamento da actividade de pesca.

4. Os requisitos, condições e elementos a constar do registo a que se refere o número um são estabelecidos por regulamento.

ARTIGO 23

(Gestão participativa)

1. Para assegurar o ordenamento das pescas e a gestão das pescarias é adoptado o modelo de gestão participativa, através do estabelecimento de mecanismos que permitam a representação dos interesses envolvidos.

2. Na aplicação do modelo de gestão participativa toma-se em consideração a necessidade de assegurar:

- a) o direito das comunidades pesqueiras de aceder aos recursos pesqueiros e a sua participação na planificação e na gestão;

- b) a coordenação entre a Administração das Pescas e os pescadores artesanais, armadores de pesca, comerciantes, transportadores, processadores de produtos da pesca e outros intervenientes com interesses indirectos;
- c) a sustentabilidade dos recursos pesqueiros e a sua exploração responsável;
- d) o benefício, por parte das comunidades locais onde a pesca se desenvolve, de uma percentagem das receitas obtidas.

3. O Governo estabelece as formas de implementação do modelo de gestão participativa.

ARTIGO 24

(Conflitos no exercício da pesca)

A adopção de medidas necessárias para prevenir e resolver os conflitos que surjam no decurso do exercício da pesca, sem prejuízo do recurso a outros mecanismos, deve ter em conta:

- a) a subscrição antecipada e obrigatória de seguros, por parte de quem exerce a actividade da pesca, destinados a garantir a reparação dos danos eventualmente causados;
- b) o estabelecimento de comissões de mediação e a adopção de medidas de aplicação das recomendações adoptadas;
- c) o estabelecimento de ajustes apropriados entre operadores;
- d) o envolvimento das autoridades comunitárias no âmbito dos seus deveres.

ARTIGO 25

(Órgãos Consultivos)

1. Para a coordenação dos esforços de protecção, conservação e utilização sustentável dos recursos pesqueiros são criados os seguintes órgãos consultivos:

- a) Comissão Nacional de Administração Pesqueira (CNAP), órgão consultivo de nível central coordenado pelo Ministro que superintende o sector das Pescas e que integra representantes dos sectores do Ambiente, Turismo, Transportes e Comunicações, Defesa, Indústria e Comércio e Finanças bem como do Sector Privado e das Associações dos Pescadores.
- b) Comité de Co-Gestão de Pescas (CCGP), órgão consultivo de nível local.

2. A Comissão Nacional de Administração Pesqueira e os Comités de Co-Gestão de pescas são entidades do sistema de gestão participativa onde todos os grupos de interesse se encontram representados.

3. O estatuto e as atribuições dos órgãos consultivos de administração dos recursos aquáticos são definidos em regulamento a ser aprovado pelo Governo.

SECÇÃO III

Direitos de pesca

ARTIGO 26

(Conteúdo dos direitos de pesca)

Os direitos de pesca a que a presente Lei se refere compreendem o direito de exercer a pesca incluindo a propriedade das capturas, fauna acompanhante e a respectiva comercialização.

ARTIGO 27

(Zona reservada a pesca de pequena escala)

Sem prejuízo do que vier estabelecido em regulamentos sobre a extensão de zonas de pesca, toda a extensão do mar territorial até às 3 milhas marítimas, contadas a partir das linhas de base é reservada exclusivamente à pesca de pequena escala, de subsistência, de investigação científica, recreativa e desportiva.

ARTIGO 28

(Pesca nas águas continentais)

1. Nas águas continentais ou interiores a pesca é exclusivamente reservada à pesca de pequena escala, à pesca de subsistência, à pesca de investigação científica e à pesca recreativa e desportiva.

2. Compete ao Governo regulamentar o exercício da pesca em águas continentais ou interiores.

ARTIGO 29

(Concessão e duração)

1. Os direitos de pesca só são concedidos a pessoas nacionais por períodos até vinte anos renováveis, salvo o estabelecido nos acordos e contratos de pesca celebrados ao abrigo da presente Lei.

2. O Governo estabelece os critérios, requisitos e períodos de concessão de direitos de pesca para cada pescaria.

ARTIGO 30

(Titularidade)

1. A titularidade dos direitos de pesca constitui-se mediante:

- a) o Título de Direitos de Pesca, para a pesca comercial industrial e semi-industrial;
- b) a inscrição na licença de pesca para a pesca de pequena escala;
- c) o registo das artes de pesca, para a pesca de subsistência;

2. O Governo estabelece as formas e modalidades da inscrição administrativa da titularidade dos direitos de pesca a que o presente artigo alude.

3. Os direitos de pesca comercial apenas são concedidos a pessoas singulares ou colectivas nacionais com idoneidade e capacidade técnica para o tipo de pesca que se proponham realizar e que preencham os demais requisitos previstos na presente Lei e em regulamento a ser aprovado pelo Governo.

ARTIGO 31

(Transmissibilidade)

Os direitos de pesca transmitem-se por morte.

ARTIGO 32

(Suspensão)

São causas de suspensão dos direitos de pesca:

- a) o perigo comprovado de extinção ou não renovação das espécies em zonas de pesca a que os direitos se referem;
- b) o comprovado perigo de saúde humana ou para o ambiente, incluindo o que resulta de poluição;
- c) em caso de força maior que perdure por período superior a seis meses;
- d) a requerimento do titular do direito;
- e) não exercício dos direitos de pesca sem justificação por um período ininterrupto superior a doze meses;
- f) em caso de transgressão e sanção grave cometida pelo titular do direito de pesca.

ARTIGO 33

(Extinção)

1. São causas de extinção dos direitos de pesca:
 - a) o não exercício dos direitos de pesca por um período ininterrupto superior a doze meses;
 - b) o não cumprimento das condições de constituição do direito;
 - c) revogação por abuso do direito;
 - d) a revogação, a título de sanção, por reincidência de infracção de pesca muito grave;
 - e) caducidade;
 - f) renúncia.
2. A decisão de suspensão dá direito ao contraditório.

ARTIGO 34

(Oferta pública)

1. Dentro dos limites totais de captura e de esforço de pesca, o Governo pode promover a oferta pública de direitos de pesca.
2. A oferta pública destina-se, em primeiro lugar, a pessoas nacionais não armadoras de pesca, mas que tenham interesse em participar neste processo antes da oferta pública ser extensiva às pessoas estrangeiras.
3. Na falta de resposta das pessoas nacionais, pode a oferta pública ser extensiva a pessoas estrangeiras armadoras de pesca.
4. Os direitos de pesca adquiridos por via de oferta pública só são válidos para o ano em que são concedidos.

ARTIGO 35

(Pagamento de taxas de direitos de pesca)

1. O Governo, como contrapartida dos direitos de pesca concedidos, estabelece as correspondentes taxas a pagar.
2. O cálculo do valor das taxas referidas no número anterior tem em conta, entre outros:
 - a) o valor de mercado das espécies em causa;
 - b) o volume das capturas previstas e o rendimento das artes de pesca utilizadas para as realizar;
 - c) as zonas de pesca e o tipo de embarcação de pesca a ser utilizada;
 - d) a economia da pescaria incluindo a respectiva renda;
 - e) os custos de produção do conhecimento científico;
 - f) os eventuais danos ambientais que resultem do exercício da actividade de pesca.
3. A pesca de subsistência está isenta do pagamento de taxas.

ARTIGO 36

(Contrapartidas dos direitos de pesca)

Os beneficiários dos direitos de pesca devem, no período da vigência do direito de pesca, assumir obrigações de processamento em território nacional dos produtos da pesca, de entre outras a serem regulamentadas pelo Governo.

ARTIGO 37

(Acordos e contratos de pesca)

1. Tendo em conta a disponibilidade de recursos pesqueiros a capturar, os planos de desenvolvimento das pescas e os planos de gestão das pescarias, o Governo, sem prejuízo da preferência de pessoas nacionais, pode celebrar:
 - a) acordos multilaterais ou bilaterais com terceiros Estados interessados em obter direitos de pesca, ou para efeitos de investigação, experimentação e fiscalização da pesca, nas águas jurisdicionais de Moçambique;

b) contratos com organizações internacionais ou associações de pesca estrangeiras, concedendo direitos de pesca, com prioridade para aquelas cujos Estados possuam acordos assinados com Moçambique.

2. Os contratos devem conter, nomeadamente a capacidade de pesca autorizada, as zonas e o sistema de pesca, o volume das capturas, assim como as condições gerais de realização das operações de pesca ou conexas de pesca.

3. Os acordos e contratos a que o presente artigo alude incluem a obrigação, por parte do Estado, organização internacional ou associação contratantes, de adoptar todas as medidas necessárias destinadas a assegurar que as respectivas embarcações observem:

- a) os termos e as condições do acordo, do contrato e da licença de pesca;
- b) a pertinente legislação vigente em Moçambique;
- c) os procedimentos aduaneiros e sanitários sobre a exportação de produtos da pesca;
- d) a obrigatoriedade de cooperar no planeamento e condução de investigação científica para efeitos de conservação e aproveitamento sustentável dos recursos pesqueiros, bem como de disponibilizar todas as estatísticas e dados científicos colhidos.

ARTIGO 38

(Afretamento de embarcações)

1. O armador de pesca nacional, no período de vigência de direitos de pesca, pode solicitar a título provisório a autorização às entidades competentes para o afretamento de embarcações para o licenciamento e exercício do direito de pesca.
2. As regras e modalidades do exercício do direito previsto no número anterior são regulamentadas pelo Governo.

SECÇÃO IV

Licenciamento

ARTIGO 39

(Concessão, suspensão e revogação da licença de pesca)

1. A pesca nas águas jurisdicionais moçambicanas ou no alto mar e as operações conexas de pesca ficam sujeitas à obtenção prévia de uma licença de pesca a ser concedida nos termos e condições estabelecidos na presente Lei e seus regulamentos.

2. A licença a que se refere o número anterior deve ser emitida a favor:

- a) do armador, para uma embarcação determinada utilizando as artes de pesca a ela acopladas;
- b) do proprietário das artes de pesca sem embarcação.

3. A pesca de subsistência é isenta de licenciamento, sem prejuízo da inscrição obrigatória das artes de pesca usadas.

4. Podem ser licenciadas operações de pesca experimental, de investigação científica ou para treino e formação, mediante a apresentação de um plano circunstanciado das operações a empreender.

5. Compete ao Governo a outorga, a suspensão ou a revogação de licença de pesca, bem como a determinação das respectivas condições.

ARTIGO 40

(Expansão da frota)

1. Para o enquadramento e orientação da expansão da frota de pesca moçambicana, a construção, importação, modificação ou transacção de embarcações de pesca ficam sujeitas à autorização, nos termos a serem definidos pelo Governo.

2. O disposto no número anterior aplica-se, igualmente, à modificação de embarcações que não sejam de pesca para as destinar a este fim.

ARTIGO 41

(Licença para pessoa estrangeira)

1. A licença de pesca pode ser concedida a pessoa estrangeira nos termos da presente lei e demais legislação aplicável.

2. Com excepção da licença para a pesca recreativa e desportiva, a licença de pesca para pessoa estrangeira é concedida para operar fora do mar territorial, por um período renovável não superior a um ano.

3. O Governo estabelece as condições de concessão de licença de pesca a pessoa estrangeira, para operar nas águas continentais.

ARTIGO 42

(Requisitos para atribuição e renovação de licença de pesca)

1. A atribuição e renovação de uma licença de pesca obedece aos seguintes requisitos obrigatórios:

- a) ser titular do direito de pesca ou estar coberto, nos termos do artigo 37, por acordo de pesca ou contrato, sendo pessoa estrangeira;
- b) estar inscrito e registado nos termos do artigo 22 da presente Lei;
- c) ser titular de licença sanitária, quando aplicável;
- d) estar, a embarcação de pesca devidamente registada na autoridade marítima moçambicana.

2. Complementarmente, o Governo pode estabelecer outros requisitos que se mostrarem necessários.

ARTIGO 43

(Denegação)

O pedido de licença de pesca pode ser denegado se:

- a) não tiverem sido concedidos direitos de pesca;
- b) for considerado necessário para garantir uma gestão sustentável do recurso pesqueiro objecto da licença de pesca requerida;
- c) o requerente tiver sido reincidente por infracção de pesca muito grave no ano anterior à data do pedido;
- d) as artes de pesca a utilizar não corresponderem às tipificadas na legislação pesqueira nacional;
- e) a embarcação de pesca tiver sido declarada como tendo realizado pesca ilegal, não reportada e não regulamentada ou, por tal feito, encontrar-se registada em lista internacional;
- f) existirem obrigações não cumpridas para com a Administração das Pescas;
- g) outros motivos indicados por regulamentos.

ARTIGO 44

(Intransmissibilidade da licença de pesca)

A licença de pesca é intransmissível.

ARTIGO 45

(Revogação da licença de pesca)

A mudança de proprietário ou de armador de uma embarcação de pesca ou de proprietário de arte de pesca sem embarcação, dá lugar à revogação automática da respectiva licença de pesca.

ARTIGO 46

(Pagamento pela licença de pesca)

1. O Governo, pela emissão de uma licença de pesca, estabelece o valor e o destino das taxas a aplicar.

2. A taxa, que constitui receita do Estado, é determinada e calculada tendo em conta o valor da taxa de direitos de pesca e os custos dos serviços a prestar.

ARTIGO 47

(Validade e renovação da licença de pesca)

1. A licença de pesca é válida pelo período nela constante, podendo ser renovada a requerimento do seu titular segundo condições definidas na presente Lei e seus regulamentos.

2. A licença de pesca caduca impreterivelmente no último dia do ano correspondente à data da sua emissão.

SECÇÃO V

Artes de pesca

ARTIGO 48

(Artes de pesca e dispositivos de atracção e de exclusão)

1. A pesca nas águas jurisdicionais de Moçambique só pode ser exercida com artes de pesca expressamente regulamentadas.

2. O Governo estabelece a designação das artes de pesca, as suas características técnicas e as condições de utilização, incluindo os dispositivos de atracção de cardumes ou de exclusão de espécies, tendo em consideração:

- a) as espécies ou grupo de espécies objecto da pesca, assim como as respectivas capturas acessórias;
- b) as zonas de pesca e os períodos autorizados;
- c) as implicações da sua utilização para o meio ambiente.

ARTIGO 49

(Sinalização de artes de pesca)

Os titulares das licenças de pesca ficam obrigados a identificar e a sinalizar as artes de pesca quando em operação ou quando estivadas a bordo, nas condições definidas por regulamento.

ARTIGO 50

(Explosivos, substâncias tóxicas ou pesca por electrocussão)

No exercício da pesca, é expressamente proibido deter a bordo ou transportar, empregar ou tentar empregar matérias explosivas ou substâncias tóxicas ou instrumentos de pesca por electrocussão, susceptíveis de enfraquecer, atordoar, excitar ou matar espécies aquáticas ou por qualquer outro modo as tornar mais fáceis de capturar.

SECÇÃO VI

Investigação e monitorização

ARTIGO 51

(Investigação)

1. A gestão das pescarias, a monitorização dos recursos pesqueiros, as actividades de extensão pesqueira, as actividades aquícolas e os padrões de qualidade dos produtos da pesca baseiam-se em recomendações e propostas científicas.

2. Sem prejuízo de outros que venham a ser considerados por via regulamentar, a investigação pesqueira tem como objectivos principais:

- a) o estudo, a identificação, a conservação, a monitorização, a avaliação do estado de exploração, o uso sustentável dos recursos biológicos e os ecossistemas aquáticos;

- b) a observação, a medição, a avaliação e a análise de riscos ou os efeitos da poluição nos recursos pesqueiros;
- c) o estudo e a apreciação de normas técnicas, tecnológicas e higio-sanitárias dos produtos da pesca;
- d) o estudo dos impactos ecológicos, climáticos, económicos, sociais e culturais sobre os ecossistemas costeiros e ribeirinhos, das actividades pesqueiras;
- e) o estudo de tecnologias da pesca e do pescado adaptadas às condições do país.

3. O comandante da embarcação de pesca licenciada é obrigado a aceitar a bordo, amostradores, extensionistas e técnicos de investigação e proporcionar-lhes o devido acesso ao trabalho, alimentação e alojamento.

4. O amostrador, o extensionista ou o técnico de investigação, quando embarcado, não pode, por decisão própria, do comandante da embarcação, de qualquer membro da tripulação ou de outra entidade, realizar quaisquer outras actividades além daquelas que lhe estão destinadas realizar.

ARTIGO 52

(Dados estatísticos e amostras de produtos da pesca)

1. O comandante da embarcação de pesca é obrigado, nos termos regulamentares, a:

- a) preencher os formulários estatísticos ou a fornecer declarações sobre as capturas realizadas e desembarques efectuados de forma correcta e verdadeira, nas condições que forem prescritas;
- b) fornecer amostras de produtos da pesca, quando solicitado.

2. O conteúdo dos dados estatísticos e das declarações de captura e desembarque são confidenciais.

ARTIGO 53

(Apoio à investigação)

1. O armador pode ser solicitado a conceder uma percentagem do tempo operacional das suas embarcações de pesca para trabalhos de investigação científica.

2. Sem prejuízo das operações programadas, as condições de utilização da embarcação de pesca e de venda das capturas são objecto de acordo entre o armador e a Administração das Pescas.

3. O governo deve investir na aquisição de equipamentos e meios tecnológicos adequados para a realização de investigação científica dos recursos biológicos aquáticos.

ARTIGO 54

(Sistema de monitorização de embarcações de pesca)

1. A monitorização contínua das embarcações de pesca pode ser efectuada com dispositivos de detecção automática via satélite ou outros sistemas aplicáveis.

2. Os sistemas de monitorização são aplicáveis a todas as embarcações de pesca nacionais e estrangeiras, a pescar nas águas jurisdicionais de Moçambique, de terceiros Estados ou no alto mar, com vista a, em tempo real, obter a sua localização, bem como outras informações que permitam o seu acompanhamento.

3. O Governo estabelece os sistemas aplicáveis e as formas de implementação do sistema de monitorização de embarcações de pesca a ser adoptado.

ARTIGO 55

(Pesca experimental e de investigação)

1. Com duração máxima de um ano e renovável por período único e igual, é permitida a pesca experimental e de investigação.

2. Os dados recolhidos durante a pesca experimental ou de investigação científica autorizada e realizada por armadores de pesca nacionais ou estrangeiros, bem como os dados obtidos após o seu processamento, são entregues à autoridade moçambicana competente.

3. As actividades de pesca experimental e de investigação ficam sujeitas às condições definidas na respectiva licença de pesca.

CAPÍTULO III

Actividades de aquacultura

ARTIGO 56

(Uso da terra e da água)

O uso e o aproveitamento da terra e das águas que integram o domínio público, necessários ao desenvolvimento da aquacultura, estão sujeitos ao regime jurídico da respectiva legislação específica.

ARTIGO 57

(Aquacultura marinha e de água doce)

1. O Governo define as orientações gerais de gestão e desenvolvimento da aquacultura marinha e de água doce e adopta as medidas que forem necessárias, nomeadamente:

- a) a definição das espécies a cultivar e os sistemas de produção aquícolas permitidos;
- b) as áreas com potencialidade para o desenvolvimento da aquacultura;
- c) a preparação de programas de investigação, experimentação, demonstração e extensão;
- d) as normas e preceitos a respeitar na introdução de espécies e para o controlo de doenças;
- e) as condições a que devem sujeitar-se os empreendimentos de aquacultura;
- f) as normas relativas ao uso de produtos químicos, rações e drogas veterinárias.

2. Compete ao Governo estabelecer o ordenamento, o registo das instalações e as condições para o exercício das actividades de aquacultura.

ARTIGO 58

(Aquacultura em tanques e outras instalações)

1. É permitida a construção de tanques e outras instalações destinadas à aquacultura.

2. As construções industriais e semi-indústrias carecem de autorização das instituições competentes.

3. Os tanques e outras instalações para a aquacultura de subsistência não carecem da autorização.

ARTIGO 59

(Pesca em instalações de aquacultura)

A captura de espécies, em instalações licenciadas para o exercício da actividade de aquacultura, é parte do processo de produção aquícola, não estando sujeita às disposições relativas à actividade de pesca.

ARTIGO 60

(Controlo de doenças)

1. As pessoas singulares ou colectivas que se encontrem licenciadas para o exercício da actividade de aquacultura devem possuir mecanismos de prevenção, detecção e controlo da ocorrência de doenças que ponham em causa as espécies aquícolas em cultivo, o meio ambiente, os ecossistemas e a saúde pública.

2. Os espécimes infectados devem ser geridos nos termos fixados em legislação específica, sendo proibido o seu lançamento na descarga de águas.

ARTIGO 61

(Espécimes permitidas)

É permitida, em condições a especificar por via regulamentar, a cultura de espécimes aquáticas nativas ou estabelecidas e de espécimes exóticas, definidas para cada tipo de aquacultura e região de desenvolvimento de actividade.

ARTIGO 62

(Efluentes)

1. Os efluentes das instalações de aquacultura contendo produtos químicos, drogas veterinárias, agentes patogénicos, espécimes contaminados, matéria orgânica e sedimentos, devem ser controlados por sistemas de tratamento apropriados.

2. Os efluentes contendo organismos aquáticos vivos de cultivo são normados por regulamento.

ARTIGO 63

(Mangal)

1. É proibida a destruição de mangal para a instalação de estabelecimentos de aquacultura.

2. O uso de áreas de mangal só é permitido para a construção de estações de bombagem de água, canais de entrada de água para instalações fixas em terra e de pequenos ancoradouros ou para o cultivo de espécies cujo habitat é o mangal, mediante o compromisso de reposição do mangal destruído e a sua previsão em estudo técnico e de impacto ambiental.

ARTIGO 64

(Licenciamento)

1. A construção e a exploração de instalações de aquacultura carecem de apresentação de projecto, estão sujeitas a autorização prévia, ao licenciamento e ao pagamento de taxas que constituem receitas do Estado e à apresentação do estudo de impacto ambiental.

2. O Governo estabelece as condições de autorização, licenciamento e de taxaço.

3. A construção e exploração de instalações de aquacultura de subsistência não está sujeita às obrigações estabelecidas no n.º 1 do presente artigo.

CAPÍTULO IV

Actividades complementares da pesca

ARTIGO 65

(Constituição, instalação e licenciamento)

Compete ao Governo autorizar a constituição, instalação e licenciamento das actividades complementares da pesca.

ARTIGO 66

(Desenvolvimento de infra-estruturas)

O Governo promove, em obediência à política pesqueira e aos planos de desenvolvimento, projectos de investimento público e privado em infra-estruturas destinadas às actividades complementares da pesca.

ARTIGO 67

(Controlos oficiais)

1. O Governo estabelece os requisitos higio-sanitários e de gestão de qualidade relativos às actividades de manuseamento e/ou processamento, distribuição e comércio, incluindo as normas para a realização dos controlos oficiais.

2. Nos controlos oficiais são realizadas as seguintes acções:

- a) o licenciamento sanitário de unidades produtivas;
- b) a certificação sanitária dos produtos da pesca e subprodutos destinados ao mercado;
- c) análises laboratoriais e programas de pesquisa relativos à segurança dos produtos da pesca e subprodutos.

3. Os serviços prestados em decorrência dos controlos oficiais têm como contrapartida o pagamento de tarifas.

ARTIGO 68

(Actividade portuária)

1. A gestão e a segurança nos portos de pesca e em outras infra-estruturas portuárias de apoio à pesca, propriedade do Estado, são exercidas por pessoa colectiva de direito público.

2. As actividades comerciais que têm lugar nos recintos portuários podem ser concessionadas e exercidas por entidades privadas, em condições a definir contratualmente.

ARTIGO 69

(Tarifas portuárias)

1. A prestação de serviços portuários nos portos de pesca e em outras infra-estruturas portuárias de apoio à pesca, tem como contrapartida o pagamento de tarifas.

2. As embarcações, nacionais ou estrangeiras, de investigação científica, de fiscalização da pesca, da polícia ou militares, ou ao serviço destas actividades, estão isentas do pagamento das tarifas correspondentes aos serviços portuários de acostagem e de manuseamento de carga.

ARTIGO 70

(Comercialização dos produtos da pesca e certificados de origem)

1. A comercialização dos produtos da pesca obedece ao constante na presente Lei, bem como na diversa legislação de defesa do consumidor e de comercialização de produtos alimentares.

2. Cabe ao governo adoptar medidas necessárias para assegurar o contínuo abastecimento do mercado nacional em bens alimentares, de sanidade e qualidade adequadas, provenientes da pesca ou da transformação do pescado.

3. O governo estabelece normas para o aproveitamento da fauna acompanhante.

4. É proibida a saída pelas fronteiras marítimas, terrestres e aéreas de Moçambique de produtos de pesca em pequena ou grande quantidade sem apresentação de certificados de origem e de sanidade, bem como o comprovativo de pagamento das devidas taxas.

5. Compete ao governo proceder à atribuição de certificados de origem e de qualidade previstos na legislação sobre a propriedade industrial, bem como o estabelecimento de quantidades mínimas isentas de pagamento de taxas.

ARTIGO 71

(Comércio de redes e aprestos de pesca)

A produção, a importação e a venda de redes e aprestos de pesca, cujas especificações não sejam as regulamentadas é punível nos termos da presente Lei, com sanção igual à aplicável ao emprego de redes com malhas de dimensão efectiva inferior às malhas mínimas autorizadas.

TÍTULO III

Fiscalização, infracções e sanções

CAPÍTULO I

Disposições gerais

ARTIGO 72

(Competência dos agentes de fiscalização)

1. Compete aos agentes de fiscalização indicados na presente Lei, sem prejuízo das competências das demais autoridades, realizar a fiscalização.

2. Com vista a garantir o cumprimento das disposições da presente Lei e demais legislação, os agentes de fiscalização podem:

- a) dar ordem a qualquer embarcação de pesca para parar e efectuar as manobras necessárias para facilitar a sua inspecção;
- b) inspecionar qualquer embarcação de pesca quando em faina de pesca, navegação, em porto ou nos locais de desembarque, bem como qualquer estabelecimento de processamento ou estabelecimento de aquacultura;
- c) ordenar que lhes sejam exibidas as artes de pesca, as capturas que se encontrem a bordo, os documentos obrigatórios relativos à embarcação, a estabelecimentos de processamento ou a instalações de aquacultura, bem como as licenças, os certificados de legalidade e dos equipamentos instalados;
- d) inspecionar quaisquer locais em que tenham razões para presumir da existência de pescado ilegalmente capturado ou de artes de pesca não licenciadas e não regulamentadas;
- e) inspecionar os documentos relativos aos produtos da pesca transportados e ou transbordados que transitem ou não por estabelecimentos de processamento de produtos da pesca;
- f) ordenar que uma embarcação, apresada nos termos da presente Lei e demais legislação aplicáveis, se dirija ou seja conduzida até ao porto mais próximo ou local apropriado para os devidos procedimentos legais;
- g) ordenar a abertura de qualquer recipiente, armazém frigorífico, fixos ou móveis, armazém de secos, ou porões de embarcações, veículos, salas, estabelecimentos ou compartimentos onde presumam existirem produtos da pesca susceptíveis de inspecção sanitária;
- h) vistoriar, abrir ou ordenar a abertura de unidades produtivas, estabelecimentos ou instalações e, se for caso disso, ordenar o seu encerramento;
- i) interditar a circulação de produtos da pesca ou produtos da pesca impróprios para o consumo humano ou suspender a circulação de produtos da pesca suspeitos.

3. Compete ao Governo estabelecer normas de actuação dos agentes de fiscalização.

ARTIGO 73

(Fiscalização)

1. As actividades de fiscalização da pesca nas águas jurisdicionais de Moçambique são da exclusiva competência do Estado.

2. O Estado pode estabelecer acordos internacionais para a conjugação de esforços de fiscalização.

ARTIGO 74

(Natureza da infracção)

A conduta prosseguida no exercício da pesca e de outras actividades reguladas pela presente Lei, em violação das suas disposições e demais regulamentos aplicáveis e descrita como tal, constitui infracção de natureza contravencional.

ARTIGO 75

(Responsabilidade civil objectiva)

Aquele que, no decurso das actividades pesqueiras e complementares da pesca, causar danos ao meio ambiente, independentemente de culpa, fica obrigado a repará-los e ou a indemnizar terceiros lesados e ou o Estado, nos termos da presente Lei e demais legislação aplicável.

ARTIGO 76

(Procedimentos cautelares)

Quando, no decurso das operações de fiscalização, os agentes de fiscalização tiverem fortes indícios da prática de infracção à presente Lei e demais regulamentos aplicáveis, podem, a título preventivo:

- a) apreender qualquer embarcação de pesca com os respectivos materiais, artes de pesca e capturas existentes a bordo que suspeitem terem sido empregues na prática da dita infracção;
- b) mandar encerrar estabelecimentos de processamento de produtos da pesca;
- c) manter em quarentena instalações ou estabelecimentos de aquacultura;
- d) suspender a colheita e a comercialização dos produtos aquícolas.

ARTIGO 77

(Destino dos bens confiscados)

O destino dos bens confiscados é estabelecido pelo Governo.

ARTIGO 78

(Mínimo de interferência com as actividades produtivas)

As operações de fiscalização e inspecções de rotina são efectuadas de modo a ocasionar um mínimo de interferências e de perturbações nas actividades produtivas em curso.

ARTIGO 79

(Resistência com violência ou ameaças de violência)

Quem agredir ou obstruir com violência ou ameaça de violência, a acção de um agente de fiscalização ou amostrador ou técnico de investigação no exercício das suas funções, será punido nos termos da lei penal em vigor.

ARTIGO 80

(Pluralidade de infracções)

1. No âmbito do mesmo processo de infracção é punido, por acumulação de infracções, o agente que tenha cometido mais do que uma infracção.

2. Na acumulação de infracções o valor da multa é a soma aritmética dos valores das multas a aplicar por cada sanção acumulada, sendo aplicadas as correspondentes sanções acessórias.

ARTIGO 81

(Reincidência)

No caso de reincidência, os limites da multa a aplicar são elevados para o dobro, cabendo sempre a sanção acessória correspondente.

ARTIGO 82

(Participação e auto de notícia)

1. Todo aquele que constatar uma violação das disposições da presente Lei e demais regulamentos aplicáveis deve participá-la às autoridades competentes para averiguações.

2. O processo de infracção inicia-se com o Auto de Notícia e a sua instrução tem regulamentação própria.

ARTIGO 83

(Natureza do processo de infracção)

1. A instrução do processo de infracção é de carácter administrativo, exceptuando a que decorre da violação do artigo 79 da presente Lei, cuja competência é da autoridade de investigação criminal.

2. O membro do Governo responsável pelo sector das pescas ou quem ele delegar é competente para aplicar todas as sanções previstas na presente Lei e demais legislação conexa.

ARTIGO 84

(Recurso da decisão)

Da decisão que recaia sobre o processo de infracção, impondo sanção, cabe recurso hierárquico necessário a ser interposto no prazo de oito dias, contados a partir da data da sua notificação.

ARTIGO 85

(Execução da decisão)

1. Verificada uma decisão definitiva e executória, se o infractor não a cumprir voluntariamente, no prazo de oito dias, contados a partir da data da notificação da decisão, é confiscado e declarado perdido a favor do Estado tudo o que haja sido apreendido a título preventivo, sem prejuízo de se lançar mão das garantias constituídas.

2. Na falta de garantias suficientes, o processo de infracção é remetido ao Tribunal de Execuções Fiscais competente para a respectiva execução.

3. Não havendo recurso, o despacho da decisão definitiva e executória do confisco de embarcação de pesca é título bastante para determinar a transferência da sua propriedade para o Estado.

ARTIGO 86

(Prescrição das infracções)

1. As infracções de pesca muito graves previstas na presente Lei prescrevem no prazo de três anos e as graves no prazo de dois anos, contados a partir da data do seu cometimento.

2. As infracções aquícolas e higio-sanitárias prescrevem no prazo de dois anos a partir da data do seu cometimento.

ARTIGO 87

(Responsabilidade geral)

Os comandantes das embarcações de pesca, os armadores, os titulares de direitos de pesca, os proprietários de embarcações de pesca, os afretadores, os proprietários de estabelecimentos de processamento de produtos da pesca e de estabelecimentos e instalações de aquacultura, os encarregados das operações de pesca, de processamento e das actividades de aquacultura, os transportadores, os armazenistas frigoríficos ou de secos, as pessoas singulares e colectivas em geral, respondem individual e solidariamente pelas infracções cometidas e também pelo pagamento das sanções pecuniárias, indemnizações e outras prestações em que forem sancionados por infracções à presente Lei e demais legislação.

ARTIGO 88

(Graduação de multas)

Na fixação do montante da multa a aplicar deve ter-se em conta:

- a) o tipo de pesca praticado e o local ou zona onde a infracção tenha ocorrido;

b) as características técnicas da embarcação usada na prática da infracção;

c) as características técnicas e a dimensão das instalações e estabelecimentos de processamento ou aquícolas onde a infracção tenha ocorrido;

d) o benefício económico estimado que o autor da infracção poderia ter tirado ou tirou da sua prática;

e) eventuais danos causados à saúde pública, ao meio ambiente e aos ecossistemas;

f) outros factos relevantes que o instrutor tenha conhecimento no exercício das suas funções.

ARTIGO 89

(Unidade monetária)

1. A fixação e o pagamento da multa são na moeda nacional.

2. A multa aplicada a pessoa estrangeira não residente ou sem representação em Moçambique é pagável em moeda livremente convertível.

CAPÍTULO II

Fiscalização

SECÇÃO I

Fiscalização da pesca

ARTIGO 90

(Procedimento com embarcação de pesca estrangeira)

A apreensão de uma embarcação de pesca estrangeira ou a autuação por qualquer infracção de pesca em que esta esteja envolvida é comunicada, de imediato, ao órgão do Governo responsável pelas relações exteriores que, por sua vez, as comunica ao Estado de bandeira e às organizações regionais e internacionais pertinentes.

ARTIGO 91

(Direito de perseguição)

Quando no exercício da fiscalização da pesca os agentes de fiscalização tiverem motivos fundados para acreditar que uma embarcação de pesca infringiu as leis e regulamentos de pesca, pondo-se em fuga, podem exercer o direito de perseguição em conformidade com o direito internacional.

ARTIGO 92

(Responsabilidade da administração)

Sem prejuízo do direito de regresso nos termos da lei, o Estado responde pelos danos causados por actos ilegais praticados pelos agentes de fiscalização no exercício das suas funções.

ARTIGO 93

(Capturas apreendidas)

1. As capturas apreendidas devem manter-se a bordo da embarcação infractora, na qualidade de fiel depositária, em porão devidamente selado ou, se forem susceptíveis de deterioração, colocadas em entreposto frigorífico, vendidas ou doadas a centros de saúde, internatos ou outras instituições públicas de cariz social.

2. O produto da venda das capturas é depositado, à ordem das autoridades que tiverem a seu cargo a instrução do processo de infracção, até à sua conclusão.

3. O Governo declina qualquer responsabilidade quanto ao preço de venda das capturas apreendidas.

ARTIGO 94

(Prestação e restituição de caução)

1. Quando uma embarcação de pesca tiver sido apreendida ao abrigo do disposto na alínea *a*) do artigo 76 da presente Lei pode ser imediatamente libertada a requerimento do armador, afretador, comandante ou seus representantes, mediante a prestação de caução.

2. O valor da caução é arbitrado pelo instrutor do processo de infracção de pesca, não devendo ser inferior ao valor de mercado da embarcação de pesca envolvida, acrescido do valor máximo da multa correspondente à infracção de pesca respectiva.

3. A decisão sobre a libertação da embarcação é proferida no prazo de quarenta e oito horas após a prova de prestação da caução.

4. A caução prestada é prontamente restituída:

- a*) se tiver sido decidido o arquivamento do processo;
- b*) se, verificada decisão definitiva e executória, os autores da infracção tiverem procedido tempestivamente ao pagamento de todas as multas, despesas e emolumentos da sua responsabilidade.

SECÇÃO II

Inspecção higio-sanitária dos produtos da pesca

ARTIGO 95

(Controlo hígio-sanitário dos produtos da pesca)

1. As actividades de manuseamento e ou processamento, distribuição e comércio estão sujeitas ao controlo dos requisitos higio-sanitários e de gestão de qualidade através dos controlos oficiais.

2. O Governo indica a autoridade competente responsável pela execução dos controlos oficiais para os produtos da pesca e respectiva certificação sanitária.

ARTIGO 96

(Fiscalização sanitária)

1. As acções de controlo e fiscalização sanitária são realizadas por inspectores de pescado.

2. Sem prejuízo do disposto no artigo 72 da presente Lei, o Inspector de Pescado pode:

- a*) vistoriar, abrir ou ordenar a abertura de unidades produtivas e estabelecimentos;
- b*) verificar as condições higio-sanitárias das unidades produtivas e estabelecimentos;
- c*) colher amostras para serem submetidas a análises;
- d*) ordenar, se for caso disso, o encerramento das unidades produtivas e estabelecimentos;
- e*) inspecionar em toda a cadeia produtiva a documentação relativa aos produtos alimentares de origem aquática e das rações usadas para animais aquáticos que se destinem ao consumo humano;
- f*) interditar a circulação de produtos da pesca ou produtos da pesca impróprios para o consumo humano ou suspender a circulação dos suspeitos.

3. Os inspectores de pescado podem ser auxiliados por profissionais da saúde e outros que se mostrarem indispensáveis para auxiliar no desempenho das suas funções.

SECÇÃO III

Fiscalização das actividades de aquacultura

ARTIGO 97

(Fiscalização aquícola)

O Governo fiscaliza o exercício das actividades de aquacultura através do seu órgão de superintendência do sector das pescas.

CAPÍTULO III

Infracções

SECÇÃO I

Infracções de pesca, aquícolas e higio-sanitárias

ARTIGO 98

(Infracções de pesca muito graves)

Constituem infracções de pesca muito graves:

- a*) a prática ou tentativa de prática de pesca sem licença de pesca, por nacionais ou estrangeiros, nas águas jurisdicionais de Moçambique;
- b*) a pesca no alto mar ou em águas de terceiros Estados, utilizando embarcação de pesca moçambicana, sem a competente autorização;
- c*) a falsificação de licença de pesca;
- d*) a fuga ou a tentativa de fuga de embarcação de pesca após a respectiva interpelação pelos agentes de fiscalização;
- e*) a posse, o uso e ou o transporte das substâncias e dos produtos mencionados no artigo 50 da presente Lei;
- f*) a realização de operações conexas de pesca que não tenham sido autorizadas e/ou licenciadas;
- g*) a não utilização ou a utilização fraudulenta do dispositivo de exclusão de tartarugas marinhas;
- h*) a recusa do comandante em obedecer às ordens dadas por agentes de fiscalização, de entrada em porto, recolha de artes de pesca ou de apresentação dos documentos de bordo.

ARTIGO 99

(Infracções de pesca graves)

Para efeitos da presente Lei e seus e demais legislação, são infracções de pesca graves:

- a*) a existência a bordo ou o uso de artes de pesca que não correspondam às especificações prescritas ou autorizadas;
- b*) o emprego de redes cujas malhas sejam de dimensão efectiva inferior às malhas mínimas autorizadas ou a pesca submarina com armas e artefactos cujo uso seja proibido;
- c*) o emprego de dispositivo susceptível de obstruir ou diminuir a dimensão das malhas;
- d*) a pesca em épocas proibidas, de defeso e de veda;
- e*) a pesca em zonas cujo acesso é proibido e em locais ou zonas para as quais não esteja autorizado ou não indicado na licença de pesca;
- f*) a pesca de espécies cuja captura seja proibida;
- g*) a pesca de espécies cujo peso ou dimensões sejam inferiores aos pesos e dimensões mínimos autorizados;
- h*) a pesca para além do limite da quota e do número mínimo de espécimes cuja captura é autorizada ou o desrespeito das normas relativas ao controlo do esforço de pesca;
- i*) a alteração fraudulenta dos dados que figuram na licença de pesca;
- j*) a prestação de falsas informações estatísticas sobre as capturas e esforço de pesca;
- k*) a falsificação ou ocultação da informação sobre a potência instalada ou a introdução não autorizada de dispositivos que a alterem;
- l*) a alteração, a danificação, intencional ou não, ou qualquer forma de interferência com as comunicações ou com o funcionamento de dispositivo de localização por satélite;
- m*) a posse, o uso e ou o transporte das substâncias e dos produtos mencionados no artigo 50;

- n) o desembarque, a descarga ou o transbordo dos produtos da pesca não autorizados ou em porto diferente do autorizado;
- o) o não cumprimento por embarcação de pesca moçambicana, autorizada a pescar no alto mar, das medidas internacionais sobre a conservação e a gestão do alto mar;
- p) a falsificação ou a ocultação das marcações, da identidade ou do registo de embarcação de pesca.

ARTIGO 100

(Infracções de pesca simples)

Para efeitos da presente Lei e seus regulamentos, são infracções de pesca simples:

- a) o não cumprimento das condições e termos estabelecidos na licença de pesca;
- b) o não cumprimento da obrigação de pôr à disposição das autoridades competentes os registos de bordo;
- c) a falta de cooperação com os agentes de fiscalização e técnicos de investigação;
- d) a perda ou deterioração do diário de bordo de pesca e outros livros de bordo relativos à navegação e às máquinas;
- e) a falta de cópia de licença de pesca a bordo ou qualquer outro documento obrigatório legalmente previsto;
- f) a prática de pesca submarina com meios de respiração artificial não autorizados;
- g) a realização de concursos de pesca desportiva sem prévia comunicação à autoridade competente ou que tenham sido proibidos;
- h) a venda pelo produtor ou a compra e a venda pelo comerciante de produtos da pesca capturados em zonas ou épocas proibidas;
- i) a recusa do fornecimento, quando solicitado, de informação relativa ao posicionamento da embarcação;
- j) o fornecimento de dados estatísticos fora dos prazos estabelecidos.

ARTIGO 101

(Infracções aquícolas)

1. Para efeitos da presente Lei e seus regulamentos, são infracções aquícolas simples:

- a) o excesso de biomassa em face de limites admissíveis;
- b) a realização de obras ou instalações sem que constem em projecto devidamente autorizado;
- c) a interdição do acesso, de agente credenciado, as instalações aquícolas;
- d) o uso de áreas de mangal para a instalação de tanques de cultura, incluindo o seu abate para outros fins sem a sua reposição;
- e) o lançamento na descarga de águas de espécimes infectados ou doentes ou de águas que contenham produtos químicos, agentes patogénicos, matéria orgânica e sedimentos.

2. São infracções aquícolas graves:

- a) a construção de estabelecimento de aquacultura sem prévia autorização;
- b) a importação de espécies para a cultura sem autorização prévia;
- c) a não observância das normas de quarentena aplicáveis às espécies importadas de estabelecimento de aquacultura;
- d) o início de funcionamento sem estar licenciado;
- e) a realização de manipulações genéticas sem prévia autorização;
- f) a descarga de efluentes sem sistemas apropriados de tratamento;

- g) o uso de produtos químicos ou drogas veterinárias não autorizadas;
- h) a falsificação ou alteração das condições estabelecidas na licença de aquacultura;
- i) a cultura de espécies selvagens sem prévia autorização;
- j) a não comunicação da ocorrência de doenças;
- k) a administração de produtos químicos ou drogas veterinárias fora dos limites permitidos.

ARTIGO 102

(Infracções higio-sanitárias)

Para efeitos da presente Lei e seus regulamentos, são infracções higio-sanitárias:

- a) o funcionamento de unidades produtivas e estabelecimentos sem licenciamento sanitário de funcionamento;
- b) o funcionamento de unidades produtivas e estabelecimentos com licença caducada ou suspensa;
- c) a colocação no mercado de produtos alimentares de origem aquática sem cumprir com os requisitos gerais para a sua colocação no mercado, de higiene ou sem certificado sanitário;
- d) o não cumprimento dos requisitos higio-sanitários previstos em regulamentação específica;
- e) a falta de registos e ou a sua falsificação, o envio de informações falsas ou ainda a falta de envio de informação destinada à autoridade competente;
- f) a falta de cooperação para com a autoridade competente na realização de controlos oficiais ou fiscalização;
- g) o funcionamento de unidades produtivas e estabelecimentos que não cumpram os requisitos estruturais e em matéria de equipamento estabelecidos em normas específicas;
- h) a colocação deliberada ou tentativa de colocação no mercado de produtos da pesca contaminados ou que contenham toxinas prejudiciais à saúde humana;
- i) o não cumprimento dos prazos que venham a ser estabelecidos pelo Inspector do Pescado no âmbito dos controlos oficiais;
- j) a realização de obras ou instalações sem que constem de projecto devidamente autorizado;
- k) a falsificação ou alteração das condições estabelecidas na licença sanitária.

CAPÍTULO IV

Sanções gerais

ARTIGO 103

(Sanções aplicáveis)

1. As infracções à presente Lei e demais regulamentos aplicáveis são puníveis com multa, não convertível em pena de prisão, que constitui receita do Estado.

2. Cumulativamente à multa, são aplicáveis as seguintes sanções acessórias:

- a) confisco de todas as capturas que se encontrem na posse, a bordo ou no processo de produção;
- b) confisco das artes de pesca ilegais;
- c) confisco de produtos da pesca em contravenção à legislação aplicável;
- d) cancelamento ou suspensão de licença de pesca, de licença sanitária de funcionamento e de licenças necessárias à actividade aquícola;
- e) encerramento de unidade produtiva ou estabelecimento;
- f) interdição temporária do comandante de embarcação de pesca do exercício da actividade de pesca;
- g) perda a favor do Estado da embarcação de pesca, sendo estrangeira;

- h) confisco de espécies geneticamente manipuladas em infracção ou cultivadas sem autorização ou com doenças;

3. O Governo, sempre que se mostrar necessário, pode proceder à actualização dos valores das multas.

ARTIGO 104

(Sanção por infracções de pesca muito graves)

1. As infracções de pesca, previstas no artigo 98 da presente Lei são puníveis com as seguintes multas:

- a) superior a mil e cento e cinquenta salários mínimos da Função Pública para a pesca industrial;
- b) superior a quatrocentos e vinte e três salários mínimos da Função Pública para a pesca semi-industrial;
- c) superior à metade do salário mínimo da Função Pública, para a pesca artesanal;
- d) superior a dezanove salários mínimos da Função Pública, para a pesca recreativa e desportiva.

2. Cumulativamente, são aplicáveis as seguintes sanções acessórias:

- a) confisco das capturas e das artes de pesca;
- b) interdição do comandante de exercer a pesca em Moçambique durante trinta e seis meses;
- c) confisco e reversão automática da propriedade da embarcação de pesca a favor do Estado, sendo estrangeira.

ARTIGO 105

(Sanções por infracções de pesca graves)

1. As infracções previstas no artigo 99 da presente Lei são puníveis com multa graduada de metade do salário mínimo a cento e vinte salários mínimos e, cumulativamente, com as sanções acessórias seguintes:

- a) confisco das capturas e das artes de pesca, no caso de infracção às alíneas a), b), c), d), e), f) e g);
- b) confisco das capturas, no caso de infracção às alíneas j) e p);
- c) suspensão da licença de pesca, por um período de quinze a sessenta dias, no caso de infracção às alíneas a), c), e), h), j) e k);
- d) interdição do comandante da embarcação de pesca da sua actividade profissional, por um período de quinze a noventa dias, no caso de infracção às alíneas a), b), c), e), k) e o).

2. A sanção acessória de suspensão do comandante não é aplicável à pesca artesanal.

ARTIGO 106

(Sanções por infracções de pesca simples)

1. As infracções previstas no artigo 100 da presente Lei são puníveis com multa de metade do salário mínimo a oitenta salários mínimos e, cumulativamente, com as sanções acessórias seguinte:

- a) confisco das artes de pesca, no caso de infracção à alínea f);
- b) confisco de produtos da pesca em contravenção, no caso de infracção à alínea h);
- c) interdição do comandante da embarcação de pesca da sua actividade profissional, por um período de quinze a sessenta dias, no caso de infracção às alíneas a), b), c), d), e), i) e j).

2. A sanção acessória de suspensão do comandante não é aplicável à pesca artesanal.

ARTIGO 107

(Sanções por infracções aquícolas)

1. As infracções previstas no artigo 101 da presente Lei são puníveis com multa graduada de metade do salário mínimo a setenta salários mínimos e, cumulativamente, com as sanções acessórias seguintes:

- a) confisco dos espécimes em cultivo, no caso de infracção às alíneas b), c), e), j) e l do n.º 2;
- b) suspensão da autorização de construção, no caso de infracção à alínea b) do n.º 1;
- c) cancelamento da concessão da construção, no caso de infracção à alínea d) do n.º 2;
- d) cancelamento da licença de aquacultura, no caso de infracção às alíneas e) do n.º 1; f), e h) do n.º 2;

2. A infracção prevista na alínea d) do n.º 1 do artigo 101 da presente Lei é punível com multa de três salários mínimos por cada hectare de área de cultivo construída.

3. A infracção prevista na alínea a) do n.º 1 do artigo 101 da presente Lei é punível com multa de dois salários mínimos por cada tonelada produzida em excesso.

ARTIGO 108

(Sanções por infracções higio-sanitárias)

As infracções previstas no artigo 102 são puníveis com multa graduada de três salários mínimos a oitenta salários mínimos e, cumulativamente, são aplicadas as sanções acessórias seguintes:

- a) Encerramento da unidade produtiva ou do estabelecimento, no caso de infracção à alínea a);
- b) Encerramento da unidade produtiva ou do estabelecimento, por um período de trinta a cento e oitenta dias, no caso de infracção às alíneas b), e j);
- c) Confisco dos produtos objecto da contravenção, no caso de infracção às alíneas a), c), d) e h);
- d) Suspensão da correspondente licença sanitária de funcionamento por um período não superior a cento e oitenta dias, no caso de infracção à alínea d), g), h) e k).

ARTIGO 109

(Sanções por prática de actos ilícitos)

Fica interdito, por um período de dez anos, do exercício de actividades pesqueiras e complementares da pesca o comandante, o proprietário ou o armador, que tenha consentido ou usado a embarcação de pesca, a que esteja vinculado, para o transporte, contrabando ou tráfico ilegal de pessoas, drogas tóxicas, estupefacientes, substâncias psicotrópicas, armas de fogo ou material de guerra ou de quaisquer outros produtos proibidos por lei, sem prejuízo de procedimento criminal se o houver.

TÍTULO IV

Disposições finais

ARTIGO 110

(Regulamentação)

Compete ao Governo aprovar os regulamentos específicos, no prazo de 180 dias nos domínios da pesca, da inspecção de pescado e da aquacultura, destinados a assegurar a execução da presente Lei.

ARTIGO 111

(Disposição revogatória)

É revogada a Lei n.º 3/90, de 26 de Setembro, e toda a legislação contrária à presente Lei.

ARTIGO 112

(Entrada em vigor)

A presente Lei entra em vigor noventa dias após a sua publicação.

Aprovada pela Assembleia da República, aos 17 de Maio de 2013. — A Presidente da Assembleia da República, *Verónica Nataniel Macamo Dlhovo*.

Promulgada aos 10 de Setembro de 2013.

Publique-se.

O Presidente da República, *Armando Emílio Guebuza*.

ANEXO

GLOSSÁRIO

A

Actividades complementares da pesca: o processamento de pescado, a comercialização, os serviços portuários, a construção e reparação naval, o fabrico de redes de pesca, artefactos, aprestos e outros acessórios.

Actividades pesqueiras: as actividades de pesca e de operações conexas de pesca e de aquacultura.

Administração das Pescas: órgão do Governo responsável pelo sector das pescas.

Afretamento: É a contratação de embarcações realizada directamente com um armador normalmente no exercício da actividade pesqueira que não encontra o espaço suficiente ou frete desejado nos portos de embarque pretendido – definição não aplicável a pesca.

Agentes de fiscalização: aqueles que tenham competência para constatar e autuar as infracções às disposições da presente Lei e demais regulamentos aplicáveis, nomeadamente:

- a) o fiscal de pesca, o inspector de pescado e outros funcionários devidamente credenciados;
- b) os agentes da autoridade marítima e aduaneira, quando em acções de fiscalização;
- c) os oficiais de comando de navios e de aeronaves militares destacados em missões de fiscalização da pesca;
- d) as autoridades comunitárias devidamente habilitadas e credenciadas.

Águas continentais ou interiores: as que se encontram fora da acção marinha, nomeadamente os rios, os lagos e as lagoas, sem ligação com o mar, com comunicação com o mar somente nas marés vivas, as albufeiras, os canais e outras massas aquíferas e, de um modo geral, os depósitos de água susceptíveis de propiciar a criação de espécies aquáticas.

Águas interiores marítimas: as situadas no interior das linhas de base a partir das quais se mede a largura do mar territorial.

Águas jurisdicionais de Moçambique: as águas marítimas e as águas continentais ou interiores.

Águas marítimas: as águas interiores marítimas, o mar territorial e a zona contígua, e as águas que se estendem até ao limite da zona económica exclusiva.

Alto mar: distância além das 200 milhas marítimas medidas a partir da linha de base.

Aprestos de pesca: todo o necessário para a embarcação de pesca empreender viagem de campanha de pesca, excluindo tripulação, combustível, mantimentos e aguada.

Aquacultura: actividades desenvolvidas pelo Homem que têm por fim a reprodução, o crescimento, a engorda, a manutenção e o melhoramento de espécies aquáticas, incluindo peixes, moluscos, crustáceos e plantas aquáticas, para fins de produção, sendo estas operações efectuadas em instalações alimentadas por águas marítimas (aquacultura marinha), por águas continentais (aquacultura de água doce) ou por ambas (aquacultura de águas salobras).

Armador de pesca: pessoa singular ou colectiva que proceda ao armamento, aparelhamento ou apetrechamento de embarcação de pesca de sua propriedade ou de terceiros com vista a exercer a actividade de pesca e/ou de operações conexas de pesca.

Artes de pesca: todo o artefacto, aparelho e instrumento de pesca preparado para ser utilizado na captura de recursos pesqueiros.

C

Captura acessória ou fauna acompanhante: espécies aquáticas capturadas e que não constituem a espécie-alvo.

Captura: a recolha, extracção, apanha, remoção e colheita de qualquer recurso pesqueiro.

Comandante: tripulante constante do rol de matrícula de uma embarcação de pesca, responsável pela sua condução, operação e segurança, também designado por capitão, mestre ou arrais.

Concessão de direitos de pesca: acto administrativo da Administração das Pescas que confere a uma pessoa a titularidade de direitos de pesca.

D

Defeso: interdição da pesca em determinadas áreas ou épocas com vista à protecção de reprodutores e/ou desova.

Direito de acesso: autorização concedida a uma pessoa titular de direitos de pesca para explorar um recurso pesqueiro determinado.

Direito de Pesca: o direito de capturar uma quantidade específica de recursos pesqueiros ou uma proporção do total admissível de captura ou o direito de utilizar uma embarcação ou qualquer outro equipamento de pesca de acordo com o especificado nos planos de gestão das pescarias e na legislação pesqueira.

E

Ecossistema - É um complexo dinâmico de comunidades vegetais animais e de microorganismos e o seu ambiente não vivos, que interagem como uma unidade funcional.

Educação ambiental - que consiste na educação e troca de experiência com e entre as comunidades locais visando capacitá-las sobre o manejo e conservação dos recursos pesqueiros.

Embarcação de pesca ou barco de pesca: aquela que esteja equipada ou seja utilizada para a pesca ou actividades conexas de pesca.

Embarcação de pesca moçambicana: embarcação de pesca registada em Moçambique.

Embarcação de pesca estrangeira: aquela que não seja embarcação de pesca moçambicana.

Esforço de pesca: medida de intensidade com que a pesca é exercida sobre uma espécie aquática determinada, por unidade de pesca, embarcação ou arte de pesca, cuja unidade de medida é variável podendo ser, entre outras, o número de embarcações de pesca, o número de pescadores, o número de horas de pesca, a quantidade de artes de pesca ou o número de lances.

Espécie alvo: espécie ou espécies aquáticas cuja captura está autorizada, que não seja considerada captura acessória ou fauna acompanhante e para a qual se orienta de forma reiterada o esforço de pesca.

Espécie aquática: organismo que encontra na água o seu meio normal ou mais frequente de vida.

Espécie transzonal: espécies aquáticas que habitam tanto na zona económica exclusiva como em alto mar.

Espécies altamente migratórias: as que migram sazonalmente entre o alto mar e a zona económica exclusiva.

Espécies exóticas: espécies animais ou vegetais não nativas de Moçambique.

Estabelecimento de aquacultura: unidade onde se crie, reproduza ou conserve espécies aquáticas, com fins de comercialização ou não, incluindo a universalidade de bens e de direitos que a integram.

F

Fiscal de Pesca: agente de fiscalização, com a categoria profissional de Fiscal de Pesca, habilitado para actuar na fiscalização da pesca.

I

Infracção de pesca ou contravenção: facto punível que consiste na violação da presente lei ou dos seus regulamentos, ou na falta de observância das suas disposições preventivas, independentemente de intenção maléfica.

Inspecção de pescado ou de produtos da pesca: conjunto de acções de controlo e de fiscalização sistemática dos requisitos higio-sanitários e de gestão de qualidade em toda a cadeia produtiva, incluindo o transporte, a distribuição e a colocação no mercado.

Inspector de Pescado: agente de fiscalização habilitado para realizar o controlo higio-sanitário dos produtos da pesca e subprodutos em toda a cadeia produtiva, incluindo o transporte.

Instalações de aquacultura: massas de água e seus fundos, natural ou artificialmente criadas, devidamente demarcadas, artefactos flutuantes ou submersos e instalações em terra firme que tenham por fim a reprodução ou a cultura de espécies aquáticas.

M

Monitorização: recolha de informação, sua compilação e análise, que permite conhecer em cada momento as actividades pesqueiras, sua legalidade e as condições higio-sanitários dos produtos da pesca.

O

Operações conexas de pesca: as que se realizam com embarcações no decurso do processo produtivo da pesca e que concorrem para a concretização ou rentabilização da actividade de pesca propriamente dita, nomeadamente:

- a) o transbordo de pescado ou de produtos de pesca de uma embarcação para outra;
- b) o armazenamento, o processamento e o transporte marítimo de quaisquer espécies aquáticas até ao primeiro desembarque;
- c) o abastecimento ou quaisquer outras actividades de apoio logístico às embarcações de pesca, quando realizadas no mar;
- d) o transporte de e para as zonas de pesca;
- e) a tentativa de preparação para qualquer uma das operações previstas acima, quando realizada no mar.

Ordenamento das actividades pesqueiras: conjunto de medidas específicas de natureza legal, técnica e administrativa destinadas nomeadamente a:

- a) Regular o sector produtivo das pescas e aquacultura, a frota pesqueira e as zonas de pesca, o estabelecimento de portos base e suas alterações, a primeira venda e o controlo higio-sanitário dos produtos da pesca;
- b) Assegurar a utilização responsável, auto-renovação e sustentabilidade dos recursos pesqueiros.

P

Pesca:

- a) as actividades de captura de espécies aquáticas, incluindo a apanha de corais e de conchas ornamentais ou de colecção;
- b) a procura ou a tentativa de captura de espécies aquáticas;
- c) qualquer operação em relação com ou de preparação para a captura de espécies aquáticas, compreendendo, nomeadamente, a instalação ou a recolha de dispositivos para atraí-las ou para a sua procura.

Pesca comercial ou profissional: aquela que é praticada por pessoas singulares ou colectivas com fins lucrativos.

Pesca de investigação científica: cruzeiros ou pesca com fins científicos com vista a determinar, entre outros, a quantidade e a distribuição espacial dos recursos pesqueiros.

Pesca de pequena escala: a pesca artesanal e a pesca semi-industrial.

Pesca de subsistência: a que é praticada com ou sem embarcação e com artes de pesca artesanais elementares, constituindo uma actividade secundária para quem a pratica, produz para consumo próprio e só esporadicamente vende a sua produção.

Pesca desportiva: a que é realizada por pescador amador, em competição desportiva, de acordo com regras internacionais e regulamentos formulados pelos organizadores de concursos e campeonatos tendo em vista a obtenção de marcas desportivas, incluindo o treino e a aprendizagem.

Pesca experimental: a realizada com o objectivo de experimentar artes de pesca, métodos e embarcações de pesca, introduzir tecnologias, bem como prospectar novos recursos ou zonas de pesca, também designada por pesca demonstrativa.

Pesca marítima: a que é praticada nas águas marinhas.

Pesca recreativa: a pesca exercida por pescador amador fora dos concursos de pesca desportiva.

Pesca submarina: a pesca praticada por pessoas em imersão, em apneia ou dotada de meios de respiração artificial, com ou sem auxílio de embarcação.

Pescador amador: aquele que exerce a actividade de pesca sem fins lucrativos, com o propósito de recreio, passatempo, turismo ou desporto.

Pescaria: unidade de gestão e desenvolvimento da pesca, composta por um sistema de elementos biológicos, ambientais, tecnológicos, socioeconómicos e culturais que interagem através da acção da pesca.

Pescaria fechada: pescaria em regime de não acesso a novos ingressos e que implique aumento de capacidade de pesca.

Pessoa colectiva nacional: a que esteja registada em Moçambique e tenha a sede e direcção efectiva em território nacional e cujo capital seja maioritária e efectivamente detido por moçambicanos.

Pessoa singular nacional: pessoa de cidadania moçambicana.

Porto base ou de armamento: lugar onde a embarcação de pesca pertence e faz a matrícula anual da sua tripulação, incluindo a preparação e o início das actividades de pesca.

Porto de pesca: cais ou embarcadouro ou outro local com áreas especialmente destinadas à acostagem de embarcações de pesca e equipadas com o necessário para realizar operações de carga e descarga, abastecimento, manuseamento, acondicionamento e armazenamento de produtos da pesca e mercadorias.

Processamento de produtos da pesca: qualquer processo em local, instalação ou estabelecimento na qual os produtos da pesca são enlatados, embalados, secos, fumados, postos em salmoura ou em gelo, congelados, tratados e acondicionados de qualquer outra forma para serem vendidos a grosso ou a retalho.

Produto da pesca: qualquer espécie aquática ou parte dela, animal ou vegetal, marinha ou de água doce, apanhada ou capturada no decurso da pesca ou provenientes da aquacultura, também designado por pescado.

Proprietário de embarcação de pesca: pessoa singular ou colectiva que consta, no Título de Propriedade ou nos livros de registo da Administração das Pescas, como proprietário da embarcação de pesca.

Q

Quota de pesca: quantidade limite de captura fixada para uma embarcação de pesca, ou para um grupo de pescadores, por um determinado período.

R

Rastreabilidade: capacidade de traçar o histórico ou seguimento de rasto para a identificação da origem, destino ou fim de factos ou produtos da pesca, com base em informações conhecidas ou registadas.

Recursos pesqueiros: espécies aquáticas, animais ou vegetais, cujo meio de vida normal ou mais frequente é a água, e que podem ser objecto de actividade da pesca ou de aquacultura.

Reincidência: a comissão, pela mesma pessoa de nova infracção e da mesma gravidade, dentro de seis meses contados a partir da data da fixação definitiva da sanção anterior.

S

Salário mínimo: é o salário adoptado pela Função Pública, em vigor na data da infracção.

Sistema de Monitorização de Embarcação de Pesca: sistema de localização de embarcações de pesca, usando tecnologia informática e de satélite, através do qual se obtêm, informações sobre o seu posicionamento sua velocidade e direcção, de captura e esforço de pesca e demais dados que permitam o acompanhamento da actividade da embarcação de pesca.

Sistema de pesca: conjunto de meios humanos, artes de pesca e outros instrumentos, embarcações e métodos, que, de forma inter-relacionada, são utilizados na actividade da pesca.

T

Total Admissível de Captura (TAC): quantidade limite que poderá ser capturada num dado período, em relação a uma determinada espécie ou pescaria ou ainda à totalidade das pescarias, sem pôr em causa a sua preservação, renovação e sustentabilidade.

Total Admissível de Esforço (TAE): limite de esforço de pesca que uma pescaria admite num determinado período.

V

Veda: interdição da pesca em áreas ou épocas determinadas com vista à protecção de juvenis.

Lei n.º 23/2013

de 1 de Novembro

Havendo necessidade de regular a organização, composição e funcionamento do Conselho Superior da Magistratura Judicial Administrativa, ao abrigo do disposto no n.º 2 do artigo 232, conjugado com o n.º 1 do artigo 179, ambos da Constituição, a Assembleia da República determina:

CAPÍTULO I

Disposições gerais

SECÇÃO I

Natureza e composição

ARTIGO 1

(Natureza)

1. O Conselho Superior da Magistratura Judicial Administrativa é o órgão de gestão e disciplina dos juízes da jurisdição administrativa, fiscal e aduaneira.

2. O Conselho Superior da Magistratura Judicial Administrativa exerce, também, jurisdição sobre os funcionários de justiça nos termos constantes da lei.

ARTIGO 2

(Composição)

1. O Conselho Superior da Magistratura Judicial Administrativa tem a seguinte composição:

- a) o Presidente do Tribunal Administrativo, que o preside;
- b) dois membros designados pelo Presidente da República, sendo um deles magistrado judicial administrativo;
- c) três membros eleitos pela Assembleia da República, segundo o critério de representação proporcional;
- d) dois juízes conselheiros do Tribunal Administrativo, eleitos pelos seus pares;
- e) três juízes eleitos pelos seus pares, de entre os juízes dos tribunais administrativos, fiscais e aduaneiros.

2. Fazem também parte do Conselho Superior da Magistratura Judicial Administrativa quatro oficiais de justiça, sendo um em representação do Tribunal Administrativo e os restantes em representação dos tribunais administrativos, fiscais e aduaneiros, todos eleitos pelos pares de cada instituição a que pertençam.

ARTIGO 3

(Mandato)

1. À excepção do Presidente, cujo mandato é regulado nos termos da Lei Orgânica da Jurisdição Administrativa, os membros do Conselho Superior da Magistratura Judicial Administrativa exercem o respectivo mandato por um período de cinco anos, sendo permitida a reeleição.

2. Findo o mandato, os membros cessantes mantêm-se em funções até à tomada de posse dos novos membros.

ARTIGO 4

(Substituição do Presidente)

O Presidente do Conselho Superior da Magistratura Judicial Administrativa é substituído, nas suas faltas, ausências e impedimentos, pela ordem seguinte:

- a) pelo Juiz Conselheiro, membro do Conselho, mais antigo no exercício das respectivas funções junto do Tribunal Administrativo;

APPENDIX 2

Full text of the Fisheries Proclamation (No. 104/1998) from Eritrea. Published May 25, 1998, in the Gazette of Eritrean Laws, Vol. 8, No. 4.

PROCLAMATION NO 104/1998
THE FISHERIES PROCLAMATION

WHEREAS, the Government of Eritrea is aware of the potential for developing the fishery resources of Eritrea and of its obligation to manage them for the permanent benefit of the country;

NOW, THEREFORE, the following Proclamation is hereby proclaimed:

PART I
PRELIMINARY

Art 1. Issuing Authority

This Proclamation has been proclaimed by the Ministry of Fisheries of the State of Eritrea.

Art 2. Short Title

This Proclamation may be cited as the Fisheries Proclamation No. 104/1998.

Art 3. Definition

For the purposes of this Proclamation, unless the context otherwise requires:

- a) "aquatic organism" means any aquatic plant or animal with the exception of birds, and includes any fish, crustacean, mollusc, coral, echinoderm, holothurian, aquatic reptile or aquatic mammal and its shells, eggs, and other naturally occurring products;
- b) "authorized officer" means any authorized officer appointed under Article 5 hereof, any police officer not below the rank of sergeant and any member of the armed forces not below the rank of lieutenant;
- c) "Eritrean waters" means inland water, marine internal waters, the territorial sea and any waters or the seabed over which Eritrea exercises sovereign rights in respect of living resources;
- d) "fishing" means fishing for, catching, taking or killing fish or other aquatic organisms by any method;
- e) "Fishing license" means a licence issued under Articles 16, 18 or 19 hereof;
- f) "Fishing vessel" means any vessel used for fishing;
- g) "Foreign fishing vessel" means a foreign fishing vessel in accordance with Article 14 hereof;
- h) "Licensing officer" means, in respect of a license issued under article 16 hereof, the Minister and, in respect of any other licence under this Proclamation, the officer appointed by the Minister to issue the licence.
- i) "Minister" means the Minister of Fisheries of the state of Eritrea;
- j) "Ministry" means the Ministry of Fisheries of the state of Eritrea;
- k) "National fishing Vessel" means a national fishing vessel in accordance with Article 14 hereof;
- l) "Operator" in relation to a fishing vessel means any owner charterer, sub-charterer, lessee or sub-lessee of the vessel or any other person who controls or directs the operation or movements of the vessel or who is legally entitled to do so, whether alone, jointly, directly or indirectly, and any other person to whom a licence relating to the vessel has been issued under this Proclamation;
- m) "Protected Species" means marine mammals and other aquatic organisms which it is prohibited to fish for;
- n) "related activities" in relation to fishing includes:
 - i. transshipping fish or other aquatic organisms to or from any vessel;
 - ii. storing or processing fish or other aquatic organisms;
 - iii. transporting fish or other aquatic organisms taken from Eritrean waters until they are first landed (other than in the vessel which caught them): and
 - iv. refunding or supplying fishing vessels or performing other activities in support of fishing operations;

"This Proclamation" includes any regulation made under this Proclamation.

PART II
ADMINISTRATION

Art 4. Ministry of Fisheries

The Ministry shall be responsible for the management and development of the fisheries resource in Eritrea and for the administration of this Proclamation.

Art 5. Authorized Officers

The Minister may appoint any public officer to be an authorized officer for the purposes of this Proclamation.

Art 6. Fisheries Advisory Council

- 1) There shall be a Fisheries Advisory Council to advise on the management and development of fisheries and discharge such responsibilities as are conferred on it under this Proclamation.
- 2) The Fisheries Advisory Council shall be composed of the following persons:
 - (a) an officer of the Ministry who is responsible for administering and enforcing this Proclamation;
 - (b) a representative of the department responsible for ports and maritime transport;
 - (c) a representative of the Navy;
 - (d) a representative of the department responsible for economic development and/or investment
 - (e) a representative of the Research and Training Division of the Ministry;
 - (f) an elected representative of persons engaged in artisanal fishing;
 - (g) an elected representative of operators of foreign fishing vessels fishing in Eritrean waters: and
 - (h) an elected representative of operators of national commercial fishing vessels (if any).
- 3) The Fisheries Advisory Council may invite other persons to participate in its meetings and shall, whenever it considers matters particularly affecting an area of Eritrea or a government department, invite one or more persons engaged in fisheries in that area, or a representative from that department, to participate in its meetings.
- 4) The Fisheries Advisory Council shall elect one of its members as chairperson and shall determine its own rules of procedure.

**PART III
FISHERIES MANAGEMENT**

Art 7. Fisheries Management and Development Plans

1. The Minister shall prepare and keep under review plans for the management and development of fisheries in Eritrean waters, and shall base the fisheries development program on such plans.
2. Each plan shall:
 - (a) identify each fisheries resource and assess the present state of its exploitation;
 - (b) specify the objectives to be achieved in the management of the fishery;
 - (c) specify the management and development measures required to achieve the objectives; and in particular;
 - (d) specify the licensing program to be followed for the fishery; the limitations, if any, to be applied to national fishing operations and amount of fishing, if any, to be allowed to foreign fishing vessels.
3. In the preparation of each fisheries management and development plan, the Minister shall:
 - (a) have regard to and guided by the principles set out in Article 8 hereof;
 - (b) consult with persons engaged in the fishery, local authorities, other persons and government departments affected by the plan; and
 - (c) present a draft of the plan to the Fisheries Advisory Council for its opinion.
4. The Minister shall consult wherever feasible with the fisheries management authorities of other states in the region, and in particular, with those sharing the same or related stocks, with a view to harmonizing and improving fisheries management in the region as a whole.

5. The Minister shall publish a summary of each plan.

Art 8. Fisheries Management Principles

- 1) The Minister shall ensure that the aquatic and coastal resources of Eritrea are conserved and managed properly:
 - (a) to ensure that the living resources are not endangered by exploitation; and
 - (b) with the objective of ensuring that those resources produce the optimum sustainable yield taking in to account relevant environmental, economic and social factors, including the development needs of Eritrea and of the region, fishing patterns, the interdependence of stocks, the interests of other states in shared, straddling and migratory stocks and generally recommended international minimum standards.
- 2) The Minister shall ensure that the access by other states to living resource in Eritrean waters shall be controlled and managed to ensure that the combined exploitation of any particular resource by both national and foreign fishing vessels during any period does not exceed any total allowable catch for the resource for that period determined by the Minister taking into account the best scientific evidence available to the Minister and other relevant factors, including the effects of harvesting on associated or dependent species.

Art 9. Fisheries Management Measures

- 1) The Minister may make regulations prescribing measures for the proper management of fisheries.
- 2) Prescribed management measures may include but are not limited to:
 - (a) closed season and closed areas;
 - (b) prohibited fishing method and gear and specification of gear that may be used (including the mesh size of nets);
 - (c) the species, sizes and other characteristics of fish and other aquatic organisms that it is permitted or forbidden to catch; and
 - (d) schemes for the, limitation of entry into all or any specified fisheries.
- 3) A regulation prescribing management measures may also prohibit the possession, purchase, sale, import or export of any gear, fish or other aquatic organism.

Art 10. Fisheries Information

- 1) The Ministry shall collect, analyze and publish statistical and other information on fisheries.
- 2) Every person engaged in fishing, related activities or aquaculture shall supply such information regarding those activities, in such form, as an authorized officer may require.
- 3) The Minister may consult with fisheries management authorities of other states with a view to the harmonization and/or coordination of management measures and the exchange of information on fisheries.

Art 11. Scientific Research

- 1) No vessel shall be used in Eritrean waters for research related to living resources except with the authority of the Minister under sub-Article (2) hereof or in accordance with a fishing license.
- 2) The Minister may in writing authorize any person or vessel to fish for the purpose of scientific research, subject to such conditions as the Minister may prescribe by regulations or otherwise specify.
- 3) An authorization under sub-Article (2) hereof may exempt any persons or vessel from any provision of this Law.

Art 12. Protected Species

- 1) No person shall fish for any marine mammal or other protected species in Eritrea waters.
- 2) Any marine mammal or other protected species caught accidentally shall be released immediately and returned with the least possible injury to the waters from which it was taken.
- 3) Except with the written permission of the Minister, no person shall take or destroy any coral or take any shell.

Art 13. Protected Areas

- 1) The Minister may after consultation with the occupiers of adjoining land, the authorities responsible for other uses of the area, the appropriate local government councils and the Fisheries Advisory Council, declare any area of Eritrean waters and adjoining coast to be a protected area.
- 2) A declaration of a protected area may prohibit or restrict fishing within such area
- 3) Except with the written permission of the Minister, no person shall within any protected area:
 - (a) dredge or take any sand or gravel;
 - (b) otherwise destroy or disturb the natural habitat; or
 - (c) fish contrary to any prohibition or restriction under sub-Article (2) hereof.

PART IV FISHING LICENCES

Art 14. Nationality of Fishing Vessels

- 1) For the purposes of this Proclamation a national fishing vessel is a fishing vessel which:
 - (a) is wholly owned by one or more citizens of Eritrea, the State of Eritrea, its bodies or enterprises; or
 - (b) is wholly owned by a business organization established under the Commercial Code, which is wholly owned by one or more citizens of Eritrea, the State of Eritrea, its bodies or enterprises; or
 - (c) has been determined by the Minister to be a national fishing vessel under sub-Article (2) hereof.
- 2) The Minister may in writing determine that any vessel shall be a national fishing vessel for the purposes of this Proclamation for so long as:
 - (a) the vessel is wholly owned or chartered by a business organization established under the Commercial Code; and
 - (b) Eritrean citizens, the state, its bodies or enterprises, together hold the majority of voting shares in the business organization or are otherwise legally entitled to exercise control of the management of the business organization.
- 3) Any fishing vessel which is not a national fishing vessel in accordance with this Article shall be a foreign fishing vessel for the purposes of this Proclamation.

Art 15. Fisheries Access Agreements

- 1) The Minister, with the approval of the Cabinet of Ministers, may enter into agreements with other States and with international organizations to which states have delegated the power to negotiate fishing agreements, and with associations representing foreign fishing vessel operators providing for the allocation of fishing rights to vessels from those states, organizations or associations.
- 2) The total fishing rights allocated under agreements entered into under this Article shall not exceed the total catch or amount of fishing allocated to foreign fishing vessels under any applicable fisheries management and development plan.

- 3) Any agreement entered into under this Article shall include a provision establishing the responsibility of the foreign state, organization or association to take all necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in Eritrean waters.

Art 16. Foreign Fishing Vessel License

- 1) No foreign fishing vessel, except a vessel used exclusively for recreational fishing, shall be used for fishing in Eritrean waters except under the authority of a valid licence issued under this Article or of an authorization under Article 11 hereof.
- 2) Subject to this Proclamation and to the applicable fisheries management and development plan, the Minister may issue a license in respect of any foreign fishing vessel authorizing the vessel to be used in Eritrean waters for such fishing or related activities as may be specified in the license.
- 3) No license shall be granted under sub-Article (2) hereof unless:
 - (a) there is in force with the Government of the flag state of the vessel, with an intergovernmental organization to which the flag state has delegated the power to negotiate fishing agreements or with an association of which the operator is a member, an agreement entered into under Article 15 hereof to which Eritrea is a Party; or
 - (b) where there is no applicable agreement under Article 15 hereof, the Minister determines that such an agreement is not feasible and the applicant provides sufficient financial and other guarantees for the fulfillment of all obligations under this Proclamation.

Art 17. Stowage of Gear

Any foreign fishing vessel, except a vessel used exclusively for recreational fishing, that is not licensed in accordance with Article 16 hereof or authorize under Article 11 hereof shall at all times that it is in Eritrean waters keep its fishing gear stowed in such manner as may be prescribed by regulations.

Art 18. National Fishing Vessel License

- 1) No national fishing vessel may, unless it has been exempted under sub-Article (2) hereof be used for fishing except under the authority of a valid fishing license issued under this Article or of an authorization under Article 11 hereof.
- 2) The Minister may make regulations exempting any category of local vessel from the requirements of this Article, subject to such conditions as the Minister may prescribe.
- 3) A licensing officer shall, upon proper application in accordance with Article 20 hereof, grant a licence in respect of a national fishing vessel if the licensing officer is reasonably satisfied that:
 - (a) the issue of the licence is consistent with the applicable fisheries management and development plan; and
 - (b) the applicant is able and willing to comply with the conditions of the license.

Art 19. Other Licenses

- 1) The Minister may make regulations requiring a license for:
 - (a) any kind of fishing, with or without the use of a vessel; and/or
 - (b) the use of a vessel for any related activity.
- 2) A licensing officer may, upon application in accordance with Article 20 hereof, issue a licence authorizing the applicant to conduct any kind of fishing or related activity for which the license is required by regulation under sub-Article (1) hereof.

Art 20. Applications for License

Any application for a license under this Proclamation shall be made in the form and manner prescribed by regulation.

Art 21. Conditions of Fishing Licenses

- 1) Every fishing licence shall be subject to such general conditions, as the Minister may prescribe, to the conditions made applicable to the license by any agreement under Article 15 hereof, and to any special conditions which may be endorsed on the licence by the licensing officer, including conditions related to:
 - (a) the type and method of fishing or related activity authorized;
 - (b) the areas within which such fishing or related activity is authorized;
 - (c) the target species and amount of fish or other aquatic organisms authorized to be taken, including any restrictions on them;
 - (d) the period during which fishing or a related activity is authorized; and
 - (e) measures to facilitate enforcement of this Proclamation.
- 2) The Minister may vary any special condition attached to any fishing licence if the Minister is satisfied that it is expedient for the proper management of fisheries.
- 3) The Minister shall notify the licensee as soon as practicable of any variation or special condition attached to a fishing licence.

Art 22. Fees and other payments

There shall be payable in respect of every fishing licence such fees and other payments as may be prescribed by regulation or as may be provided for by an agreement under Article 15 hereof.

Art 23. Validity of Fishing Licenses

- 1) A fishing licence issued under this Proclamation shall be valid for such period not exceeding three years as may be prescribed by regulation or specified in the license.
- 2) Where a vessel licensed as a national fishing vessel ceases to be a national fishing vessel, the licence in respect thereof shall automatically terminate.
- 3) The term of a licence issued under Article 16 hereof shall not extend beyond the term of any applicable agreement under Article 15 hereof, or if there is no such agreement, beyond one year.
- 4) No fishing licence shall be transferable except to a vessel which does not have a greater catching capacity and with the written permission of a licensing officer or as may be prescribed by regulation for the limitation of entry into any fishery.

Art 24. Suspension and cancellation of License

- 1) If the Minister has reason to believe that this Proclamation or any licence condition has been contravened, the Minister may suspend any licence which is related to a vessel or equipment suspected of having been used in the commission of the alleged offence.
- 2) A licensing officer may suspend and the Minister may cancel any fishing licence where such action is necessary or expedient for the proper management of fisheries.
- 3) In the event of the suspension or cancellation of any fishing licence for the reasons set out in sub-Article (2) hereof any fees paid with respect to the period of time during which the licence is suspended or cancelled shall be refunded to the licensee.

**PART V
AQUACULTURE**

Art 25. Aquaculture Authorization

- 1) No person shall, in any water other than a personal aquarium facility, culture fish or other aquatic organisms except under the authority of a valid authorization issued under this Article.

- 2) The Minister may in writing grant an exclusive authorization to any person to culture and take fish and other aquatic organisms in any specified place in Eritrea or Eritrean waters.
- 3) No authorization shall be granted under this Article unless:
 - (a) the applicant has rights to occupy any land or any areas of the sea and to abstract any water required for the aquaculture activities; and
 - (b) the Minister is satisfied, following consultation with the Fisheries Advisory Council and the authorities responsible for other uses of the sea and for the environment, that the proposed activities will not cause undue pollution or interference with other uses of the sea or with the environment.

Art 26. Condition of Aquaculture Authorization

- 1) An authorization under Article 25 hereof shall be for such term not exceeding fifteen years, and subject to such conditions, including the payment of such fees, as the Minister may determine from time to time.
- 2) The Minister may vary the conditions of an authorization under Article 25 hereof at any time in order to protect the environment from contamination or to prevent the spread of disease or to protect the quality of the organisms in the aquaculture facility.

Art 27. Protection of Aquaculture Facility

No person shall fish in any aquaculture facilities authorized under Article 25 hereof except with the permission of the operator of the facility.

Art 28. Suspension of Operations and Closure of Facility

- 1) The Minister may order the suspension of operations and closure of an aquaculture facility authorized under Article 25 hereof at any time:
 - (a) where any condition of the authorization has been violated;
 - (b) where such action is necessary to protect the environment from contamination or to prevent the spread of disease or to protect the quality of the aquatic organisms in the facility.
- 2) Where an order is made under sub-Article (1) hereof the Minister may allow a reasonable time to the operator of the facility to correct the conditions leading to the closure or suspension of operations and if such conditions are not or cannot be corrected, the Minister may cancel the authorization under Article 25 hereof.

**PART VI
ENFORCEMENT**

Art 29. Power of Authorized Officers

- 1) For the purpose of enforcing this Proclamation, any authorized officer may, without a warrant:
 - (a) stop, board and search any fishing vessel in Eritrean waters;
 - (b) require to be produced, examine and take copies of any licence, logbooks, or other document required under this Proclamation;
 - (c) require to be produced and examine any fish or other aquatic organisms, fishing net or other fishing gear whether at sea or on land;
 - (d) enter, inspect and search any premises, other than premises used exclusively as a dwelling house:
 - (i) Where fish or other aquatic organisms are being cultivated or stored: or
 - (ii) in which the officer has reasonable grounds to believe that evidence of an offence may be found;

- (e) take samples of any fish or other aquatic organisms found in any fishing vessel, premises or vehicle searched under this Article;
 - (f) seize any fish or other aquatic organisms which the officer has reasonable grounds to believe has been caught or produced in the commission of the offence, or is being possessed, imported or exported in contravention of this Proclamation;
 - (g) seize any poison or explosive which the officer has reasonable grounds to believe is being possessed in contravention of this Proclamation;
 - (h) seize any vessel (together with its gear, store and cargo), vehicle or fishing gear, which the officer has reasonable grounds to believe, has been used in commission of an offence or in relation to which an offence has been committed;
 - (i) destroy or otherwise render harmless any fish or other aquatic organism, which he has reasonable grounds to believe is diseased or otherwise contaminated; and
 - (j) arrest any person who the officer has reasonable grounds to believe has committed an offence under this Proclamation.
- 2) The master of any fishing vessel ordered by an authorized officer to stop shall stop the vessel and take all necessary measures to facilitate its boarding.
 - 3) An authorized officer in exercising any of the powers conferred on him by this Article shall, on demand, produce such means of identification as may be necessary to show that he is an authorized officer for the purposes of this Proclamation.
 - 4) A written receipt shall, wherever feasible, be given for any thing seized under sub-Article (1) hereof and the grounds for such seizure shall be stated in the receipt.
 - 5) Any vessel seized under sub-Article (1) hereof and the crew thereof shall be taken to the nearest or most convenient Eritrean port, and any vessel or other thing seized shall be delivered into the custody of a court.
 - 6) Any person arrested shall be taken as soon as practicable before a court to be dealt with according to the law.
 - 7) In case of arrest or detention of foreign vessels, the flag state shall be promptly notified of the action taken and any penalties subsequently imposed.

Art. 30. Hot Pursuit

Where, following the commission in Eritrean waters of an offence against this Proclamation with the use of a vessel, the vessel is pursued beyond the limits of Eritrean waters, the powers conferred on authorized officers under Article 29 hereof shall be exercisable in respect of such vessel beyond the limits of such waters in circumstances and to the extent recognized by international law or by any applicable bilateral or regional agreements.

Art 31. Protection of Authorized Officers from Liability

- 1) An authorized officer or observer who does, or purports to do any thing under this Proclamation or who omits to do anything required to be done by this Proclamation, shall not be subject to any criminal or civil liability, unless the officer acted in bad faith or without reasonable cause.
- 2) The State including any State agencies, shall not be directly or indirectly liable for an act or omission of an authorized officer or observer unless the officer or observer would be liable.

Art 32. Custody of seized Goods

Any vessel or other thing seized under Article 29 (1) hereof shall, except as provided in Articles 33 and 34 hereof, be held by the court and dealt with as provided in Article 37 hereof.

Art 33. Disposal of Perishable Goods

- 1) An Authorized officer or the court may, to avoid spoilage or decay of any fish or other aquatic organism or other thing of a perishable nature seized under this Proclamation, sell them or, if sale is impracticable, dispose of them in such manner as may appear suitable.
- 2) In case of sale or disposal under sub-Article (1) hereof, the authorized officer or court shall give to the person from whom the seizure was made a receipt stating:
 - (a) the date of the sale;
 - (b) the quantity of fish or other aquatic organisms and other things of a perishable nature sold; and
 - (c) the amount realized from the sale.
- 3) The proceeds of any sale under sub-Article (1) hereof shall be paid to court and dealt with in the manner provided by Article 37 hereof for the fish or other things sold.

Art 34. Release of Vessels, etc. on Bond

- 1) The Minister may order the release of any fishing vessel (together with its gear, stores and cargo), vehicle, fish, other aquatic organism or fishing gear seized under this Proclamation on receipt of a reasonable bond or other form of security.
- 2) Any bond or other form of security received under sub-Article (1) hereof shall be delivered to a court and dealt with in the manner provided by Article 37 hereof for vessel or other thing released.

Art 35. Offences

- 1) The operator and master of a vessel each commit an offence where the vessel:
 - (a) is a foreign vessel which requires a license to fish under Article 16 hereof or authority to conduct scientific research under Article 11 hereof; and is used for fishing in Eritrean waters:
 - i. without the necessary license or authority; or
 - ii. in contravention of any condition of a license or authority;
 - (b) is a foreign vessel which does not have a license to fish under Article 16 hereof or authority to conduct scientific research under Article 11 hereof and is in Eritrean waters without its fishing gear stowed in the prescribed manner; or
 - (c) is a national vessel that is required to be licensed under Article 18 hereof or authorized under Article 11 hereof and is used for fishing in Eritrean waters:
 - i. without being so licensed or authorized; or
 - ii. in contravention of any condition of the license or authorization;
 - (d) is a national fishing vessel which navigates through an area of Eritrean waters in which it is not authorized to fish without its fishing gear stowed in the prescribed manner.
 - (e) is used in Eritrean waters for research related to living resources without the necessary authority under Article 11 hereof or license under Articles 16, 18 or 19 hereof.
- 2) A person commits an offence where that person, in Eritrean waters:
 - (a) conducts any fishing or related activities for which a license is required under Article 19 hereof without such a license or in contravention of the terms of such license;
 - (b) uses any explosive or poison to kill, stun or disable fish or other aquatic organisms in order to render them more easily caught;
 - (c) fishes in contravention of any management measure prescribed under Article 9 hereof;
 - (d) prevents or hinders an authorized officers exercising the power conferred on such officer under Articles 29 or 30 hereof;
 - (e) destroys or abandons any fish or other aquatic organisms, fishing gear, explosive, poison or any marine mammals or other thing with the intent to avoid their seizure or the detection of an offence against this Proclamation;
 - (f) fishes for any marine mammals or other protected species or, having accidentally caught any marine mammal or other protected species, fails to release it immediately and return it with the least possible injury to the water from which it was taken;
 - (g) takes or destroys any coral or takes any shell without the written permission of the Minister;
 - (h) in a protected area, without the written permission of the Minister, dredges or takes any sand or gravel, destroys or disturbs the natural habitat, or fishes contrary to any prohibition or restriction under Article 13 (2) hereof;

- (i) cultures fish or other aquatic organisms in any water other than a personal aquarium facility, without an authorization under Article 25 hereof or in contravention of any condition of the authorization;
- (j) fails to supply information required under this Proclamation or supplies false or misleading information;
- (k) uses or discloses information received pursuant to this Proclamation for any purposes except the purposes of this Proclamation; and
- (l) contravenes any other provision of this Proclamation.

Art 36. Penalties

- 1) A person who is convicted of an offence:
 - (a) referred to in Article 35 (1) (a) (i) hereof is liable to a fine not exceeding 500,000 Nakfa;
 - (b) referred to in Article 35 (1) (a) (ii), Article 35 (1) (b) or Article 35 (2) (a) or (b) hereof, is liable to a fine not exceeding 200,000 Nakfa;
 - (c) referred to in Article 35 (1) (c) (ii), Article 35 (d) or (e); or Article 35 (2) (a) or (b) hereof, is liable to a fine not exceeding 500,000 Nakfa.
- 2) A person who is convicted of an offence for which no other penalty is provided is liable to a fine not exceeding 50,000 Nakfa.

Art. 37. Forfeiture

- 1) Where any person is convicted of an offence under this Proclamation, the court, in addition to any other penalty imposed:
 - (a) may order that any vehicle or fishing gear used in the commission of the offence and, in the case of an offence under Article 35 (1) (a) (i) hereof any fishing vessel (together with its gear, stores and cargo) used in the commission of the offence be forfeited;
 - (b) shall order that any fish or other aquatic organisms caught in the commission of such offence and any explosive or poison possessed in the commission of such offence be forfeited.
- 2) Where in any prosecution under this Proclamation, all accused are acquitted of any offence, all things held shall be released to the persons entitled thereto and if no person is so entitled, shall be forfeited.
- 3) Where any thing in the custody of the court is not ordered to be forfeited, it shall be held until all fines imposed for any offences in commission of which the thing was used, caught or possessed have been paid, and if within thirty days following a conviction, any part of such fines remains unpaid, such things may be sold and the proceeds applied toward payment of the fines.
- 4) In the case of any administrative settlement under Article 46 hereof, all things ordered by the Minister to be released shall be released forthwith and all other things held shall be forfeited.

Art 38. Cancellation of License

Where any person is convicted of an offence under this Proclamation, the court, in addition to any other penalty imposed, may order that any license or authorization under this Proclamation be cancelled and that no new license or authorization be issued to the person or in respect of the vessel involved in the offence for such period of time as the court may specify.

Art 39. Strict Liability

In any prosecution of an offence under this Proclamation the prosecution shall not be required to prove that the defendant intended to commit an offence.

Art 40. Liability for Actions of Master and Crew

An offence under this Proclamation which is committed by:

- (a) any person aboard or employed on a fishing vessel shall be deemed also to have been committed by the master and by every operator of that vessel;
- (b) the master of a fishing vessel shall be deemed also to have been committed by every operator of that vessel.

Art 41. Liability of Corporate Directors And Managers

If a body corporate is convicted of an offence under this Proclamation then every director or manager who authorized, permitted or consented to the offence: or who knew or ought to have known that the offence would or may be committed and failed to take reasonable steps to prevent it, shall be guilty of a like offence.

Art 42. Admissible Evidence

- 1) Subject to sub-Article (2) hereof, in any prosecution under this Proclamation the following documents shall be admissible in evidence and in the absence of evidence to the contrary, shall be sufficient proof of the facts stated in the document:
 - (a) a certificate purporting to be signed by the Minister relating to whether or not any administrative requirement of the Minister had been complied with or the status of any license or authority issued by the Ministry;
 - (b) a certificate purporting to be signed by the person in charge of equipment used to determine the position of a vessel stating the position of the vessel at a particular date and time and certifying that the equipment used to determine the vessel's position was working properly and was accurate within the specification set out in the certificate.
- 2) Any document referred to in sub-Article (1) hereof shall only be admissible if a copy is served on the defendant at least 10 days before the hearing and the Court has not, on the application of the defendant brought before that trial, ruled it inadmissible on the basis that there are reasonable grounds for doubting its accuracy or validity.

Art 43. Presumptions

Unless the contrary is proved:

- (a) all fish and other aquatic organisms found on board in any fishing vessel which:
 - i. is in Eritrean waters are presumed to have been caught in Eritrean waters;
 - ii. has navigated through a protected or closed area without stowing its fishing gear in the manner prescribed by this Proclamation are presumed to have been caught in that area;
 - iii. has been used in the commission of an offence under this Proclamation are presumed to have been caught in the commission of that offence;
- (b) all fish, other aquatic organisms, coral, shells, sand and gravel found in the possession of a person within a protected area are presumed to have been taken within that protected area.

Art 44. Burden of Proof

- 1) In any proceeding under this Proclamation where the defendant is charged with having committed an offence under which a license or the authorization of any person is required for doing of any act, the burden shall be on the defendant to prove that at the time to which the charge relates, the requisite license or authorization was duly held.
- 2) In any proceeding under this Proclamation where an exception to any requirement is claimed on behalf of a vessel used excessively for recreational fishing, the burden shall be on the defendant to prove that the vessel in question was used exclusively for recreational fishing.
- 3) In any proceeding under this Proclamation where a defendant is alleged to have been a crew member, the master or an operator of a vessel or an officer or director of a body corporate, at the time to which the charge relates, the burden shall be on the defendant to disprove such allegation.

Art 45. Jurisdiction of the Court

The courts of Eritrea have jurisdiction in respect of any proceeding concerning an illegal offence under this Proclamation committed either within Eritrean waters or territory, or on board or in respect of a national fishing vessel.

Art 46. Administrative Settlement

- 1) any offence under this Proclamation:

- (a) which is illegal to have been committed in connection with a foreign fishing vessel or a foreign vessel used for related activities; or
- (b) in respect of which the maximum fine which a court may impose does not exceed 50,000 Nakfa and which the Minister considers may be appropriately dealt with by way of administrative penalty;

may be subject to administrative settlement in accordance with the provisions of this Article.

- 2) If the Minister has reason to believe that an offence referred to in sub-Article hereof has been committed by any person, the Minister may cause a written notice giving details of the alleged offence to be served on that person ('the defendant') and shall afford the defendant a reasonable opportunity to make representations in respect of the alleged offence.
- 3) Within 60 days of considering any representations made by the defendant, the Minister shall cause a notice to be served on the defendant stating:
 - (a) that no further proceeding will be taken in respect of the alleged offence; or
 - (b) that legal proceedings will be instituted to bring the matter before a court; or
 - (c) the penalty imposed.
- 4) In dealing with any matter under this Article, the Minister may:
 - (a) impose a fine not exceeding the maximum fine specified for the offence;
 - (b) Where the gravity of the offence so warrants, cancel any license authorization issued under this Proclamation; and
 - (c) Order the release of any vessel or other thing seized in connection with the offence on payment of a sum of money not exceeding the value of the vessel or other thing.
- 5) Any sum of money received under this Article shall be dealt with as though it were a fine imposed by court.
- 6) In any court proceeding brought against any person for an offence under this Proclamation, it shall be a good defense if the person proves that the offence has been dealt with under this Article and any fine imposed has been paid.

PART VII

GENERAL PROVISIONS

Art 47. Security for Sums Due to the State

If any amount is due to the State by the master or any operator of a foreign fishing vessel and the court considers that the State has no or has insufficient security to insure payment, the court may order the detention of any vessel or equipment in respect of which the amount became due until the debt is paid in full or security to the satisfaction of the court is lodged.

Art 48. Appeals

Any person aggrieved by:

- (a) the refusal of a licensing officer to issue a license in respect of national fishing vessel;
- (b) the suspension, cancellation or variation of a condition of any fishing license;
- (c) the suspension of operations or closure of an aquaculture facility or the cancellation or variation of a condition of an authorization under Article 25 hereof; or
- (d) a decision of the Minister under Article 46 hereof;

may, within thirty days, appeal to court of competent jurisdiction.

Art 49. Regulations

- 1) The Minister may make regulations for the implementation of this Proclamation, including regulations:
 - (a) delimiting areas of Eritrean waters in which fishing shall be reserved to Eritrean citizens and national vessels;
 - (b) prescribing the manner in which fishing gear is to be stowed and requiring any fishing vessel to stow its gear at any time that it is in an area of Eritrean waters where it is not authorized to fish;
 - (c) regulating the import and export of live fish and other aquatic organisms;
 - (d) further providing for the control of aquaculture;
 - (e) regulating the quality of fish and other aquatic organisms that may be sold or exported, including-
 - i. providing for inspection and for the issue of certificates of inspection;
 - ii. prescribing methods of handling and processing;
 - iii. prescribing standards for product quality;
 - (f) prohibition or restricting of otherwise regulating fishing for any aquatic organism; and
 - (g) prescribing any other matter which is required or authorized to be prescribed.
- 2) Regulations made under this Article may provide that their contravention shall constitute an offence and may prescribe fines not exceeding 50,000 Nakfa for any offence.

Art 50. Delegation of powers

The Minister may delegate any of his powers under this Proclamation, except the power to make regulations and the power to declare protected areas.

Art. 51. Entry Into Force

This Proclamation shall enter into force as of the date of its publication in the Gazette of Eritrean Laws.

Done at Asmara, this 25th day of May, 1998
Government of Eritrea

APPENDIX 3

Full text of the Deep Sea Fishing Authority Act (Cap. No. 388) from Tanzania. Published March 6, 2009 in Government Notice No. 48.

**THE DEEP SEA FISHING AUTHORITY ACT
(CAP No. 388)**

REGULATIONS

(Made under Section 23)

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PART I
PRELIMINARY PROVISIONS

Short title **1.** These Regulations may be cited as the Deep Sea Fishing Authority Regulations, 2009.

*Applica-
tion* **2.** These Regulations shall apply to fishing and related activities in the Exclusive
Economic Zone of the United Republic.

3. In these Regulations, unless the context otherwise requires:-

Cap. 388 “**Act**” means the Deep Sea Fishing Authority Act;

“**Automatic Location Communicator commonly known in its acronym as ALC**” means an electronic device that transmits information relating to the position and activities of a fishing vessel so that the information can be received at a vessel monitoring operation centre;

“**by-catch**” means any fishery resource harvested other than those authorised in the licence;

“**captain**” means in relation to a vessel, aircraft or any other craft a person having lawful command or charge of a fishing vessel or aircraft or any other craft and includes person who has principal responsibility for fishing on board, but does not include a pilot on board a fishing vessel solely for the purpose of providing navigational assistance;

“**enforcement officer**” means an officer referred to under regulation 31(2) of these Regulations;

“**fish**” means all forms of aquatic or amphibious marine life and includes finfish, shell fish, dugong, turtle, dolphins and whales and their spat, brood, fry, spawn, ova or young;

“**fishery inspector**” means a person appointed under regulation 33 of these Regulations;

“**fishery observer**” means a person appointed under regulation 34(1) of these Regulations;

“**fishery resources**” means all aquatic ecosystem, fish and fish stocks;

“**fish stock**” means a population of fish, including migratory species, which constitute coherent reproductive unit;

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“**licensing officer**” means a person appointed under regulation 4(1) of these Regulations;

“**local fishing vessel**” means a vessel registered under the Merchant Shipping Act or any other written law and that flies the United Republic flag;

“**long arm jurisdiction**” means the process in which an enforcement officer or a fishery inspector is empowered to hot pursue a fishing vessel within and beyond the jurisdiction of the United Republic;

“**management measures**” means laws, decisions or guidelines set out to ensure the protection of marine environment and sustainable use of fishery resources;

“**Minister**” means the minister responsible for fisheries in the Government of the United Republic;

“**Ministers**” means the Minister responsible for fisheries in the Revolutionary Government of Zanzibar and the Minister responsible for fisheries in the Government of United Republic of Tanzania;

“**President**” means the President of the United Republic;

“**purse seiner**” means a fishing vessel which uses a huge net made of long walls of netting sometimes several kilometres long with lead-line of equal length or longer than the float line having rings hanging at the lower edge of the gear used for catching pelagic and surface fish by surrounding the fish both vertically and horizontally;

“**senior management officer**” means an officer in the managerial position of the Authority who by virtue of his position makes policy on behalf of the Authority or is authorised to conclude collective agreement on behalf of the Authority;

“**shark fining**” means the removing or cutting of one or more fins from a shark whereby the carcass is discarded at sea and the fins preserved on board;

“**special licence**” means a licence or permit issued by the Director General for special purpose such as research and other purposes provided under regulation 7(1);

“**tampering**” includes any modification, change or any other action that may cause the Automatic Location Communicator to function otherwise than in accordance with any requirements determined in terms of these Regulations;

“**targeted species**” means main fish species which a captain of a fishing vessel aims to harvest;

“**transhipment**” means the offloading of fish, fishing gear or provisions from one vessel to another or to shore based facilities;

“**trawler**” means a fishing vessel using a large net usually in the shape of a socks or bag drawn from the vessel;

“**United Republic**” means the United Republic of Tanzania;

“**vessel monitoring operations centre**” means a place established in terms of Regulation 29 for receiving information transmitted from licensed fishing vessel;

“**vessel monitoring system**” means a system of tracking movements of a fishing vessel through satellite transmission;

PART II
LICENSING OF FISHING OPERATIONS

- Licensing officers* **4.** (1) The Director General shall appoint in writing among the officers of the Authority, licensing officers.
(2) A licensing officer appointed under sub-regulation (1) of this regulation shall be a person with knowledge in fisheries and nautical sciences.
(3) The licensing officer shall, in the course of discharging his duties, carry identification card issued by the Authority as prescribed in the First Schedule.
- Duties of licensing officer* **5.** (1) A licensing officer shall –
(a) keep and maintain records for applications received, vessel inspected and licences issued; and
(b) process application forms.
(2) The Licensing officer shall report to the Director General on performance of his duties under sub-regulation (1).
- Types of fishing licences* **6.** (1) There shall be fishing licences in the form prescribed in the First Schedule to be issued by the Director General.
(2) The Director General may issue the following fishing licences –
(a) Licence for foreign fishing vessel,
(b) Licence for local fishing vessel, or
(c) Special licence.
- Special licence* **7.** (1) The Director General may grant to any person without fees, a special licence prescribed in the First Schedule which shall entitle the holder to engage in fishing and do such other things as may be specified therein for –
(a) scientific research and museums;
(b) educational purposes;
(c) the supply of food in case of an emergency where no other adequate food supply is available.
(2) A special licence may be used for fishing in the Exclusive Economic Zone of the United Republic and fishing of any kind of species of fish provided that a special licence issued for the supply of food shall not be used for fishing of any kind of fish declared to be protected under the Act or any other written law.
- Duration of licences* **8.** A fishing licence issued under these Regulations shall, unless cancelled, expire in one month, three months or one year depending on the request of the applicant.
- Licence fees* **9.** A licence shall be issued under these Regulations subject to payment of fees prescribed in the Second Schedule.
- Licence conditions* **10.**(1) A licensee under these Regulations shall ensure that –
(a) a licensed fishing vessel –
(i) is brought either to Dar-es-Salaam, Zanzibar, Mtwara or Tanga

- or any other port designated by the Minister for inspection and verification of fishery resources destined for export market;
 - (ii) is not discarding any by-catch at sea;
 - (iii) collects and transports by-catch to any of the ports for local market;
 - (iv) while in the jurisdiction of the United Republic fly the flag of the state she is registered;
 - (v) is linked to a Vessel Monitoring System installed in the office of the Authority to enable monitoring of vessels while in the United Republic;
 - (vi) is marked with the local identification mark in the manner prescribed in the Third Schedule upon payment of a fee prescribed in the Second Schedule.
- (b) rare fish and seabird species listed under Convention on International Trade on Endangered Species and any other Convention which the United Republic is a party are not caught and in case of incidental catch be returned to the sea as soon as possible;
- (c) a captain of a licensed fishing vessel while discharging his functions –
- (i) allows on board two officers of the Authority who shall oversee compliance with national and international laws all the time the vessel is in Economic Exclusive Zone of the United Republic;
 - (ii) has on board a map of the Exclusive Economic Zone of the United Republic;
 - (iii) reports to the Director General whenever the vessel enters and leaves the Exclusive Economic Zone of the United Republic;
 - (iv) prepares entry and exit to the Exclusive Economic Zone report containing information specifying position of the vessel by latitudes and longitudes, date and time, quantity and species of fish on board;
 - (v) gives information to the Director General on the last port of call and fishing area before the vessel enters the Exclusive Economic Zone;
 - (vi) gives information to the Director General on the last fishing area and weight by species of fish caught in the jurisdiction of the United Republic before the vessel leaves the Exclusive Economic Zone; and
 - (vii) reports on daily basis to the Director General by fax, vessel monitoring system or e-mail on weight and types of fish caught.

(2) The Director General may attach to any licence issued under these Regulations conditions which in his opinion are necessary or expedient the carrying into effect the objectives and purposes of the Act provided that the conditions are not inconsistent with the provision of the Act or these Regulations.

(3) A fishing vessel licensed under these Regulations shall not be allowed to fish in the internal waters of the United Republic.

(4) A licence issued under these Regulations shall not be transferred to another

person or vessel.

Application for fishing licences and registration of ALC

11.(1) A person who wishes to conduct fishing in the Exclusive Economic Zone of the United Republic shall apply for a licence and registration of Automatic Location Communicator to the Director General.

(2) A person applying for fishing licence and registration of Automatic Location Communicator shall lodge to the Director General an application in the form prescribed in the First Schedule dully filled and he shall –

(a) pay application fee prescribed in the Second Schedule;

(b) avail the vessel he intends to use for fishing for inspection either at Zanzibar or Dar-es-Salaam port; and

(c) fulfil pre-licensing criteria set by the Authority.

(3) Subject to paragraph (b) of sub-regulation (2) the person shall provide a twenty four hours notice of vessel's estimated time of arrival, weight by fish species catch onboard and port of call to the Director General, and shall ensure that the vessel only enters the exclusive economic zone of the United Republic once the notification has been acknowledged by the Director General.

Grant or refusal to grant a fishing licence

12. (1) The Director General may, within seven days from the date of receiving application, grant or refuse to grant a fishing licence.

(2) The Director General shall not grant fishing licence to the applicant –

(a) who fails to comply with the provisions of regulation 9 and 11;

(b) where the level of exploitation of any fishery resources is detrimental to the resource;

(c) who has been convicted of an offence involving dishonest or fraud;

(d) where the vessel to which a licence is applied for has been involved in illegal, unreported and unregulated fishing within the United Republic or any other state.

(3) The Director General shall, in writing notify the applicant of his refusal to grant a license and reasons for the refusal.

Surrender of licence

13. (1) A holder of a licence may surrender a licence issued under these Regulations to the Authority after ceasing fishing operations, suspension or revocation.

(2) A surrender of the licence shall be without prejudice to any liability or obligations which have accrued on the holder of the licence prior to the date of surrender.

(3) A person who finds a lost licence issued under these Regulations shall surrender it to the Authority or to the nearest Police station.

(4) The Authority shall not be bound to refund any payment in the event of surrender, revocation or suspension of a licence.

Inspection of fishing vessel

14. A licensing officer shall verify the inspection of a vessel in accordance with the criteria approved by the Executive Committee.

Register of licences

15. The Director General shall appoint a registrar and assistant registrar of fishing licences among licensing officers who shall keep and maintain a register in respect

of each type of licences issued and particulars of licensed fishing vessels.

*Suspension and
revocation of
licences*

16.(1) The Director General may, where the holder of any licence under these Regulations –

- (a) has furnished false or incomplete information in the application for licence;
- (b) contravenes or fails to comply with the conditions imposed in the licence;
- (c) contravenes the provisions of the Act;
- (d) contravenes the fisheries management measures set out by a regional organization, bilateral arrangement or international Conventions of which the United Republic is a party,

in writing require the licence holder within seven days to show cause why his licence should not be suspended or revoked.

(2) The Director General shall, after the expiry of the period referred in sub-regulation (1) suspend, revoke or allow the licensee to proceed under the terms and conditions of the licence.

*Replacement of
lost or damaged
licence*

17. (1) Where a licensee to whom a fishing licence has been issued under these Regulations satisfies the Director General that the licence has been lost, destroyed or defaced, the Director General may, on payment of a fee of thirty percent of the value of the licence, issue to him a duplicate licence including any particulars endorsed or entered upon the licence lost, destroyed or defaced and the duplicate so issued shall have the same effect as the original licence.

(2) A licence which has been altered without lawful authority or has been defaced or mutilated shall not be deemed as valid licence for the purpose of these Regulations.

PART III
MANAGEMENT OF FISHERY RESOURCES AND PROTECTION
OF MARINE ENVIRONMENT

*Sovereignty
over fishery
resources*

18. All fishery resources acquired from the Exclusive Economic Zone of the United Republic shall remain the property of the United Republic in accordance with the Act, Territorial Sea and Exclusive Economic Zone Act or any other written law.

*Principles of
sustainable
fishery
management*

19. A person exercising jurisdiction under these Regulations shall, in relation to any decision, order, exercise of any power or performance of any function, be guided by the following principles –

- (a) precautionary principle;
- (b) the polluter pays principle;
- (c) the principle of ecosystem integrity;
- (d) the principle of international cooperation in management of fishery resources;
- and
- (e) the principle of public participation.

*Stock
assessment*

20. (1) The Director General shall, in collaboration with relevant research institutions and other stakeholders, carry out fish stock assessment, conduct studies on fish migratory patterns, fishing seasons, biodiversity, environmental, ecological, socio-economic factors or any other fishery related study for effective management of the fishery resources.

(2) Licensed vessel shall participate in any national or international tagging programme by retaining tags onboard and reporting to the Director General together with data on the vessel name, catch position, date of capture, length and weight of individual tagged fish and name of person reporting the capture.

*Restoration of
fish stock*

21. The Director General may, in consultation with other relevant regional fisheries management organisations, impose measures for restoration of fish stocks in order to ensure sustainability of the fishery resources.

*Restriction on
fishing gears
and methods*

22. The Minister may, by order published in the gazette, basing on bilateral, regional, international agreement or prevailing situation within the United Republic, restrict the use of any fishing gear or method, area or time of fishing in the Exclusive Economic Zone.

*Marking and
protection of
set fishing
gears*

23. A holder of a fishing licence under which a fishing vessel operates shall ensure that fishing gear set in the sea is clearly marked as follows:

- (a) each and every buoy used for setting gill nets, long lines, set nets shall be marked with the licence number or local identification mark assigned to the vessel utilizing the gear;
- (b) the identification mark must be in block letters and numbers;
- (c) letters and numbers must be as large as the surface of the buoy permits;
- (d) the identification mark must be in either white or black, whichever colour gives the higher contrast to the colour of the buoy;
- (e) good quality marine paint must be used in writing the identification marks; and
- (f) the identification marks and the surrounding background must be maintained in a good condition all times.

*Landing and
transshipment*

24.(1) A person who intends to land fishery resources in any designated port in the United Republic shall give, for the inspection purposes, a forty-eight hours notice to the Director General before landing.

(2) Subject to sub-regulation (1) contents of the notice shall include the following information:

- (a) manifest of fish onboard,
- (b) place and position of transshipment,
- (c) date and time of transshipment, and
- (d) duration of transshipment.

(3) Transshipment of any fishery resources from any vessel shall be carried out at the designated ports and under the supervision of a fishery inspector.

(4) Shark fins shall not be transhipped without the carcass and vice versa.

(5) The costs of transport, accommodation pertaining to the performance of the duties of a fishery inspector or other person designated by the Director General to

conduct supervision of a transshipment of fishery resources outside a port in the United Republic shall be borne by the holder of the licence.

Prohibition on water pollution and degradation of marine environment

25.(1) A person shall not cause or willingly flow or pass into marine waters of the United Republic any solid, liquid or gaseous material or cause water pollution.

(2) Any waste generated on a fishing vessel in the cause of fish processing, human activities and unused bait shall be taken back to port to be disposed off.

(3) A person shall not, without a written authorization of the Director General, leave any fishing gear or any other non-biodegradable object used for the harvesting of fishery resources after the termination of harvesting.

(4) A person who leaves fishing gear or any other non-biodegradable object referred to in sub-regulation (3) shall report to the Director General before removing such gear or object.

(5) Notwithstanding sub-regulation (3) a person may, in a case of emergency, leave fishing gears or non-biodegradable object and shall report the incidence to the Director General.

(6) The Director General may cause fishing gear or any other non-biodegradable object referred to in sub-regulation (3) to be removed by any other person authorised for that purpose.

(7) Any cost incurred in connection with the removal of any fishing gear or any biodegradable object contemplated in sub-regulation (6) may be recovered from the person by whom the gear or object was left.

Information sharing.

26. The Director General may prepare and submit to the Food and Agricultural Organisation of the United Nations and other bilateral agreements, regional or international organisations which the United Republic is a party, fisheries statistics and vessels information.

PART IV QUALITY CONTROL

Quality management programme

27.(1) The Minister shall, for the purpose of exportation of fishery resources and in accordance with any bilateral, regional or international arrangement, impose or prescribe conditions, specifications or any requirement on any matter of fishery resources to be exported including processing establishments.

(2) The Minister shall, in consultation with the Minister responsible for fisheries in the Revolutionary Government of Zanzibar, designate a competent authority for the purpose referred to in sub-regulation (1) of this regulation.

PART V MONITORING CONTROL AND SURVEILLANCE

Vessel Monitoring System

28.(1) A fishing vessel licensed under these Regulations shall be equipped with an Automatic Location Communicator linked to the vessel monitoring system and capable of transmitting messages automatically to a land based vessel monitoring operations centre, to allow continuous monitoring of the vessel.

(2) Information transmitted by a fishing vessel shall include the vessel identification, latitude, longitude, date and time, course and speed which shall be transmitted at the intervals as prescribed in the licence to ensure that the vessel is effectively monitored.

(3) The Director General shall approve the type of technology of vessel monitoring system to be used in the Exclusive Economic Zone of the United Republic.

(4) The Director General shall determine technical requirements for automatic location communicator which relate to –

- (a) the frequency at which automatic location communicator shall transmit;
- (b) the manner in which the data shall be modulated on the frequency concerned;
- (c) the duty to transmit the data through a specified third party, which may use any system and further relaying the signal, including the use of satellite;
- (d) the format of the data that shall be transmitted by the automatic location communicator; and
- (e) the encoding, encryption, transformation or addition of checksums that must be applied or added to data in order to ensure the accuracy, validity and integrity of the transmitted data.

(5) A licensee shall seal or take any other measure to prevent the Automatic Location Communicator from being tampered with, and to detect any tampering.

(6) In case the power supply to the vessel monitoring system be interrupted or the automatic location communicator not be operational for any reason whatsoever and the problem persists, the vessel shall return to port within twenty four hours of being informed of the problem, unless special arrangements have been made with the Director General to allow the vessel to continue fishing. Such special arrangements shall include:

- (a) 3-hourly reporting of the vessel's position by any other communication means,
- (b) Notice of estimated time of arrival,
- (c) Notice of port of arrival,
- (d) Inspection of the catch by fishery inspector, and
- (e) A copy of the vessel track for the voyage for verification purposes.

(7) The Director General shall keep a record of the frequency of vessel monitoring system breakdowns in order to discourage repeated uses or abuses of this special arrangements dispensation.

(8) Vessels wishing to switch off their vessel monitoring system units whilst alongside in port, may do so only after a minimum of six hours after berthing, and shall switch on their units a minimum of six hours prior to the estimated time of departure from port.

(9) The Director General may, upon receiving the application made under regulation 11(2) and being satisfied that technical requirements have been complied with, issue a Certificate of Registration for an Automatic Location

Communicator in the form prescribed in the First Schedule.

*Vessel monitoring
operation centre*

29.(1) The Director General shall establish a vessel monitoring operation centre equipped with receivers and other equipment that will receive and record information transmitted from all the fishing vessels by the Automatic Location Communicator's that have been approved under these regulations.

(2) The vessel monitoring operations centre shall be in the room that is locked in a secured manner.

(3) An employee of the Authority authorized to enter the vessel monitoring operations centre may enter the room.

(4) A list of names of employees authorized to enter the centre shall be displayed on the door of the room of the centre.

(5) The Director General may, in writing, authorize any other person to enter the centre on a specific occasion.

Confidentiality

30.(1) Information received and recorded by the equipment in the vessel monitoring operations centre shall be treated as confidential and may only be revealed-

(a) to a person who is gathering information in order to decide whether criminal proceedings should be instituted against any person;

(b) to a prosecutor or legal representative who requires such information for the purpose of prosecuting or defending criminal proceedings;

(c) to a person who is empowered to ensure compliance of the United Republic with obligations under international law;

(d) when the revealing of such information is necessary in order to conduct search or rescue operations in relation to any vessel; and

(e) where the captain of the vessel concerned gives permission for the revealing of the information.

(2) A person who obtains information for a purpose referred in sub-regulation (1) shall use that information for such purpose and may reveal such information to any other person for the same purpose.

(3) A person who reveals or uses information contrary to the provisions of these Regulations commits an offence.

Surveillance unit

31. (1) There is established within the Authority a unit to be known as Surveillance Unit.

(2) The Unit shall consist of number of enforcement officers as the Director General may determine based on the decision of the Executive Committee.

*Powers and
functions of the
Unit*

32.(1) The functions of the Unit shall be the protection of fishery resources and marine environment against illegal, unreported and unregulated fishing in the Exclusive Economic Zone and general enforcement of the provisions of the Act.

(2) The Unit shall, in discharging its duties, be equipped with vehicles, air crafts, patrol boats, radio and any other equipment necessary for efficiency and effective implementation.

(3) Members of the Unit shall have powers to –

(a) cause a captain of a fishing vessel or any other suspicious vessel to

- stop;
- (b) require a captain of a fishing vessel to stop fishing and take fishing gears back on board;
- (c) require a captain of the vessel to facilitate the boarding by all appropriate means;
- (d) board a fishing vessel or any other vessel and exercise powers of an authorised officer;
- (e) require a captain or crew of a vessel to produce any document or information relating to the vessel, fishing gears, fish caught or any person onboard;
- (f) examine, take copy or sample of things mentioned under paragraph (e); and
- (g) order a captain of a vessel to sail to port.

Fishery inspectors **33.**(1)The Director General shall in writing appoint among the officers of the Authority fishery inspectors.

(2) The fishery inspector shall have power to -

- (a) stop, board and inspect any vessel, its fishing gear, fishery resources, cargo, equipment, stores, documents or other item required to be kept under these Regulations;
- (b) enter and inspect any premise or vehicle in which he reasonably suspects that fishery resources or fishing gear are kept or transported;
- (c) examine any fishing gear or equipment which is used or intended to be used in harvesting, handling or processing of fishery resources;
- (d) interrogate any person who, in his opinion, may be capable of furnishing any information which he may require;
- (e) require any person onboard to assist him in examining any container, fishing gear, fishery resources, document or any other thing in such vessel to ascertain compliance of these Regulations; and
- (f) Prepare vessel inspection report in the manner prescribed in the First Schedule.

(3) Where a fishery inspector has reasonable grounds to suspect that an offence under these Regulations has been committed he may -

- (a) seize any vessel, vehicle, fishing gear, fishery resources, document or any other item; and
- (b) order the captain to bring the vessel to the nearest port from the point where the offence has been committed.

(4) The fishery inspector shall, in the course of discharging his duties, carry identification card issued by the Authority in the form prescribed in the First Schedule.

Fishery observers **34.** (1) There shall be fishery observers to be appointed by the Director General.

(2) The Fishery Observers appointed under sub-regulation (1) shall –

- (a) observe and record the harvesting, handling, and processing of

- fishery resources and related operations;
- (b) collect and record biological and other information related to activities governed by these Regulations;
- (c) report to the Director General any observations or information obtained under these Regulations;
- (d) take samples or photo of fishery resources harvested or anything onboard; and
- (e) perform such other activities as may be assigned to him by the Director General.

(3) The fishery observer shall, in the course of discharging his duties, carry identification card issued by the Authority in the form prescribed in the First Schedule.

*Authorised
officers*

35.(1) For the purposes of these Regulations, the following persons are designated as Authorised Officers –

- (a) officers of the Authority;
- (b) fisheries officers of the Government ministries responsible for fisheries;
- (c) members of the Defence Forces;
- (d) members of the Police Forces;
- (e) officers of the Customs and Revenue Departments;
- (f) Kikosi Maalum cha Kuzuia Magendo, known in its acronym as “KMKM”;
- (g) Any other person approved by the Minister.

(2) The Minister shall, in collaboration with the minister responsible for fisheries in the Revolutionary Government of Zanzibar, institute mechanism for cooperation between the Authority and authorised officers.

*Pre-licensing
inspection
procedures*

36.The inspector shall for the purpose of pre-licensing inspection, -

- (a) verify a vessel identification documentation onboard and information relating to ownership;
- (b) verify the vessel's flag and markings such as name, external registration number, International Maritime Organisation ship identification number, international radio call sign and other markings;
- (c) inspect all gear onboard, including any gear stowed out of sight and to the extent possible verify that it is in conformity with the conditions of the licence. The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh size, devices and attachments, dimensions and configuration of nets, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorized for the vessel;
- (d) evaluate whether there is reasonable evidence for believing that a vessel has engaged in, or supported illegal, unreported and unregulated fishing;
- (e) provide the report containing the result of the inspection to the captain of the vessel, to be signed by the inspector and the captain;
- (f) provide an opportunity to the captain to add any document to the

- report; and
- (g) where necessary, arrange for an official translation of relevant documentation.

*Off-loading
inspection
procedures*

- 37.** The inspector shall for the purpose of landing or off-loading inspection -
- (a) verify the authorization for fishing and related activities;
 - (b) review all relevant documentation and records, including documents in electronic format and vessel monitoring system data;
 - (c) examine whether the fish on board was harvested in accordance with the applicable authorizations;
 - (d) examine the catch in the hold during or after the landing to determine the quantity and composition of all onboard, including by sampling. The port inspector may open cartons to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight. The inspector may also examine any catch retained onboard;
 - (e) evaluate whether there is reasonable evidence for believing that a vessel has engaged in, or supported illegal, unreported and unregulated fishing;
 - (f) provide the report containing the result of the inspection to the master of the vessel, to be signed by the inspector and the captain. The captain's signature of the report shall serve only as acknowledgement of the receipt of a copy of the report. The captain shall be given the opportunity to add any comments to the report; and
 - (g) where necessary, arrange for an official translation of relevant documentation.

*Sea inspection
procedures*

- 38.** The inspector shall, for the purpose of sea inspection, –
- (a) board the fishing vessel after prior notification by radio or appropriate signal using the International Code of Signals sent to the vessel;
 - (b) not require a fishing vessel to stop or manoeuvre while fishing, shooting or hauling;
 - (c) notwithstanding the paragraph (b) of this regulation, order the interruption or delay in the hauling of the fishing gear if he has boarded the fishing vessel and that process can not take more than thirty minutes after receiving the signal.

*Stowage of fishing
gear*

- 39.** A captain of a fishing vessel shall, while in an unauthorised fishing area or time in the United Republic, ensure that all fishing gear and any other equipment onboard used for fishing are covered and secured in such a manner that they can not be used in fishing.

*Log book
maintained by
captain.*

- 40.(1)** A captain of the licensed fishing vessel shall maintain onboard –
- (a) a bound fishing logbook in the format prescribed in the First Schedule with numbered pages, and
 - (b) a landing logbook in the format prescribed in the First Schedule.

- (2) The fishing logbook shall contain -
 - (a) on a daily basis and for each fishing operation, catches retained onboard by species in weight kilograms,
 - (b) the estimated cumulative fish catch since the commencement of fishing,
 - (c) types and number of gears used,
 - (d) number of fishing operations per day and the duration of time that the fishing is deployed during each fishing operation,
 - (e) fishing location, longitudes and latitudes.

(3) The fishing logbook and landing logbook shall be kept in a place where they are protected from being damaged and where they are readily available for inspection at any time upon the request of a fishery inspector or any other person acting on a written authority of the Director General.

(4) The captain of the vessel shall, upon returning from each fishing trip, not later than twenty four hours after completion of the landing of the fishing, handover the original of both the fishing logbook and landing logbook sheets to any person authorized by the Director General.

(5) The logbook sheet copies shall be kept by the owner of a fishing vessel at least twenty four months after the last entry was made.

Radio call signs

41.(1) Every vessel licensed under these Regulations shall display letters or numbers of its International Telecommunication Union Radio Call Sign on each side of the superstructure at the highest point above the gunwale, or main deck where it can easily be seen.

(2) Where for practical reasons, the Radio Call Sign can not be displayed on the superstructure, it shall be displayed in a conspicuous position on each side of the vessel at the highest practical point above the gunwale or main deck.

(3) The letters or numbers of the radio call sign shall be painted in white colour on a black ground or in black colour on a white ground in characters not less than in the case of vessel with an overall length of –

(a) twenty-five metres or more, but less than forty-five metres, ninety centimetres in height, forty-five centimetres in breadth excluding the letter 'I' and figure 'one', ten centimetres in thickness width and stroke, and twenty centimetres spacing between each letter or figure, and the white or black background area shall overlap the edge of the radio call sign by at least ten centimetres; and

(b) forty-five metres or more, one hundred and twenty centimetres height, seventy centimetres in breadth, excluding the letter 'I' and figure 'one', fifteen centimetres in thickness width and stroke, and thirty centimetres spacing between each letter or number and the white or black background area shall overlap the edge of the radio call sign by at least twenty centimetres.

(4) The registration letter or number and the radio call sign assigned and affixed to a fishing vessel shall at all times be maintained in a clear distinct and legible condition and shall at all the times be clearly displayed.

Hot pursuit or long arm

42.(1) A fishery inspector or authorised officer shall, in accordance with the Territorial Sea and Exclusive Economic Zone Act or any other written law, have

jurisdiction
Cap. 238

the power to pursue a vessel beyond waters of the United Republic based on evidence from -

- (a) vessel monitoring system;
- (b) geographical positioning system;
- (c) air photographing;
- (d) satellite system; or
- (e) any other accepted international technological communication system.

(2) A fishery inspector or authorised officer shall take into consideration relevant bilateral, regional or international instrument to which the United Republic is a party in the exercise of the right of hot pursuit.

(3) A fishery inspector shall, where he has exercised his powers conferred under sub-regulation (1), inform the Director General who through the ministry responsible for foreign affairs shall inform the embassy of the flag state.

(4) A fishing vessel violated laws of another state and flees to the United Republic shall be arrested and charged in accordance with the provisions of the Act and these Regulations or any other written law or handed over to the state where the offence has been committed.

Prohibition of
fishery resources
trade

43.(1) A person who is within the jurisdiction of the United Republic –

- (a) on his own account or as partner, agent or employee of another person lands, imports, transports, sales, receives, acquires or purchases;
- (b) causes or permits a person acting on his behalf, uses a fishing vessel to land, import, transport, sale, receive, acquire or purchase,

any fish taken, possessed, transported, or sold contrary to the laws of another state shall be arrested and handed over to the state where the offence has been committed.

(2) Any fish found onboard a fishing vessel within the Exclusive Economic Zone shall be presumed to have been taken within the Exclusive Economic Zone of the United Republic by such vessel.

PART VI ADMINISTRATION OF THE AUTHORITY

Structure of the
Authority

44. The organisation structure of the Authority shall be as prescribed in the Act and the Fourth Schedule of these Regulations.

Appointment and
termination of
Director General
and Deputy
Director General

45.(1) The Minister and Minister responsible for fisheries in the Revolutionary Government of Zanzibar shall jointly advertise the posts of Director General and Deputy Director General.

(2) The Minister and Minister responsible for fisheries in the Revolutionary Government of Zanzibar shall, each, after the expiry of one month from the date of advertisement, consider applications and shortlist three candidates for the posts of Director General and Deputy Director General.

(3) The minister responsible for fisheries in the Revolutionary Government of Zanzibar shall, within two weeks after short listing three candidates, submit to the

Minister.

(4) The Minister shall within four weeks submit both lists of candidates prepared under sub-regulation (2) to the President.

(5) The President may, upon the receiving the lists from the Minister, appoint the Director General and Deputy Director General in accordance with the provisions of the Act.

(6) The Director General shall perform his duties in consultation with the Deputy Director General.

(7) The Deputy Director General shall perform his duties under the instruction of the Director General.

(8) The Director General and Deputy Director General shall cease to hold office upon –

- (a) Death,
- (b) Resignation,
- (c) Failure to perform his functions,
- (d) Terminal illness, and
- (e) Convicted of criminal offence.

*Employment of
directors and
other staff*

46.(1) The Director General shall determine and recommend for the approval to Executive Committee the number and qualifications of staff required by the Authority.

(2) The Executive Committee shall, upon receiving the recommendations from the Director General, consider and may approve or give necessary directives to the Director General in accordance with the provisions of the Act.

(3) The Director General shall, upon receiving the directives from the Executive Committee, comply with directives and act accordingly.

(4) The Director General shall, within ten working days, upon receiving approval from the Executive Committee, advertise the all approved vacancies together with details, such as, qualifications, job descriptions and remunerations.

(5) The Director General shall, after the expiry of one month from the date of advertisement, consider applications for the posts advertised and prepare the lists of shortlisted candidates to be submitted to the interviewing panel.

(6) The Director General shall in consultation with other senior management officers of the Authority, establish an interviewing panel for interviewing the short-listed candidates.

(7) The Director General shall, prior to issuance of letter of appointment to a selected candidate, submit to the Executive Committee a list of selected candidates together with the interviewing report for consideration and approval.

(8) Other staff who are not technical staff shall be employed from the side where the head office of the Authority is situated.

*Permanent and
temporary
employment*

47.(1) Employment of staff for the Authority, other than Director General and Deputy Director General, shall be permanent employment governed by employment and Labour Laws for the time being applicable to the United Republic.

(2) The Director General may, upon approval of the Executive Committee, employ person for specific task on temporary basis.

| | |
|--|--|
| <i>Disciplinary authority and measures</i> | <p>48.(1) All staff of the Authority shall perform their duties in accordance with the provisions of the Act and other existing laws of the United Republic.</p> <p>(2) A staff of the Authority who breaches any of the provision of the Act or these Regulations or other existing laws of the United Republic shall be subject to disciplinary measures as stipulated in employment and labour laws for the time being in force.</p> <p>(3) The Minister shall be the disciplinary authority for the Director General and Deputy Director General upon recommendation of the Executive Committee.</p> <p>(4) The Director General shall be the disciplinary authority for directors and other staff of the Authority upon approval of the Executive Committee.</p> |
| <i>Conflict of interest</i> | <p>49. Where any matter concerning the implementation or enforcement of these Regulations in which any officer exercising functions under the Regulations or any member of his immediate family has an interest allocated to, referred to or otherwise come to such officer for his advice, assistance or decision, that officer shall declare conflict of interest and not exercise any functions under these Regulations in respect of that matter.</p> |
| <i>Director General to hold consultations</i> | <p>50. The Director General shall, in the performance of his functions, hold consultations with the directors responsible for fisheries in Mainland Tanzania and Tanzania Zanzibar for effective implementation and enforcement of the Act and these Regulations or any other written law relating to fisheries.</p> |
| <i>Government approval of fishing agreements</i> | <p>51. Any fishing agreement negotiated by the Authority shall be subject to Government consideration and approval.</p> |

PART VII FINANCIAL PROVISIONS

| | |
|--------------------------------|--|
| <i>Budget of the Authority</i> | <p>52.(1) At least three months before the commencement of any financial year, the Director General shall prepare and submit to the Executive Committee the budget estimates of the Authority.</p> <p>(2) The Executive Committee shall, upon receiving estimate budget from the Director General, approve and submit it to the Ministers who shall incorporate them in the estimate budget of their ministries.</p> <p>(3) The estimate budget of the Authority shall be prepared in accordance with guidelines issued by the Treasury and be submitted to the Minister and the Minister responsible for fisheries in the Revolutionary Government of Zanzibar two months before commencement of Parliament and the House Representatives budgetary session.</p> |
| <i>Remittance</i> | <p>53. The Director General shall, at least three months before the commencement of any financial year, notify the Executive Committee on the sum of money needed to be remitted to the Treasury in the Government of the United Republic and in the</p> |

Revolutionary Government of Zanzibar as provided by section 10 of the Act.

*Borrowing by
the Authority*

54.(1) the Director General may, where the circumstance requires the Authority to borrow funds, prepare and submit to the Executive Committee for approval, the financial plan showing the amount of money to be borrowed, how money is going to be used and how the Authority shall benefit from the loan.

(2) The Authority may, with approval of the Minister responsible for Finance in the Government of United Republic, borrow funds from any financial institution.

*Investment of
funds for the
Authority
Cap. 53*

55.(1) The Director General shall cause the funds of the Authority to be invested in accordance with Section 12 of the Act or any other written law.

(2) The Authority shall not invest any fund in the shares or debentures of a company unless –

- (a) the companies total issued and paid-up capital is two million shillings or more;
- (b) the company during each of the three years preceding the year in which investment is proposed to be made, as made profit and the total of the profit earned during three years is not less than fifteen per centum of the total value of the company's paid-up share capital as at the end of the year immediately preceding the year in which the investment is proposed to be made.

(3) The Authority shall not, for avoidance of conflicting interest, invest in any fishing operation or fishery related business.

(4) The Authority shall not invest in projects which shall override its main objectives.

(5) The Authority may invest in land mortgage in accordance with Trustee Investment only if –

- (a) the value of land including the value of buildings is more than twice the amount proposed to be invested;
- (b) the unexpired term of leasehold or right of occupancy is not less than twenty years;
- (c) the date of repayment of the mortgage debt is not less than fifteen years before the date of the expiry of the lease or right of occupancy;
- (d) the interest to be received in respect of mortgage debt is not less than eight per centum per annum;
- (e) there has been no breach of covenant of the lease or right of occupancy;
- (f) development requirements, if any, annexed to the lease or right of occupancy by or under the Authority of any written law other than any requirement which is of continuing nature have been complied with;
- (g) in the case of land held by Government lease, the rent payable in respect of the land does not exceed the rent prescribed in the existing laws.

*Procurement
and disposal of
assets
Cap. 410*

56.(1) There shall be a tender board of the Authority to deal with procurement of goods, services, works, consultancies and disposal of assets of the Authority constituted in accordance with the Public Procurement Act or any other written law.

(2) Tender board may include the following members -

- (a) the Director General,
- (b) the Deputy Director General,
- (c) other Directors of the Authority,
- (d) head of procurement unit of the Authority who shall be the secretary.

(3) The tender board may invite any person to attend and participate in the deliberations of the board meeting but such a person shall have no right to vote.

(4) The Director General shall be responsible for the execution of procurement and disposing processes.

(5) The Director General shall cause to be prepared procurement and disposing processes in accordance with the existing laws of the United Republic and submit it to the Executive Committee for approval.

(6) The tender board shall have power to appoint an evaluation team to deal with specific tender after the opening it and thereafter shall prepare a short-list and recommendations for the board's decision.

(7) The tender board shall conduct its activities and proceedings in accordance with the Public Procurement Act and Regulations made there under or any other written law.

Remunerations **57.**(1) A member of the Executive or Technical Advisory Committees shall be entitled to the following remunerations and allowances –

- (a) fees;
- (b) sitting allowances;
- (c) subsistence allowances while in the course of duties of the Authority out of his working station;
- (d) transport allowances; and
- (e) gratuity.

(2) Any staff of the Authority shall be entitled to the following remunerations –

- (a) salaries;
- (b) subsistence allowances while in the course of duties of the Authority outside the working station;
- (c) transport allowances; and
- (d) sitting allowances;
- (e) any other payments prescribed by the Executive Committee.

(3) The Director General shall prepare or cause to be prepared rates of salaries and allowances payable to members of the Committees and other staff of the Authority and submit to the Executive Committee for consideration and submission to the Ministers for approval.

Bank Accounts **58.**(1) The Authority shall have its own bank accounts in the Bank of Tanzania or in any commercial bank within the United Republic approved by the Executive Committee.

(2) Signatories of the accounts of the Authority shall be-

- a) group A: The Director General and the Deputy Director General; and
- b) group B: The Director of Finance and Assistant Director of Finance of the Authority.

(3) A bank cheque shall not be authentic without two signatures one from each group.

Audit

59. (1) The auditing of the account of the Authority shall be conducted by the Controller and Auditor General of the Government of the United Republic in collaboration with the Controller and Auditor General of the Revolutionary Government of Zanzibar.

(2) The Ministers shall, as soon as practicable after receiving statement of accounts, lay them before the National Assembly and the House of Representatives.

**PART VIII
APPEALS AND THE MANNER OF LODGING APPEAL**

Appeals

60.(1) A person aggrieved by the decision of the Director General for refusal to grant a licence, suspension or revocation of the licence may, within seven days from the date of receiving the decision of the Director General, appeal to the Minister.

(2) A petition of appeal lodged by the aggrieved person under these Regulations shall be in writing and the appellant shall –

- (a) prepare the petition in triplicate;
- (b) adequately describe the manner to which the appeal relates;
- (c) set forth concisely the grounds of objection; and
- (d) sign the petition.

(3) The petitioner shall serve the copy of petition of the appeal to the Director General.

(4) The Director General shall, on receipt of the copy referred to sub-regulation (3) of this Regulation, forward to the Minister a written statement setting out particulars relating to the subject matter of the appeal together with his own comments as in his opinion useful towards a just determination of appeal.

(5) The Minister shall, after consultation with the Minister responsible for fisheries in the Revolutionary Government of Zanzibar, make decision on the appeal and shall communicate the decision in writing to the appellant within fourteen days from the date of receiving the appeal.

(6) An appeal to the Minister shall not be entertained unless the petitioner has paid fee prescribed in the Second Schedule.

*Register of
appeal and
decision
made by the
Minister*

61. The Director General shall keep the register of appeals lodged and the decisions made by the Minister.

**PART VIII
CAPACITY BUILDING, AWARENESS AND RESEARCH**

*Research
permits*

62. The Director General may issue a special permit for fisheries scientific research on the following conditions-

- (a) a research proposal approved by the competent authority responsible for

- scientific research in the United Republic be submitted to the Authority fourteen days before the date of commencement of the research;
- (b) the Authority to be provided with a final copy of research report.

Education and awareness creation

63. The Director General may initiate, implement and support public awareness creation and education programs on fishery and fishery related issues in order to enhance awareness and build capacity in sustainable utilisation and management of the fishery resources.

Support of training institutions and programs

64.(1) The Director General may initiate and support training institutions or centres within the United Republic to run training programs and offer courses for fisheries and nautical sciences, management of marine environment and aspects related to monitoring, control and surveillance.

(2) The Authority may offer scholarships for the training of the staff, authorised officers or any other person in order to enhance capacity for the management of the fishery resources and enforcement of the Act.

PART VIII OFFENCES AND PENALTIES

Falsification of documents

65. A person who unlawfully alters, destroy, erase or obliterate any declarations, certificate or other documents made or issued under these Regulations, or any label or mark placed on any vessel in accordance with these Regulations, commits an offence.

Possession of shark fins

66. A person who unlawfully possesses shark fins without carcass onboard a vessel licensed under these Regulations commits an offence and on conviction shall be liable to a fine of not less than one billion shillings or to imprisonment for a term of twenty years or to both and in addition to the fine and imprisonment, the Court may order the forfeiture of any vessel, structure, equipment, device or thing in connection with which the offence was committed.

Offences relating to fishing

67. A person who carries out fishing activity without licence issued under these Regulations commits an offence and on conviction shall be liable to a fine of five billion shillings or to imprisonment for a term of twenty years or to both and in addition to the fine and imprisonment, the Court may order the forfeiture of any vessel, structure, equipment device or thing in connection with which the offence was committed.

Offences relating licence conditions

68. A person who contravenes any licence condition commits an offence and on conviction shall be liable to a fine of not less than one billion shillings or to imprisonment for a term not less than twenty years or to both that fine and imprisonment.

Obstruction of inspectors and

69. A person who assaults, resists, obstructs, or intimidates fishery inspector, fishery observer or authorised officer in execution of his duty under these Regulations commits an offence and on conviction shall be liable to a fine of not less than one million

observers shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.

Offences relating to pollution and degradation of marine environment **70.** A person who contravenes the provision of Regulation 25 commits an offence and on conviction shall be liable to a fine of twenty billion shillings or to imprisonment for a term of not less than ten years or to both that fine and imprisonment.

General penalties **71.** A person who commits an offence under these Regulations where no specific penalty has been provided shall be liable to a fine of not less than one million shillings or to imprisonment for a term not exceeding two years, or to both that fine and imprisonment.

PART IX GENERAL PROVISIONS

Guidelines **72.** The Director General may, from time to time, issue guidelines, circulars or directives for the purposes of assisting the proper implementation of these Regulations.

Powers to amend Schedules **73.** The Minister may, by order published in the gazette, amend any of the Schedules under these Regulations.

Reports of the Authority **74.** The Director General shall prepare annual report of the activities of the Authority in accordance with section 16 of the Act and submit it to the Executive Committee for consideration prior to submission to the Ministers.

Access of information to the register **75.** Any member of the public may, on showing reasonable cause, and on payment of a fee set out in the Second Schedule of these Regulations access entries from the registers.

Corporate social responsibility **76.** The Authority may promote and assist, through grants community based fishery management programme and social services initiatives.

FIRST SCHEDULE

Form No. 1

THE UNITED REPUBLIC OF TANZANIA



THE DEEP SEA FISHING AUTHORITY ACT

CAP. 388

The Deep Sea Fishing Authority Regulations, 2009

LICENSING OFFICER IDENTIFICATION CARD

(Made under Regulation 4(3))

Full name:

ID Number:

Affix recent
coloured
passport size
Photograph

.....
Signature of holder

The bearer of this card whose photograph is displayed and whose designation is **Licensing Officer** has been appointed by the Director General to exercise powers conferred to him under the Deep Sea Fishing Authority, 2008.

Date of issue.....

.....
Full name of the Director General

.....
Signature of the Director General

Official stamp of the Authority

Note: This card is a property of the Deep Sea Fishing Authority. The holder shall return this card to the Director General on upon ceasing to be a licensing officer.

THE UNITED REPUBLIC OF TANZANIA



THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388
The Deep Sea Fishing Authority Regulations, 2009

FISHERY OBSERVER IDENTIFICATION CARD
(Made under Regulation 34(3))

Full name:

ID Number:

Affix recent
coloured
passport size
Photograph

.....
Signature of holder

The bearer of this card whose photograph is displayed and whose designation is **Fishery Observer** has been appointed by the Director General to exercise powers conferred to him under the Deep Sea Fishing Authority, 2008.

Date of issue.....

.....
Full name of the Director General

.....
Signature of the Director General

Official stamp of the Authority

Note: This card is a property of the Deep Sea Fishing Authority. The holder shall return this card to the Director General on upon ceasing to be a fishery observer.

THE UNITED REPUBLIC OF TANZANIA



THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388

The Deep Sea Fishing Authority Regulations, 2009

FISHERY INSPECTOR IDENTIFICATION CARD
(Made under Regulation 33(4))

Full name:
ID Number:

Affix recent
coloured
passport size
Photograph

.....
Signature of holder

The bearer of this card whose photograph is displayed on this card and whose designation is **Fishery Inspector** has been appointed by the Director General to exercise powers conferred to him under the Deep Sea Fishing Authority, 2008.

Date of issue.....

.....
Full name of the Director General

.....
Signature of the Director General

Official stamp of the Authority

Note: This card is a property of the Deep Sea Fishing Authority. The holder shall return this card to the Director General on upon ceasing to be a fishery inspector.

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388
The Deep Sea Fishing Authority Regulations, 2009

APPLICATION TO REGISTER AN AUTOMATIC LOCATION COMMUNICATOR
(ALC)
(Made under Regulation 11(2))

New Application ☐ Renewal ☐

A: PARTICULARS OF APPLICANT

Full name:
Postal address:
Business or residential address:
Telephone number: facsimile: email:
Name of local representative:
Local representative address:
Telephone number: facsimile: email:

B: PARTICULARS OF VESSEL CARRYING THE ALC:

Name of the Vessel:
Port and country of Registry:
Fishing Vessel registration number:
Fishing Vessel International Radio Call Sign:
Owner of the fishing vessel:
Postal address:
Business or residential address:
Telephone number: facsimile:, email:
Country of Residence:
Name of Captain:
Postal address:
Business or residential address:
Telephone number: Facsimile:, email:

C: SPECIFICATION OF THE ALC:

Make: Model:

Serial Number: Date purchased:
Name of supplier:
Business or residential address of supplier:
Telephone numbers: Facsimile:

D. DECLARATION BY THE APPLICANT

I,, the undersigned, hereby apply to register the ALC
on the fishing vessel specified above and addresses that the particulars furnished are the best of
my knowledge and belief correct in all respects.

Signature

Place

Date

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388
The Deep Sea Fishing Authority Regulations, 2009

**APPLICATION FORM FOR A LICENCE TO FISH IN EXCLUSIVE ECONOMIC
 ZONE OF THE UNITED REPUBLIC OF TANZANIA**
 (Made under Regulation 11(2))

New Application

☐

Renewal

☐

APPLICANT:

Name of applicant:
 Address (postal, telex, fax, email, phone)

 Business or residential address
 Occupation.....
 Name and address of local legal agent or representative.....

 Telephone numbers Facsimile email:

VESSEL:

Type of vessel.....
 Name of vessel
 Registration number.....
 Date and place of construction.....
 Current port and country of registry:

 Previous registration:
 Flag State.....
 Length of vessel..... Gross tonnage..... Net tonnage.....
 Beam.....
 Engine HP / Number of engines (specify)
 Engine make engine model.....
 Speed of vessel (max)..... Propeller: **fixed** [] , **variable** [] or **ducted** []
 International Call Sign..... Call
 frequency.....

Sounding, navigational and transmission instruments:

Radar [] , Sonar [] , Net sonde [] , VHF [] , SSB [] , Net sonde satellite navigation []
 Others:
 Number of crew.....

Name of Captain.....
Postal address:
Business or residential address
Telephone numbers Facsimile

FISHING:

Type or method of fishing
Type and number of gears.....
Size (length and depth) of each gear.....
Number and size of hooks (if applicable).....
Mesh size (if fishing net will be used).....
Any other specifications of gear to be used:
Any other specifications of gear carried and stowed on board not to be used:
.....
Targeted area of fishing: **surface** [], **mid-water** [] or **bottom** []
Targeted species of fish.....
Tonnage of fish applied to catch.....
Expected market and price.....

PRESERVATIONS:

Number of wet fish holds/total capacity M³
Number of freezer holds/ total capacity M³
Packed in ice [], ice and refrigeration [], freezing in brine [], dry [] or refrigerated sea water [].
Total refrigeration power.....
Freezing capacity.....
.....
Total fish hold capacity.....

SHORE BASED FISH PROCESSING FACILITY:

If applicable, provide –
Name of firm.....
Main activities.....
Type and number of wholesale fish trade licence.....
Any description of processing and preservation plant including type of construction material used.....
.....
.....

I,..... the undersigned, hereby apply for a licence to use the fishing vessel indicated above and declare that the particulars furnished are to the best of my knowledge and belief correct in all respects.

Signature

Place

Date

ATTACHMENTS:

An application shall be accompanied with the following documents –

1. copy of the vessel certificate of registration
2. copy of ship surveyor's Certificate,
3. copy of certificate of Seaworthiness,
4. list of names of crew showing citizenship,
5. coloured photograph, A6 format, showing vessel from starboard or portside, and
6. proof of insurance for a vessel and crew.
7. Plan to employ Tanzanian crew while fishing in the Exclusive Economic Zone;
8. Fishing plan
9. proof of availability of English speaker onboard a fishing vessel to which a licence is applied for.
10. proof of having local legal Representative or Agent.

Certificate Number:

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388
The Deep Sea Fishing Authority Regulations, 2009

CERTIFICATE OF REGISTRATION FOR AN ALC
(Made under Regulation 28(6))

Name of licensee
Name of fishing vessel
Fishing vessel registration number:
Fishing vessel International Radio Call sign:

Details of the ALC:

Make: Model:
Serial Number: Date of purchase:
Name of Supplier:

This is to certify that the above named licensee has duly complied with the terms and conditions for the registration of ALC. The Director General do hereby grants the licensee the Certificate for Registration.

.....
Director General

.....
date

.....
Official stamp

Licence Number.....

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388
The Deep Sea Fishing Authority Regulations, 2009

FISHING LICENCE
(Made under Regulation 6(1))

Affix recent
photo of
the

1. Name of licensee
2. Permanent address of licensee
-
3. *Name and permanent address of owner of vessel if different from above*
-
4. *Name and address of local representative*
-
5. Name and address of captain of vessel
-
6. Name of vessel
7. Type of vessel
8. Species of fish to caught
9. Tonnage of fish allowed
10. Length of vessel Gross Tonnage Engine HP
11. Country and port of registry
12. Registration number Radio Call Sign
13. Identification mark number
14. Time intervals for reporting
15. Validity of licence from to
16. Date issued

.....
Licensing Authority

Under Regulation 10 of the Deep Sea Fishing Authority Regulations, 2009, a licensee has to comply with the following conditions:

1. *A licensed fishing vessel –*
 - (i) *is brought either to Dar-es-Salaam, Zanzibar, Mtwara or Tanga ports for inspection and verification of fishery resources destined for export market;*

- (ii) *is not discarding any by-catch at sea;*
 - (iii) *collects and transports by-catch to any of the ports for local market;*
 - (iv) *fishing in the Exclusive Economic Zone employ at least three Tanzanian crew;*
 - (v) *while in the United Republic waters fly the flag of the state she is registered;*
 - (vi) *is linked to a Vessel Monitoring System installed in the office of the Authority to enable monitoring of vessel while in the United Republic waters;*
 - (vii) *is marked in the manner prescribed in the Second Schedule*
2. *Rare fish and seabird species listed under Convention on International Trade on Endangered Species and any other Convention which the United Republic is a party are not caught and in case of incidental catch be returned to the sea as soon as possible;*
3. *A captain of a licensed fishing vessel while discharging his functions –*
- (i) *allows on board two officers of the Authority who shall oversee compliance with national and international laws for all the time the vessel is in Economic Exclusive Zone;*
 - (ii) *has on board a map of the Exclusive Economic Zone of the United Republic;*
 - (iii) *reports to the Director General whenever the vessel enters and leaves the Exclusive Economic Zone of the United Republic;*
 - (iv) *prepare exit and entry to the Exclusive Economic Zone report containing information specifying position of the vessel by latitudes and longitudes, date and time, quantity and species of fish on board;*
 - (v) *gives information to the Director General on the last port of call and fishing area before the vessel enters the Exclusive Economic Zone;*
 - (vi) *gives information to the Director General on the last fishing area and weight by species of fish caught in Tanzanian waters before the vessel leaves the Exclusive Economic Zone; and*
 - (vii) *reports on daily basis to the Director General by fax, vessel monitoring system or e-mail on weight and types of fish caught.*
4. *A fishing vessel licensed under these Regulations shall not be allowed to fish in the internal waters and Territorial sea of the United Republic of Tanzania.*

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388

The Deep Sea Fishing Authority Regulations, 2009

FISH LANDING LOGBOOK
(Made under Regulation 40(1)(b))

Landing Port.....

Name of vessel

.....

Registration number

.....

Type and number of gears

Number of crew

.....

Note: (a) Number of fish in pieces

(b) Weight of fish in kilograms

(c) Value of fish in T. shillings

| Date | Fishing ground | | Duration of fishing | Arrival time | FISH SPECIES | | | | | | | | | | | | | | | | | | TOTAL | | |
|------|----------------|-----------|---------------------|--------------|--------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|-------|--|--|
| | latitude | longitude | | | A | b | C | a | B | C | A | b | c | a | b | c | a | b | c | a | b | c | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |

Captain

Fishery inspector:

Signature

Signature

Date:

Date:

**THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388**

**The Deep Sea Fishing Authority Regulations, 2009
DAILY FISHING LOGBOOK RECORD
(Made under Regulation 40(2))**

| | | | | | | | | | | | | | | | | | | | | | | | | |
|---|-----------|----------|--|----------|-----------|---|---|---|--|---|---|---|---|---|---|---|---|---|---|---|-------|---|---|--|
| DATE | | | Note: all non-fishing days must be recorded. | | | Vessel Name: | | | | | | | | | | | | | | | | | | |
| NON FISHING CODE 1. Weather 2. Unloading/re-fueling 3. Broken down/maintenance | | | 4. Steaming 5. Refit 6. Port visit | | | Vessel not fishing from to Non fishing code..... | | | Vessel Call Sign: Local identification mark: Fishing licence number: Type of fishing gears: | | | | | | | | | | | | | | | |
| Date | Start Tow | | Stop Tow | | Depth (m) | Species in kilograms (kg) | | | | | | | | | | | | | | | Total | | | |
| | Time | Lat/Long | Time | Lat/Long | | A | b | C | a | b | c | a | b | c | a | b | c | a | b | c | a | b | c | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| Haul: 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Haul: 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Haul: 3 | | | | | | | | | | | | | | | | | | | | | | | | |
| Comments | | | | | | | | | | | | | | | | | | | | | | | | |

Captain's name:
 Signature: Date:

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388
The Deep Sea Fishing Authority Regulations, 2009

VESSEL INSPECTION REPORT
(Made under Regulation 33(2) (f))

1. Port of inspection.....
2. Date of inspection.....
3. Port and date of last port call.....
4. Port and date of next port call.....
5. Name of fishing vessel
6. Flag State.....
7. Name of owner
8. Postal address.....
9. Name of Captain.....
10. Gross Tonnage (GT).....
11. International Identification Mark.....
12. International Radio Call Sign.....
13. Engine and machinery specifications:
 - (a) Main Engine Horse Power.....
 - (b) Auxiliary machinery.....
14. Fire Safety equipment specification:
15. Telecommunication equipment specification.....
.....
Functional/ non functional.....
16. Navigation equipment available specification.....
.....
Functional/ non functional.....
17. Life saving appliances:-
 - Number of life rings.....
 - Number of life jackets.....
 - Number of life rafts and capacity of each raft.....
18. Accommodation.
 - (a) Number of Crew
 - (b) Number of bunks for crew.....
 - (c) Mess: for crew.....
2. Toilets
 - (a) Number and location
 - (b) State of toilets

19. Fishing gear on board:

- (a) Type
- (b) quantity.....

Description of each gear:

- (a) Length.....
- (b) Depth.....
- (c) Mesh/hook size.....
- (d) Number of hooks.....
- (e) Any other information.....

.....

20. Cold storage facilities:-

- (a) Freezer capacity
- (b) Freezing temperature
- (c) Storage temperature

21. Food and drinking water storage facilities:-

- (a) Adequacy in relation to number of crews.....
-
- (b) Condition (state their condition).....
-

22. Others:-

- (a) First aid kit: Available/Not available
- (b) Provide type, number and other description of packaging materials (if any)
-
-

23. Availability of the following documents

- (a) Valid Certificate of Seaworthy
- (b) Valid ship Surveyor's Certificate
- (c) In case of local vessels, valid work permit for foreign crew on board.....

24. Remarks

.....

.....

25. Recommendation

.....

1.
Name and signature of Inspector
Date.....
.....
Name and signature of Captain
date.....
2.
Name and signature of Inspector
Date.....
3.
Name and signature of Inspector
Date.....

26. Approval/disapproval (To be filled by the Director/Deputy Director General)

.....
.....

Full name.....

Signature.....

Designation.....

Date.....

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388
The Deep Sea Fishing Authority Regulations, 2009

SPECIAL LICENCE
(Made under Regulation 7(1))

This special licence has been granted to M/S
..... of (address)
.....
for the purpose of
.....
(in case of research or educational purpose, specify area)
.....

This licence has been issued under the following conditions:

1.
2.
3.
4.

Effective date

Expiry date

.....
Issuing Authority

full name and signature:

Date:

Official Stamp

SECOND SCHEDULE

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388

The Deep Sea Fishing Authority Regulations, 2009

FEES PAYABLE UNDER THESE REGULATIONS

(Made under Regulation 9, 10(1)(a)(vi), 11(2)(a), 60(5) and 75)

| (a) Fees payable in respect of fishing vessels intend to operate in the Exclusive Economic of the United Republic of Tanzania: | | | |
|--|-----------------------------|----------------------------|---------------------------|
| Description of fishing method | Duration of fishing licence | Tanzania flag vessel (USD) | Foreign flag vessel (USD) |
| Purse seining | One month | 2,000.00 | 5,000.00 |
| | Three months | 4,500.00 | 12,000.00 |
| | One year | 18,000.00 | 35,000.00 |
| Long lining | One month | 1,000.00 | 3,500.00 |
| | Three months | 3,000.00 | 9,000.00 |
| | One year | 6,000.00 | 32,000.00 |
| Pole and lines | One month | 500.00 | 1,500.00 |
| | Three months | 1,500.00 | 3,000.00 |
| | One year | 6,000.00 | 12,000.00 |
| Trolling | One month | 400.00 | 800.00 |
| | Three months | 1,200.00 | 1,600.00 |
| | One year | 4,800.00 | 9,600.00 |
| Gill netting | One month | 400.00 | 800.00 |
| | Three months | 1,200.00 | 1,600.00 |
| | One year | 4,800.00 | 9,600.00 |
| (b) Local identification mark fee payable once in a calendar year: | | | |
| Tanzania vessel | | USD 300.00 | |
| Foreign vessel | | USD 2,000.00 | |
| (c) Fee for lodging appeals: | | | |
| USD 50.00 | | | |
| (d) Fee for fishing licence application form: | | | |
| USD 30.00 | | | |
| (e) Fee to access information | | | |
| USD 30.00 | | | |

NB: All fees prescribed in this Schedule shall not be refunded.

THIRD SCHEDULE

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388

The Deep Sea Fishing Authority Regulations, 2009

DESCRIPTION OF FISHING VESSEL MARKING

(Made under Regulation 10(1) (a) (vi))

1. Contents of identification mark:

Any fishing vessel licensed under these Regulations shall be given letters or numbers to be displayed as its identification marks.

2. Location of marking:

(a) Identification marks shall be promptly displayed –

- (i) on the vessel's side or superstructure, port or starboard, on any vertical or inclined surface, high above the water-line, but not on the flare of the bow of the vessel or on the stem, in such away as to be clearly visible both from the sea and from the air; and
- (ii) for vessels other than un-decked vessels, on a horizontal surface of the vessel, athwart-ships, with the top of the letters and numbers towards the bow of the vessel.

(b) Identification marks shall be so placed that they –

- (i) are not obscured at any time by fishing gear or any other gear or material, whether stowed or in use;
- (ii) are clear of flow from scuppers or overboard discharges and of areas that might be prone to damage or discolouration occurring during or as a result of fishing operations; and
- (iii) do not extend below the water-line.

(c) Where vessel presents a different structure on its port or starboard side, the identification marking prescribed in item 2(a)(i) may be placed on the sides of the vessel or its superstructure in an asymmetrical way: Provided that they otherwise conform to the provisions of this form.

(d) Where the identification marks prescribed by paragraph 2(a)(ii) are by necessity painted on a horizontal surface habitually covered by an awning or other temporary cover which would obscure the marking, the awning or other temporary cover shall bear the same identification mark.

(e) All boats, skiffs and craft, other than air craft, carried by the fishing vessel for fishing operations shall bear the same identification mark as the vessel concerned.

3. Technical specifications;

(a) Block lettering and numbering shall be used throughout

(b) The height of letters and numbers shall be in proportion to size of the vessel in accordance with the following criteria:

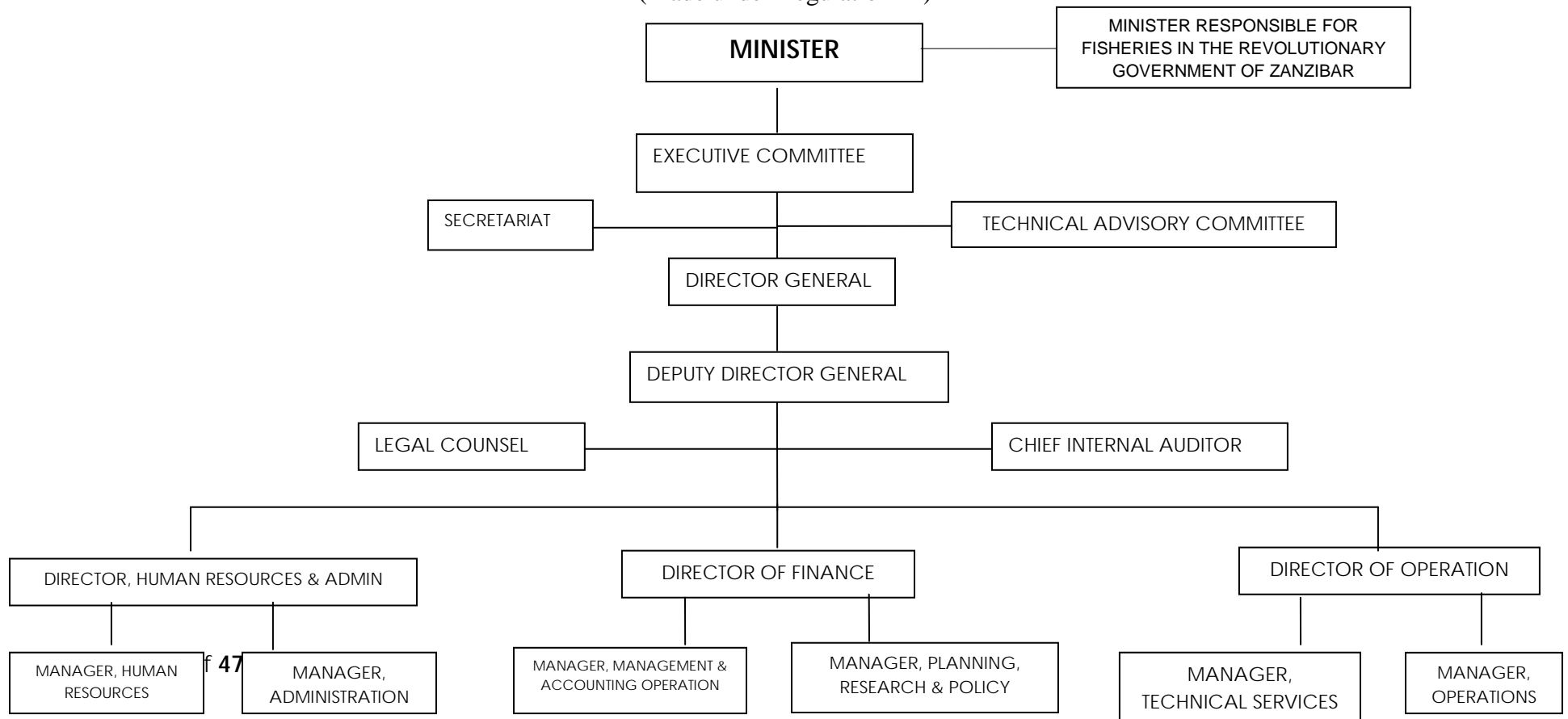
- (i) For Identification marks to be displayed on the side on superstructure of the vessel, item 2(a)(i) is applicable;
- (ii) Length of the vessel and overall minimum height of vessel letters and numbers:
 - 25 m and over: 0.8 m
 - 20 m but less than 25 m: 0.6 m
 - 15 m but less than 20 m: 0.5 m
 - 12 m but less than 15 m: 0.4 m
 - 5 m but less than 12 m: 0.3 m
 - Under 5 m: 0.1m
- (iii) Identification marks to be displayed in accordance with item 2(a) (ii) on horizontal surfaces of vessel with an overall length of five metres and more shall have a height of not less than 0.3 metre;
- (c) The length of the hyphen shall be half of the height of the letters and numbers.
- (d) The width of the stroke for all letters, numbers and hyphen shall be one sixth of the height of the letters and numbers.
- (e) The space between letters and or numbers, except in the case referred to in paragraph (f), shall not exceed one quarter of the height of the letter and numbers or be less than one sixth of that height.
- (f) The space between adjacent letters having sloping sides shall not exceed one eighth of the height of the letters or be less than one tenth of that height.
- (g) Identification mark shall be white on black background or black in white background, the background extending to provide a border around the letter and number of not less than one sixth of the height of the letters and numbers.
- (h) Good quality marine paint shall be used for applying the identification markings set out in this form.
- (i) Retro reflective, heat or heat – generating substances shall be acceptable, provided, that the identification marks otherwise meet the requirements of this form.
- (j) The Identification marks and the background to the same shall be maintained in a good condition at all times.

FOURTH SCHEDULE

THE UNITED REPUBLIC OF TANZANIA
THE DEEP SEA FISHING AUTHORITY ACT
CAP. 388

The Deep Sea Fishing Authority Regulations, 2009

ORGANISATION STRUCTURE OF THE AUTHORITY
(Made under Regulation 44)



APPENDIX 4A

Full text of Executive Order No. 1: Structure of the National Executive of 2013. Published April 18, 2013 in The Kenya Gazette, Vol. CXV-No. 61.

SPECIAL ISSUE



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GAZETTE NOTICE No. 4961A

THE CONSTITUTION OF KENYA

EXECUTIVE ORDER NO. 1

STRUCTURE OF THE NATIONAL EXECUTIVE, 2013

IN EXERCISE of the authority vested in me by the Constitution of Kenya, and in conformity with expectations of a lean and effective structure of Government as contemplated in Article 152 of the Constitution, I hereby determine the list of ministries and state departments that will form the structure of the National Executive effective immediately:

| | CABINET/MINISTRIES | STATE DEPARTMENTS |
|-----|---|---|
| | PRESIDENCY Executive Office of the President Executive Office of the Deputy President | |
| 1. | Interior and Co-ordination of National Government | • Interior and Co-ordination of National Government |
| 2. | Devolution and Planning | • Devolution and Planning |
| 3. | Defence | • Defence |
| 4. | Foreign Affairs | • Foreign Affairs |
| 5. | Education, Science and Technology | • Education • Science and Technology |
| 6. | The National Treasury | • The National Treasury |
| 7. | Health | • Health |
| 8. | Transport and Infrastructure | • Transport Services • Infrastructure |
| 9. | Environment, Water and Natural Resources | • Environment, Water and Natural Resources |
| 10. | Land, Housing and Urban Development | • Land, Housing and Urban Development |
| 11. | Information, Communication and Technology (ICT) | • Information, Communication and Technology (ICT) |
| 12. | Sports, Culture and the Arts | • Sports, Culture and the Arts. |
| 13. | Labour, Social Security and Services | • Labour, Social Security and Services |
| 14. | Energy and Petroleum | • Energy and Petroleum |
| 15. | Agriculture, Livestock and Fisheries | • Agriculture • Livestock • Fisheries |
| 16. | Industrialization and Enterprise Development | • Industrialization and Enterprise Development |
| 17. | Commerce and Tourism | • Commerce • Tourism |
| 18. | Mining | • Mining |
| | Office of the Attorney-General and Department of Justice | |

Issued Under Hand and Seal.

Dated the 18th April, 2013.

UHURU KENYATTA,
President.

APPENDIX 4B

Full text of the Fisheries Act (cap. 378) from Kenya. Published December 31, 2012 in Laws of Kenya. vi



LAWS OF KENYA

FISHERIES ACT

CHAPTER 378

Revised Edition 2012 [1991]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

CHAPTER 378

FISHERIES ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II – ADMINISTRATION

3. Director.
4. Fisheries development measures.
5. Fisheries management measures.
6. Limitation of fishing.

PART III – REGISTRATION OF FISHING VESSELS

7. Registration of fishing vessels.

PART IV – LICENSING PROVISIONS

General Licensing Provisions

8. General licensing provisions.

Licensing of Local Fishing Vessels

9. Local fishing vessel licence.
10. Validity of local fishing vessel licence.

Licensing of Foreign Fishing Vessels

11. Fishing and entry into Kenya fishery waters by foreign fishing vessels.
12. Issue of foreign fishing vessel licence.
13. Validity of foreign fishing vessel licence.

Other Licences

14. Other Licences.

PART V – OFFENCES AND ENFORCEMENT

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16. Receiving fish in respect of which offence has been committed.
17. Obstruction of officers.
18. Powers of officers.
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20. Compounding of offences.

PART VI – GENERAL PROVISIONS

21. Power to act as public prosecutor.
22. Marine mammals.

Section

23. Minister's power to make regulations.
 24. Schemes of loans to fishermen.
 25. Repeal of Cap. 378, Cap. 379, Cap. 380 and revocation of Groups 20 and 21 of United Kingdom Orders-in-Council applied to Kenya.
 26. Replacement of section 278B of Cap 63.
-

CHAPTER 378

FISHERIES ACT

*[Date of assent: 23rd August, 1989.]**[Date of commencement: 25th August, 1989.]*

An Act of Parliament to provide for the development, management, exploitation, utilization and conservation of fisheries and for connected purposes

[Act No. 5 of 1989.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Fisheries Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**authorized officer**” means a fisheries officer, a police officer of or above the rank of inspector, an officer of the Kenya Navy or other armed force or a person appointed by the Minister, by notice in the *Gazette*, to be an authorized officer for the purposes of this Act;

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

“**Director**” means person appointed to the office in the public service of Director of Fisheries;

“**fish**” means any aquatic animal, whether alive or dead, and includes any part, and the spat, brood, fry, spawn, ova and young thereof;

“**Fisheries Officer**” means the Director and any person in the public service of or above the rank of Assistant Fisheries Officer;

“**fishing**” means fishing for, catching, taking or killing fish, by any method;

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

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

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

“**fish processing**” means any action (including icing, freezing and canning) taken to alter the shape, appearance or form of fish from that in which the fish is when first taken from its natural habitat;

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

“fishing vessel” means any vessel or craft used in fishing operations including sport fishing;

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

“Kenya fishery waters” means the inland waters and the waters of the maritime zones described in the Maritime Zones Act (Cap. 371) and for the purposes of this Act excludes Government fish ponds and fish farms and any private fish ponds or fish farms not established for commercial purposes;

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

- (a) wholly owned by a person or persons who are citizens of Kenya;
- (b) wholly owned by the Government of Kenya;
- (c) wholly owned by any company, society or other association of persons established under the laws of Kenya and of which at least fifty-one percent of the voting shares are owned by the Government or citizens of Kenya; or
- (d) wholly owned and crewed by residents of Kenya or by other persons recognized by the Director by notice in the *Gazette* as persons who traditionally fish in Kenya fishery waters and which meets such other conditions as the Minister may by regulations prescribe.

PART II – ADMINISTRATION

3. Director

(1) The Director shall, subject to the directions of the Minister, be responsible for the administration of this Act.

(2) The Director may, in writing, delegate the exercise of any of the powers and functions conferred upon him by this Act to such authorized officers as he may think fit.

4. Fisheries development measures

The Director shall, in co-operation with other appropriate agencies and other departments of Government, promote the development of traditional and industrial fisheries, fish culture and related industries through such measures as—

- (a) providing extension and training services;
- (b) conducting research and surveys;
- (c) promoting co-operation among fishermen;
- (d) promoting arrangements for the orderly marketing of fish;
- (e) providing infrastructure facilities; and
- (f) stocking waters with fish and supplying fish for stocking.

5. Fisheries management measures

(1) The Director may with the approval of the Minister, by notice in the *Gazette*, impose any of the following measures that are necessary for the proper management of any fishery—

- (a) closed seasons for designated areas, species of fish or methods of fishing;
- (b) prohibited fishing areas for all or designated species of fish or methods of fishing;
- (c) limitations on the methods of gear, including mesh sizes of nets, that may be used for fishing;
- (d) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or traded;
- (e) regulate the landing of fish and provide for the management of fish landing areas; and
- (f) control of the introduction into, or harvesting or removal from, any Kenya fishery waters of any aquatic plant.

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

(3) Any person who contravenes the provisions of a notice issued under this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

6. Limitation of fishing

(1) Where proper management of fisheries requires limitation of the number of persons or of vessels, nets or areas or other means employed in a fishery, the Director may by notice in the *Gazette* limit such means and the limitation may include—

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

(2) A party aggrieved by the action taken by the Director under subsection (1) may in writing appeal to the Minister whose decision shall be final.

PART III – REGISTRATION OF FISHING VESSELS**7. Registration of fishing vessels**

(1) No person shall use any vessel for fishing in Kenya's fishery waters unless there is in force in relation to the vessel a valid certificate of registration.

(2) A certificate of registration in the prescribed form may on application and on payment of the prescribed fee be issued by an authorized officer to the owner of the vessel.

(3) Every vessel in respect of which a certificate of registration is issued under this Act shall be marked in such manner as the Director may require.

(4) The Director shall cause to be kept a register of all vessels registered under this Act.

(5) Any person who uses any vessel for fishing in Kenya fishery waters without a valid certificate of registration for that vessel shall be guilty of an offence.

(6) Any person who is guilty of an offence under this section shall be liable—

- (a) in the case of a first conviction, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both; and
- (b) in the case of a second conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART IV – LICENSING PROVISIONS

General Licensing Provisions

8. General licensing provisions

(1) Without prejudice to any regulations made under this Act, no person other than persons fishing for their own consumption, shall catch or assist in catching fish in Kenya fishery waters otherwise than under and in accordance with the terms and conditions of a valid licence issued to him under this Act:

Provided that the Minister may by order published in the *Gazette* determine the quantity of fish which may be deemed to be fish for own consumption under this section, and different orders may be made for different areas of Kenya.

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

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

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

(5) Any person who catches fish in Kenya fishery waters without a licence, or in contravention of the conditions imposed on a licence, issued under this Act shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.

Licensing of Local Fishing Vessels

9. Local fishing vessel licence

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

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

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

(4) The master and owner of a local fishing vessel which any person uses or attempts to use in fishing or any fishing operation without a licence issued under this section, shall each be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

(5) The master and owner of a local fishing vessel whose licence conditions under this section are contravened shall each be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

10. Validity of local fishing vessel licence

(1) A local fishing vessel licence shall, unless earlier revoked or suspended, expire on the 31st December of the year in which it is issued and shall cease to be valid at any time that the vessel ceases to be a local fishing vessel.

(2) The Director may revoke or suspend a licence in respect of a local fishing vessel at any time before it expires if the holder of the licence is convicted of any offence under this Act or if in the judgement of the Director the action is necessary for the proper management of fisheries.

Licensing of Foreign Fishing Vessels

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

(1) No foreign fishing vessel shall fish, attempt to fish or participate in fishing operations in Kenya fishery waters without a licence issued under section 12.

(2) Where any foreign fishing vessel enters Kenya fishery waters without a licence issued under section 12, the fishing gear or the vessel shall, at all times while it is in such waters, be kept stowed in the prescribed manner.

(3) Where any foreign fishing vessel is used in Kenya fishery waters contrary to this section, the master and owner of the vessel shall each be guilty of an offence and liable to a fine of not less than fifty thousand shillings and not exceeding five hundred thousand shillings or to imprisonment for a period of not less than six months and not more than two years or to both.

12. Issue of foreign fishing vessel licence

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

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

- (a) he has determined that there are fishery resources surplus to the Kenya fishing industry which may be harvested under the licence; and

- (b) he has determined the quantity of the surplus that may be harvested and indicates that quantity as a condition of the licence.

(3) A foreign fishing vessel licence shall be subject to a condition requiring it to comply with any management measures that may be in force from time to time under sections 4 and 5 and to the payment of prescribed fees, royalties or charges.

13. Validity of foreign fishing vessel licence

(1) A foreign fishing vessel licence shall, unless earlier revoked or suspended, be valid for such period as the Director may specify.

(2) The Director may revoke or suspend a foreign fishing vessel licence at any time—

- (a) for failure to comply with the provisions of this Act, regulations or management measures thereunder, or any condition of the licence; or
- (b) where he is satisfied that such action is necessary for the proper management of fisheries.

(3) If a licence is revoked or suspended under this section for the proper management of fisheries, the proportion of any fees paid for the unexpired term of the licence shall be refunded to the licensee.

(4) A party aggrieved by the suspension of a licence under subsection (2) may appeal in writing to the Minister whose decision shall be final.

Other Licences

14. Other Licences

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

(2) Any person who engages in any activity for which a licence is required by section (1) otherwise than under the authority of such a licence, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

PART V – OFFENCES AND ENFORCEMENT

15. Prohibited methods of fishing

Any person who uses any explosives, poisonous or noxious substances or electric shock device for the purpose of killing, stunning, or disabling fish so as to render them more easily caught shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

16. Receiving fish in respect of which offence has been committed

Any person who for purposes of trade and commerce receives or retains any fish knowing or having reason to believe that an offence under this Act has been

committed in respect of that fish shall be guilty of an offence and liable to a fine of not less than five thousand shillings and not exceeding five hundred thousand shillings or to imprisonment for a term of not less than six months and not more than two years or to both.

17. Obstruction of officers

Any person who—

- (a) wilfully obstructs any authorized officer in the exercise of any of the powers conferred on him by this Act; or
- (b) fails to comply with any lawful enquiry or requirement made by any authorized officer under section 18,

shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

18. Powers of officers

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

- (a) stop and board any fishing vessel in Kenya fishery waters, and any local vessel outside such waters, and he may inspect such vessel, its cargo, supplies, fishing gear and equipment;
- (b) stop and inspect any vehicle or vessel transporting fish;
- (c) require to be produced, examine and take copies of any licence, log or other document required under this Act or regulations made thereunder;
- (d) require to be produced and examine any fish, net or any other fishing gear; or
- (e) impound any fish to be taken as samples and issue a receipt in the prescribed form.

(2) An authorized officer may, if he believes that an offence has been committed under this Act or regulations made thereunder, without a warrant—

- (a) enter any premises which he has reason to believe have been used in the commission of the offence, or in respect of which the offence has been committed;
- (b) arrest any person whom he has reason to believe has committed the offence; or
- (c) seize any fish, fishing gear, vessel, vehicle or other article which he has reason to believe has been used in the commission of the offence, or in respect of which the offence has been committed.

(3) Any person arrested under this section shall be brought before a court as soon as reasonably practicable.

(4) A fisheries officer who seizes anything under this section shall, at the time of the seizure, issue to the person in whose custody or possession it then is a written receipt for the thing seized.

(5) Anything seized under this section where practicable, be brought before a court, and except where otherwise provided by this Act, shall be dealt with according to the Criminal Procedure Code (Cap. 75).

(6) Where any fish or other article seized under this section is of a perishable nature, an authorized officer may dispose of it by sale or otherwise and any proceeds shall be held in place of the article disposed of.

(7) Any local fishing vessel or vehicle or fishing gear seized under this section may upon application to the court and subject to the deposit in court of adequate bond or other security for the reasonable value thereof, be released to the person entitled thereto.

19. Forfeiture

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

- (a) order anything other than immovable assets used in connection with the offence, including any vessel so used together with its fishing gear, stores and cargo, as well as anything in respect of which the offence has been committed to be forfeited; or
- (b) order all fish found on board any vessel or vehicle used in connection with the offence to be forfeited, except that any fish that are proved not to have been caught in the commission of an offence shall not be forfeited.

20. Compounding of offences

(1) The Director may, with the approval of the Minister, if he is satisfied that a person has committed an offence under this Act and if the person admits the commission of the offence and agrees in writing to its being dealt with under this section—

- (a) compound the offence by accepting a sum of money not exceeding the maximum fine specified for the offence; and
- (b) order the release of any vessel or any other thing seized in connection with the offence on payment of a sum of money not exceeding the value of the vessel or other thing.

(2) Any sum of money received under this section shall be dealt with as if it were a fine imposed by the court.

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

PART VI – GENERAL PROVISIONS

21. Power to act as public prosecutor

Any authorised officer may, subject to the direction of the Attorney-General, conduct any prosecution for any offence under this Act or the regulations made thereunder and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code (Cap. 75).

22. Marine mammals

(1) No person or vessel in Kenya fishery waters shall, without the prior written authority of the Minister, fish for marine mammals or use a port in Kenya for the purpose of equipping or supplying a vessel intended to be used for fishing for marine mammals.

(2) Where any vessel is used in contravention of subsection (1), the master and owner thereof shall each be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

23. Minister's power to make regulations

(1) The Minister may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for any or all of the following purposes—

- (a) presenting the conditions to be fulfilled by foreign participation in fisheries, including conditions of licensing foreign fishing vessels;
- (b) establishing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (c) prescribing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (d) regulating the handling, storage and processing of fish by prescribed methods of handling, storage and processing of fish;
- (e) providing for inspection of fish trading and processing establishments and fish products in accordance with established standards;
- (f) management and control of fishing ports and waters;
- (g) for 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 control the importation, exportation and introduction into Kenya of live fish of any kind or species;
- (k) promoting and regulate or control the cultivation of live fish of any kind or species;
- (l) exempting any type of fishing gear or vessel or any person from any provision of this Act.

(3) Regulations made under this section may provide that the contravention of any provision shall constitute an offence and may prescribe penalties for any offence of a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or to both.

24. Schemes of loans to fishermen

(1) For the purpose of promoting modern fishing methods, the Minister may prepare a scheme, with approval of the Treasury, providing for financial assistance by way of loans to fishermen and fish farmers in respect of expenditure incurred in the acquisition of fishing vessels or their gear, fishing nets and other equipment, development of fish farms or purchase of inputs, and may provide financial assistance in accordance with the scheme upon the conditions contained in the scheme.

(2) An approved scheme shall be published in such manner as the Minister thinks fit, and may be varied or revoked by him at any time.

(3) For the purpose of administering an approved scheme, the Minister may appoint one or more loans committees, and confer upon them such functions as he thinks necessary or expedient for that purpose.

(4) The Minister may give to a loans committee directions of a general or special character as to the exercise and performance of its functions (including its procedure), and the loans committee shall give effect to any such directions.

(5) Where the Minister has, with the approval of the Treasury, prepared a scheme of the kind described in subsection (1) which is in force immediately before the commencement of this Act and has appointed a committee to administer it, that scheme shall upon such commencement, be deemed to be an approved scheme, and the committee shall be deemed to be a loans committee.

(6) The Minister may, with the consent of the Treasury—

- (a) make to a loans committee such grants as may be necessary to enable it to discharge its functions under this Act;
- (b) pay to the members of a loans committee (other than a member who is a public officer in receipt of a salary) such remuneration and travelling and other allowances as he may, with the approval of the Treasury, determine;
- (c) make such other payment as may be necessary to give effect to the provisions of this section.

25. Repeal of Cap. 378, Cap. 379, Cap. 380 and revocation of Groups 20 and 21 of United Kingdom Orders-in-Council applied to Kenya

The Fish Industry Act, the Government Fisheries Protection Act and the Trout Act are repealed, and the Seal Fisheries (Crown Colonies and Protectorates) Orders in Council, 1913 and Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order, 1936 and the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order, 1941 are revoked in so far as they apply to Kenya.

26. Replacement of section 278B of Cap 63

Section 278B of the Penal Code is repealed and replaced by the following new section—

278B. Stealing fishing gear

If the thing stolen is fishing gear within the meaning of the Fisheries Act, 1988, the offender is liable to imprisonment for five years together with corporal punishment.

APPENDIX 4C

Fisheries Management and Development Act No. 35 of 2016 from Kenya.



THE REPUBLIC OF KENYA

LAWS OF KENYA

FISHERIES MANAGEMENT AND DEVELOPMENT ACT

NO. 35 OF 2016

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NO. 35 OF 2016

FISHERIES MANAGEMENT AND DEVELOPMENT ACT

*[Date of assent: 3rd September, 2016.]**[Date of commencement: 23rd September, 2016.]*

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

[Act No. 35 of 2016.]

PART I — PRELIMINARY

1. Citation and commencement

This Act may be cited as the Fisheries Management and Development Act, 2016 and shall come into force on the fourteenth day after publication in the Gazette.

2. Interpretation

In this Act, unless the context otherwise requires—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"buy" includes—

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

"buyer" means any person who buys;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"fishery" means—

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

- (b) any fishing for such stocks;

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

"fishing" means—

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

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

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

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

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

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

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

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

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

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

"Government" means the Government of Kenya;

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

"illegal fishing" includes—

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

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

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

"international agreement" includes any treaty, convention, or other legally binding instrument, including bilateral, multilateral regional agreements or arrangements that Kenya is a party pursuant to the Treaty Making and Ratification Act, 2013, Cap 371;

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

"Kenya fishery waters" includes all maritime zones declared in the Maritime Zones Act, Cap. 250 internal waters, Lakes, riverine systems and any other waters including intertidal, inland and riverine over which Kenya exercises or claims jurisdiction;

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

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

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

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

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

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

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

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

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

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

"pollution" shall have the meaning assigned to it under the Environmental Management and Co-ordination Act, 1999;

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

"sell" includes—

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

and "sell" and "sold" have a corresponding meaning;

"semi-industrial fishing vessel" includes—

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

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

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

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

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

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

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

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

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

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

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

"unregulated fishing" includes—

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

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

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

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

3. Jurisdiction and sovereign rights of Kenya

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

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

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

4. Application

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

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

5. Objective and guiding principles

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

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

- (a) long-term sustainable use, conservation and management of fisheries resources and habitat, and adoption and implementation of management measures in such a manner as to ensure that the fisheries resources and habitat are not overexploited, threatened or endangered;
- (b) allocation and access to the fisheries resources in a manner that achieves optimum utilization, equitable distribution and long-term sustainable development of fisheries resources to achieve economic growth, human resource development, employment creation, a sound ecological balance and generational equity;
- (c) conservation and protection of fisheries habitats;

- (d) ensuring the effective application of the ecosystem approach to fisheries management;
- (e) ensuring that biodiversity and genetic diversity in the marine environment is maintained and enhanced;
- (f) fostering recreational and ornamental fishing, aquaculture and commercial fishing activities for the benefit of the country;
- (g) encouraging the participation of users of the fisheries resources, and the general community, in the management of fisheries;
- (h) ensuring that management measures are based on the best scientific evidence available and are designed to maintain or restore stocks capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and generally recommended international standards;
- (i) application of the precautionary approach to the management and development of the fisheries at no less standard than is set out in any international agreement;
- (j) managing fisheries resources in an efficient and cost effective manner, including setting targets for the recovery of management costs;
- (k) collection and, as appropriate sharing, in a timely manner complete and accurate data and information concerning fishing activities and fisheries;
- (l) implementation and enforcement of conservation and management measures through effective monitoring, control and surveillance;
- (m) promotion of sustainable aquaculture in appropriate zones as a viable option to contribute to food security replenishing natural habitats through diversification from capture fisheries and wealth generation;
- (n) minimization of wastage, bycatch, discards, catch by lost or abandoned gear, pollution and the promotion of development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (o) prevention or elimination of over-fishing and excess capacity and managing levels of fishing efforts so they do not exceed levels commensurate with sustainable use of fishery resources;
- (p) effective implementation of international agreements and relevant international laws in conformity with the Treaty Making and Ratification Act, 2013;
- (q) ensuring effective cooperation with coastal States, fishing States and entities and competent organisations; and
- (r) ensuring that the livelihood of fishers is enhanced.

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

PART II — THE KENYA FISHERIES ADVISORY COUNCIL

6. Establishment of the Kenya Fisheries Council

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

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

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

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

(3) The chairperson of the Council shall be appointed by the President from persons nominated under clause (6)(2) not being a Cabinet Secretary, upon recommendation by the Cabinet Secretary responsible for fisheries.

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

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

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

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

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

PART III —THE KENYA FISHERIES SERVICE

7. Establishment and status

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

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

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

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

8. Headquarters

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

9. Functions of Service

The functions of the Service shall be to—

- (a) ensure the appropriate conservation development of standards on management, sustainable use, development and protection of the fisheries resources;
- (b) formulate and monitor the implementation of policies regarding the conservation, management and utilization of all fisheries resources within the scope of this Act;
- (c) develop standards for the management of all fisheries and aquaculture activities and fishing related activities within the scope of this Act;
- (d) develop guidelines for the preparation of fisheries specific management plans for the Kenya fishery waters;
- (e) provide education to create public awareness and support for fisheries conservation, management, development and sustainable use;
- (f) set and meet goals for fisheries conservation, management, development and sustainable use;
- (g) in consultation with the Kenya Marine and Fisheries Research Institute, approve and co-ordinate research activities in relation to matters falling within the scope of this Act;
- (h) collect and analyse data in relation to resources and activities falling within the scope of this Act;
- (i) identify manpower requirements and recruit manpower at all levels for the Service;
- (j) liaise as appropriate with agencies and persons, including stakeholders, industry, government agencies, regional and international organisations and experts, whether local or foreign, on matters falling within the scope of this Act;
- (k) act on behalf of the government, subject to the Treaty Making and Ratification Act, 2013 in relation to any domestic or international

agreement relating to fishing, fishing related activities or any matter falling within the scope of this Act, to which Kenya is or may become a party;

- (l) administer and co-ordinate international protocols, conventions and treaties regarding fisheries in all its aspects in consultation with the Cabinet Secretary pursuant to the Treaty Making and Ratification Act, 2013, Cap 242;
- (m) subject to the Public Health Act and the Food, Drugs and Substance Act, Cap 254 control and regulate fish safety and quality;
- (n) raise revenue through levies, fees, investments and other means in accordance with this Act and the Constitution, including solicitation by public appeal or otherwise, and accept and receive subscriptions, donations, devices and bequests, whether of movable or immovable property and whether absolute or unconditional for the general or special purposes of the Service or subject to any trust;
- (o) undertake the development of appropriate fisheries infrastructure, that relates to its mandate under this Act and the Constitution;
- (p) facilitate investment in commercial fisheries, in collaboration with relevant agencies, persons or bodies, including Government departments;
- (q) promote development and introduction of appropriate technologies in aquaculture production, processing and preservation in collaboration with relevant agencies, county governments and stakeholders;
- (r) identify and promote construction of any works deemed necessary for the sustainable development and economic utilization of fisheries resources;
- (s) in collaboration with county government and the Fish Marketing Authority established under section 201, identify opportunities and promote all aspects of fisheries marketing;
- (t) arrange and enter into joint ventures or any other forms of investment arrangement for purposes of performing any of its functions;
- (u) co-ordinate fish quality assurance and operations of the marine and coastal fisheries, aquaculture and inland and riverine fisheries;
- (v) coordinate and or undertake monitoring, control and surveillance of all activities within the scope of this Act; and
- (w) perform such other duties and functions consistent with the provisions of this Act as may be necessary to carry out the objectives and provisions of this Act.

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

- (1) There shall be a board of directors of the Service, which shall—
 - (a) provide general control over and be accountable to the Cabinet Secretary for the exercise of the functions and powers of the Service;
 - (b) advise the Cabinet Secretary on all matters pertaining to the conservation, management standards, development, and sustainable use of fisheries resources;
 - (c) provide recommendations to the Cabinet Secretary for overall policy in matters within the scope of this Act;

- (d) collaborate with the Fish Marketing Authority established under section 204 and other agencies to ensure that trade in fish is carried out in accordance with the provision of this Act;
- (e) approve the annual budget and financial plan of the Service and otherwise provide oversight for all financial matters;
- (f) endorse the annual report of the Service required under section 25 and transmit it through the Cabinet Secretary to Parliament;
- (g) establish an open, competitive, transparent and objective selection process, and required qualifications for, the Director-General, and as appropriate for other persons employed by the Service;
- (h) establish an open, competitive employment policies, a transparent and objective selection process and general terms and conditions for employees of the Service;
- (i) provide policy guidance over the exercise of the functions and powers of the Service; and
- (j) perform any other function which the Cabinet Secretary may by notice in the Gazette prescribe.

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

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

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

11. Membership of the Board

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

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

- (d) all members must meet the requirements of Chapter Six of the Constitution.

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

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

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

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

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

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

12. Termination of appointment as a member of the Board

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

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

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

- (a) in the case of an *ex officio* member be filled by appointment of another nominee by the Cabinet Secretary of the relevant Ministry or the governing body of the relevant parent organization;
- (b) in the case of a member other than an *ex officio* member be filled in the same manner as vacancies arising from the expiration of that member's term

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

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

13. Disclosure of interest

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Meetings of the Board

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

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

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

(3) At a meeting of the Board—

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

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

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

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

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

(7) The Board shall establish a consultative process with the stakeholders in order that information and views on relevant fisheries management may be

exchanged as appropriate, and the Board shall take into account any information or views received from stakeholders through such process when considering management measures relevant to those stakeholders.

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

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

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

15. Appointment of the Director-General

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

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

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

16. Functions of the Director-General

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

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

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

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

17. Other staff of the Service

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

- (a) such officers of the Service as are specified in Part A of the First Schedule; and
- (b) such disciplined officers of the unit established under section 20 as are specified in Part B of the First Schedule; and
- (c) such other employees, agents, servants or consultants of the Service, as may be necessary for the performance of the functions of the Service.

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

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

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

18. Authorized officers

(1) The Cabinet Secretary may, in consultation with the Council and the Director-General and with the approval of the Board, by notice in the Gazette appoint a police officer of or above the rank of an inspector, or an officer with the Kenya Navy or other armed force to be an authorised officer for purposes of this Act.

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

19. Honorary fisheries officers

(1) The Director-General may, with the approval of the Board, by notice in the Gazette appoint suitable persons to be honorary fisheries officers for the purpose of assisting the Service in carrying into effect the provisions of this Act.

(2) An honorary fisheries officer shall—

- (a) hold office subject to such conditions as the Director may prescribe, for a period of five years; and
- (b) have such functions as may be prescribed by rules made under this Act.

20. Establishment of Monitoring, Control and Surveillance Unit

(1) There is hereby established within the Service Monitoring, Control and Surveillance Unit (MCS) hereinafter referred to as "the MCS Unit".

(2) The MCS Unit shall have the functions of—

- (a) monitoring, control and surveillance, including enforcement, and compliance with this Act and any other legislation relating to activities falling within the scope of this Act; and
- (b) cooperating and coordinating with, and performing relevant functions within the broader system of monitoring, control and surveillance at

bilateral, sub-regional, regional and international levels to implement agreements or measures which are binding upon Kenya or which the Cabinet Secretary, as appropriate in consultation with the Cabinet Secretaries responsible for internal security and defence, directs subject to the Treaty Making and Ratification Act, 2013.

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

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

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

21. Inter-agency monitoring, control and surveillance unit

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

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

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

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

PART IV — FINANCIAL AND ADMINISTRATIVE PROVISIONS

22. Funds of the Service

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

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

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

- (a) discharge of expenses, obligations and liabilities of the Service;
- (b) the remuneration of the staff of the Service and for allowances to the members of the Board;

- (c) contracts for technical consultants, observers, researchers and other personnel, activities or operations which support the functions and programmes of the Service;
- (d) travel expenses relating to official;
- (e) training and education courses or programmes for purposes relating to the objectives of the Service, and the functions and programmes of the Service;
- (f) financial assistance for management and development activities in the Counties consistent with the functions of the Service;
- (g) grants to institutions, agencies, associations or other organizations for the purpose of promoting fisheries conservation and management;
- (h) rewards for information leading to convictions for offences under this Act, Cap 412 C, in accordance with such requirements as may be prescribed;
- (i) purchase of capital items necessary to carry out the functions and duties of the Service;
- (j) contributions to donor aid projects as agreed with the donor agency; and
- (k) such other purposes as are consistent with the functions and powers of the Service as the Board, after consultation with the Director-General, shall determine.

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

(4) The Service may open and maintain an account with a bank approved by the National Treasury under the Public Finance and Management Act, 2012 and shall at all times maintain one account and shall pay all its moneys into such account.

23. Financial Year

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

24. Annual estimates

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

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

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

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

25. Accounts and audit

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

(2) The accounts of the Service shall be audited and reported upon in accordance with the Public Audit Act, No. 34 of 2015.

26. Director-General to report to the Board

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

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

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

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

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

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

27. Fisheries Research and Development Fund

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

(2) There shall be paid into the Fund—

- (a) such monies as may be provided by Parliament;
- (b) donations made to the Service from any source for purposes of the Fund, and
- (c) royalties paid to the Service:
Provided that the Service shall not accept any grant, gift, donation or bequest made on any condition that the Service performs or discharges any duty or obligation other than duties or obligations imposed by this Act.

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

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

28. Fish Levy Trust Fund

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

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

- (a) a levy imposed by the Cabinet Secretary under section 28 by Order to require the payment of levies by persons engaged in fishing or fishing related activities of a fish levy ("the levy") which may provide requirements relating, inter alia, to activities within the scope of this Act; and the evidence by which a person's liability to pay the levy, or the payment thereof, may be established, and the time at which any amount shall become payable.
- (b) donations made to the Service from any source for purposes of the Fund; and
- (c) such other sums of money or other assets as may be specifically designated to the Fish Levy Trust Fund by the Service out of its general fund.

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

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

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

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

PART V — FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

29. Fisheries vest in the State

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

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

Fisheries Development Measures

30. Fisheries development measures

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

- (a) providing a national framework of extension and training services;
- (b) conducting research and surveys;
- (c) promoting co-operation among fishers;
- (d) spearheading arrangements for the orderly marketing of fish;
- (e) stocking waters with fish and supplying fish for stocking;
- (f) promoting the adoption of alternative means of livelihood amongst fishers;

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

*International fisheries conservation and management measures***31. Notification by the Director-General**

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

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

32. Implementation of international conservation and management measures

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

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

Co-ordination of Fisheries Management with the Counties

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

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

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

34. County may develop fisheries management plans

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

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

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

Each fisheries management plan developed by authorities in each County shall

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

36. Relations between National and County governments

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

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

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

37. Establishment of Beach Management Units

(1) The Cabinet Secretary may for purposes of ensuring structured community participation in fisheries management, make regulations setting out standards for the management of beach management units established by the county governments.

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

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

Fisheries Conservation and Management

38. Responsibility for planning fisheries management

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

39. Fisheries management plans

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Any person who fails to supply information required under 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.

40. Fisheries management measures

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

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

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

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

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

41. Limitation of fishing and fishing related activities

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

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

42. Prohibited fishing gear and methods

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

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

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

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

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

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

(5) No person shall—

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

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

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

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

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

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

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

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

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

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

(4) A person who contravenes 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 for a term of imprisonment not exceeding one year or to both,

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

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

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

44. Leaving or abandoning objects in the sea Prohibited

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

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

45. Declaration of endangered species of fish

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

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

(3) A person who contravenes 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.

46. Prohibitions and requirements for marine mammals

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

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

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

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

47. Marine Protected Areas

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

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

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

48. Fisheries impact assessments

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

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

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

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

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

49. Pollution of the Kenya Fishery Waters

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

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

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

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

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

(5) Unless it is provided otherwise, the provisions of section 93 of the Environmental Management and Co-ordination Act, No. 8 of 1999, shall apply to offences involving discharge of pollutants under this Act.

50. Fish landing stations, etc

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

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

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

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

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

51. Placing of live fish

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

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

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

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

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

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

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

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

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

- (a) cause or permit a person acting on his or her behalf, or
- (b) use or permit a vessel to engage in fishing or related activity,

to take, import, export, tranship, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures in line with section 31 of this Act.

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

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

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

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

54. Import and release of live fish

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

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

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

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

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

55. Export of live fish

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

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

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

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

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

57. Promotion of fish production and marketing

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

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

PART VII — FISH QUALITY AND SAFETY

58. Competent authority

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

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

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

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

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

59. Harmonization of fish safety and quality standards

The Director-General may, pursuant to the Treaty Making and Ratification Act, 2013 in consultation with the Cabinet Secretary enter into arrangements or agreements with other States within shared fishery resources for the purpose of harmonization of fish safety and quality standards.

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

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

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

(2) A person who knowingly and wilfully contravenes 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

61. Aquaculture activities requirements

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

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

62. Aquaculture development plan

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

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

(3) The aquaculture development plan shall include—

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

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

63. Collaboration with Counties

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

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

64. Prohibited to deprive community of traditional access to fisheries

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

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

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

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

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

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

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

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

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

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

- (a) introduce or cause to be introduced into Kenya or the Kenya fishery waters any exotic species of fish or any genetically modified fish;
- (b) transfer any eggs, fingerlings or seed of exotic or genetically modified species or such adult species of fish from one aquaculture

establishment in Kenya to another or from any location in Kenya to another;

- (c) import or export live fish for the purpose of aquaculture; or
- (d) release into the fishery waters any fish except for indigenous wild fish caught in Kenya.

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

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

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

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

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

68. Aquaculture waste

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

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

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

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

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

69. Escapement

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

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

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

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

and, within seven days after becoming aware of such escape or damage, notify the Director-General in writing of the action taken to deal with it.

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

70. Use of drug, chemical, etc. restricted

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

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

71. Information on wild, genetically modified species

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

72. Interfering with aquaculture establishment prohibited

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

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

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

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

73. Transboundary aquaculture ecosystems

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

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

74. Regulations for Aquaculture

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

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

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

PART IX —INFORMATION, DATA AND RECORDS

75. Information, data and records

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

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

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

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

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

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

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

(4) A person who—

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

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

76. Ownership of information

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

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

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

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

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

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

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

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

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

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

79. Information to be true, complete and correct

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

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

80. Confidential information

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

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

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

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

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

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

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

(5) Information may be disclosed to the extent—

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

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

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

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

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

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

81. Registers of licences and authorizations

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

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

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

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

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

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

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

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

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

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

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

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

83. Information available to public

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

PART X — LICENSING AND REGISTRATION

Licences, authorizations and registration

84. Licences and authorizations required

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

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

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

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

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

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

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

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

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

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

85. Subsistence exemption from licence requirements

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

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

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

86. Grant, renewal and issuance of licences and authorizations

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

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

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

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

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

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

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

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

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

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

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

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

88. Requirements for denial of licences and authorizations

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

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

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

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

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

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

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

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

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

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

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

(3) Where—

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

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

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

90. Terms and conditions of licences and authorizations

- (1) A licence or authorization granted under this Act—
 - (a) shall be subject to the terms and conditions, requirements and endorsements as are provided in this Act or as may be otherwise prescribed or required by the Director-General by Public Notice from time to time;
 - (b) subject to subsection (2), shall enter into force on the date specified in it; and
 - (c) unless sooner revoked or suspended in accordance with this Act, remains in force until the date on which it expires in accordance with the period approved by the Director-General from time to time for the class of licence or authorization to which it belongs.
- (2) No licence or authorization shall be issued unless—
 - (a) the approved fee and other required charges have been paid at the required time; and
 - (b) where applicable—
 - (i) a performance bond has been issued as required pursuant to section 134 and notified to the Director-General; and
 - (ii) any access fee or other charges or levies payable under any relevant access agreement or arrangement, right or licence have been paid.
- (3) The holder of a licence or authorization issued pursuant to this Act shall—
 - (a) comply with this Act, the laws of Kenya, any applicable access agreement, fisheries management plan, and international conservation and management measures;
 - (b) comply with all relevant provisions of national law relating to navigational standards and the safety of vessels at sea; standards relating to work conditions on board fishing vessels; and

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

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

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

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

91. Preference for employment of citizens of Kenya

(1) Where commercial employment is foreseen in relation to the activity for which the licence or authorization is sought, it shall be a condition of the licence or authorization is sought, it shall be a condition of the licence or authorization that citizens of Kenya possessing the necessary qualifications and experience shall be given preference for employment, and such employment shall be in accordance with the Employment Act, No. 1 of 2007.

(2) A licensee shall not—

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

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

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

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

92. Period of validity of licences and authorizations

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

93. Fees, charges or levies

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

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

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

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

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

94. Suspension or cancellation of licence or authorization

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

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

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

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

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

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

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

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

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

95. Termination of licences and authorizations

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

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

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

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

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

96. Transfer of licences and authorizations

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

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

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

97. Right of appeal

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

Fishing, transshipment and fish aggregating devices

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

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

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

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

99. Conditions for industrial fishing vessels

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

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

- (j) the operator shall retain no more than thirty percent of the bycatch, or such other amount as maybe prescribed and the remaining portion of the bycatch shall be landed as required pursuant to subparagraph (k);
- (k) except where transshipment has been authorized, all catch, or a designated portion, shall be landed for sale in the local market at such places as may be designated in the licence or directed in writing by the Director-General, and unless otherwise prescribed shall include the following landing obligations for each designated class of vessel in respect of the total fish catch taken from Kenya's Economic Exclusive Zone on a yearly basis—

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

- (l) no person shall use a Kenya fishing vessel, being an industrial fishing vessel, except with a valid and applicable authorization issued pursuant to an application made in accordance with such form as may be prescribed, for fishing or fishing related activities—
 - (i) on the high seas;
 - (ii) in areas under the national jurisdiction of any other State except in accordance with the laws of that State; or
 - (iii) that do not comply with an applicable international agreement or undermine the effectiveness of international conservation and management measures;
- (m) no person shall use a Kenya fishing vessel, being an industrial fishing vessel, during the period of validity of the licence—
 - (i) for fishing or fishing related activities on the high seas for fishing related activities in areas subject to international conservation and management measures unless the licence or authorization has been endorsed to authorise such fishing;
 - (ii) in areas of national jurisdiction of other States except in accordance with a licence or authorization and the laws of that State; or
 - (iii) to engage in any activity on the high seas or in areas of national jurisdiction of other States which does not comply with an applicable international agreement or undermines the effectiveness of international conservation and management measures in an area to which such measures apply;
- (n) unless the Director-General otherwise directs in writing or unless the master of the fishing vessel is able to communicate effectively in English, the operator shall ensure that the fishing vessel has on board at all times while in the Kenya fishery waters a person who is able to communicate effectively in English and in the language of the master; and
- (o) such other conditions that may be required by Public Notice by the Cabinet Secretary or prescribed in accordance with this Act.

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

100. Reporting requirements for industrial fishing vessels

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

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

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

101. Conditions for semi-industrial fishing vessels

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

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

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

102. Reporting requirements for semi-industrial fishing vessels

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

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

103. Registration of artisanal fishing vessels

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

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

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

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

104. Registration of vessels

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

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

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

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

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

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

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

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

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

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

105. Applications for licences, etc

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

106. Conditions for recreational fishing vessels.

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

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

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

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

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

107. Requirements for transhipment

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

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

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

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

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

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

(5) The operator of a fishing vessel shall—

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

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

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

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

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

108. Deployment and maintenance of a fish aggregating device

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

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

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

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

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

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

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

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

Fish processing and marketing

109. Designated fish aggregating device

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

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

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

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

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

110. Markings, equipment for fish aggregating devices

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

- (a) is clearly marked with the name of the owner and of the vessel from which such device was placed; and
- (b) is equipped with a radar reflector and such lights as are clearly visible at night from a distance of one nautical mile, and has such other equipment or markings as the Director-General may from time to time require.

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

111. Disposal of unauthorized fish aggregating devices

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

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

Fish processing and marketing

112. Conditions for fish processing licence

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

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

- (c) any change in the information submitted in the application form shall be notified to the respective county executive committee member responsible for fisheries as soon as practicable and in any case not later than three working days from the date of change; and
- (d) each licensee shall comply with the requirements of applicable laws in Kenya relating to food safety

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

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

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

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

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

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

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

114. Inspectors to request information and keep records

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

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

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

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

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

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

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

115. Returns

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

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

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

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

Aquaculture

116. Establishment and operation of aquaculture

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

(2) Any person who—

- (a) establishes or operates an aquaculture establishment in contravention of subsection (1); or
- (b) harvests the products of such an establishment without the authority of the owner thereof

commits an offence and shall be liable, for a first offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both, and for a second or subsequent offence, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

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

117. Registration of Aquaculture Establishment, notice of transfer

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

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

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

118. Aquaculture permits

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

(2) An aquaculture permit shall—

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

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

(4) The Director-General may approve the application subject to the applicant being granted, where applicable, an environment impact assessment licence under the Environmental Management and Co-ordination Act, No 8 of 1999.

119. Application for an aquaculture licence

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

(2) After receipt of an application pursuant to subsection (1), the Director-General shall ensure that any relevant environmental standards for the proposed aquaculture project are being met, including requirements for siting, emissions and other relevant matters under the Environment Management and Coordination Act, 1999, and may, in consultation with the relevant County, determine whether the applicant is required to submit an environmental assessment of the proposed aquaculture project.

(3) If the applicant is required to undertake an environmental impact assessment under the Environmental Management and Co-ordination Act, 1999 the application shall be accompanied by a copy of any environmental impact assessment report and the recommendations of any body responsible for reviewing the environmental impact assessment report.

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

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

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

120. Standards for approval of aquaculture licence

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

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

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

121. Inspection of proposed site

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

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

122. Conditions for aquaculture licences

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

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

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

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

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

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

123. Exclusive rights

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

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

124. Unlicensed activities prohibited

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

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

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

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

125. Foreign fishing vessels

Where a foreign fishing vessel—

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

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

126. Stowage of fishing gear

(1) The operator and master of a—

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

stowed or secured in such a manner that it is not readily available for fishing unless the vessel is authorized to engage in fishing in that area of the Kenyan fishery waters or the high seas in accordance with an international agreement,

international conservation and management measures or authorization of another State recognized by Kenya as being applicable to the relevant area.

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

127. Transshipment at sea prohibited

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

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

PART XII — REQUIREMENTS FOR FOREIGN FISHING VESSELS OR VESSELS FISHING UNDER CHARTER ARRANGEMENTS

128. Fisheries access

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

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

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

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

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

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

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

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

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

129. Fisheries access requirements

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

- (a) the operator to comply with all laws of Kenya;
- (b) the operator to hold, in respect of the vessel, a valid and applicable licence or authorization from the State in which it is registered to carry out fishing or fishing related activities in the fisheries waters;
- (c) the operator to hold, in respect of the vessel, a valid and applicable license for fishing or fishing related activities issued in Kenya;
- (d) that the vessel is included on a list of authorized vessels maintained by any competent regional fishery body to which Kenya is a party or a cooperating non-party in accordance with the rules of that body;
- (e) that the vessel is not included on a list of illegal, unreported or unregulated fishing vessels maintained by any competent regional fishery body to which Kenya is a party or a cooperating non-party in accordance with the rules of that body, and that access shall automatically terminate should the vessel be included on such a list;

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

130. Fisheries access review

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

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

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

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

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

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

(1) No agreement governing joint ventures, or the chartering of any foreign fishing vessel for fishing or fishing related activities within or beyond the Kenya

fishery waters, whether or not it involves changing the registration of the vessel, shall be valid unless and until it is approved by the Cabinet Secretary on the advice of the Director-General.

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

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

(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.

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

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

(2) Notwithstanding subsection (1), where a company has been established under the Companies Act for purposes of obtaining a licence for fishing or fishing

related activities under this Act, such company shall designate in writing to the Director-General promptly upon its incorporation—

- (a) the full address of the registered or principal office of the company and their principal place of business in Kenya;
- (b) the present name and any former forename or surname, address and occupation of the person authorised to manage the company in Kenya;
- (c) a list of the directors of the company, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company; and
- (d) the names and addresses of one or more persons continuously resident in Kenya authorised to accept on behalf of the company service of process and any notices required to be served on the company and to provide such information as may be required under this Act with respect to the vessel and its activities, operator, master and crew members,

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

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

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

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

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

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

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

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

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

133. Preference for Kenya products

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

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

134. Performance bond

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

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

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

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

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

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

- (a) cause a notice of demand to be served on the licence-holder a notice of demand; and

- (b) cause a note of the service of the notice to be registered in a Magistrate's Court.

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

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

135. Force majeure or distress

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

PART XIII — MONITORING, CONTROL AND SURVEILLANCE

Powers of authorized officers

136. Authority and general powers of authorized officers

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

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

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

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

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

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

137. Identification of authorized officers

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

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

138. Declaration of boarding and inspection

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

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

139. Powers of hot pursuit

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

140. Powers of entry and search of authorized officers

(1) An authorized officer may, in the performance of his functions under this Act, without a warrant at any reasonable time—

- (a) stop, enter, board, stay on board, examine and search any vessel, vehicle or aircraft, including—
 - (i) any Kenya vessel outside the fisheries waters; and
 - (ii) any other vessel to which this Act or any international agreement applies;
- (b) enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, or which are part of or attached to a dwelling house, which the authorized officer reasonably suspects are used for activities falling within the scope of this Act and—
 - (i) in or on which he has reason to suspect that evidence of an offence against this Act may be found; or
 - (ii) which it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with;
- (c) stop any person and examine any record, article, container, gear, apparatus, device, or fish in the possession of that person; and
- (d) pass across any land,

and may examine and search any document, record, article, container, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.

(2) An authorized officer may detain any person, vessel, vehicle, or aircraft, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable the authorized officer to carry out an examination or search under this section.

(3) An authorized officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this section with a warrant issued by a court of competent jurisdiction.

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

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

- (a) inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;
- (b) make or take copies of any record, and for this purpose may take possession of and remove from the place where they are kept any such records, for such period of time as is reasonable in the circumstances;
- (c) if necessary, require a person to reproduce, or assist the authorized officer to produce in a useable form, information recorded or stored in a document;
- (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this Act, to provide such information as may be reasonably required for the monitoring or enforcement of this Act; and
- (e) otherwise remove and secure any item that may reasonably be considered to be evidence of an offence against this Act.

(2) Where an authorized officer is questioning a person pursuant to subsection (1), among other things—

- (a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, buying, trade, import, export or possession of any fish; and
- (b) require that person or any other person to produce any permit, authority, approval, permission, licence, certificate or other document issued in relation to any vessel or person.

142. Power of arrest

(1) An authorized officer may, arrest any person—

- (a) whom he believes, on reasonable grounds, is committing or has committed an offence under this Act;

- (b) who assault him or any other authorised officer, inspector, observer or fishery dock observer in the exercise of his powers or performance of his functions under this Act, or

(2) If an authorized officer arrests a person under subsection (1) the authorized officer shall cause the person to be delivered into the custody of a member of the Kenya Police Force as soon as practicable and that person shall thereafter be dealt with in accordance with the relevant law or laws.

143. Power to give direction

(1) An authorized officer may, if he believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any license, authorization, authority, approval, permission, registration or certificate issued or otherwise effected under this Act—

- (a) order the vessel as soon as reasonably practicable to the nearest available port in Kenya or such port as may be agreed between the master and the authorized officer; and
- (b) remain in control of the vessel at such port for such period as may be reasonably necessary for the purpose of the authorized officer to exercise any other powers under this Act, until the authorized officer permits the master to depart from that place, provided that the period shall not exceed seventy-two hours in total where there are no reasonable grounds to suspect contravention of this Act.

(2) After an authorized officer has given a direction under subsection (1), the authorized officer may also give to the master or any other person on board the vessel any reasonable direction in respect of any activity, method, procedure, item, gear, document, fish, property or thing while the vessel is proceeding to or remains in port.

144. Seizure of vessels, etc

(1) For the purposes of this section—

- (a) a vessel's equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel;
- (b) aircraft operating independently of a vessel shall be subject to this section; and
- (c) "Court" means the High Court.

(2) An authorized officer may seize:

- (a) any vessel or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment or thing which the authorized officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act;
- (b) any fish which the authorized officer believes on reasonable grounds is being, or has been taken, killed, transported, bought, sold or found in the possession of any person in contravention of this Act and any other fish with which such fish is intermixed;
- (c) any article, record or thing which the authorized officer believes on reasonable grounds may be or may contain evidence of an offence against this Act;
- (d) retain any passport and seaman's book—

- (i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;
 - (ii) of any person arrested, until that person is brought before a court; or
 - (iii) pursuant to any order of the Court; and
- (e) any other item which the authorized officer has reasonable grounds to believe—
 - (i) has been or is being used in the commission of an offence against this Act;
 - (ii) has been seized or forfeited under this Act; or
 - (iii) has been unlawfully removed from the custody under this Act.

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

(4) The authorized officer shall supply a written notice of seizure stating the reasons thereof to the person from whom any article or thing is seized or any person whom the authorized officer believes is the owner or is otherwise entitled to possession of the article or thing seized.

145. Removal of parts from seized vessels, etc

(1) An authorized officer may remove any part from the vessel seized pursuant to this Act for the purpose of immobilizing that vessel where the operator is in co-operative but in any event, the authorized officer shall take reasonable measures to ensure that such removal shall not cause a permanent or material damage to the vessel.

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

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

- (a) hold or arrange to obtain any part or parts removed under subsection (1);
- (b) hold or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or
- (c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilised pursuant to this Act.

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

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

(1) Where an authorized officer has reason to believe that any fishing vessel, fishing gear, fish or fish product has been abandoned for the purpose of avoiding prosecution, he shall apply to the Court for an Order to dispose of the fishing vessel, fishing gear, fish or fish product.

(2) Where a fishing vessel or fishing gear or fish product is abandoned, and an authorized officer or inspector believes that any person is liable to be investigated, searched or arrested in connection with a commission of an offence

under this Act, or that such person has absconded to any place within or outside Kenya, or has concealed himself so that he cannot be searched, arrested or otherwise investigated, the authorized officer or inspector may cause investigation measures to be taken in relation to the area or premises and property previously in possession, occupation or under control of the suspect.

Appointment and functions of observers and inspectors

147. Observer programme

(1) There shall be established an observer programme Board for the purpose of collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including, among other things—

- (a) the species, quantity, size, age, and condition of fish taken;
- (b) the methods by which, the areas in which, and the depths at which, fish are taken;
- (c) the effects of fishing methods on fish, and the environment;
- (d) all aspects of the operation of any vessel;
- (e) processing, transportation, transshipment, storage, or disposal of any fish;
- (f) monitoring the implementation of management measures and applicable international conservation and management measures; and
- (g) any other matter that may assist the Director-General to obtain, analyse, or verify information for fisheries scientific, management, and compliance purposes.

(2) Observers may be deployed as may be directed by the Director-General in accordance with this Act, or any applicable international agreement or arrangements, including an agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or in co-operation with the Government of Kenya, or any international conservation and management measures on any vessel used for fishing, transshipment, transportation or landing of fish within and beyond the Kenyan fishery waters and such other uses as may fall within the scope of this Act.

148. Appointment of, and identification by inspectors and observers

(1) The Director-General may, in writing, appoint—

- (a) inspectors for purposes of monitoring compliance and management and auditing, including inspections of vessels, premises and facilities and aquaculture establishments to gather information, and report on the fulfilment of pre-licensing requirements and any obligations pursuant to this Act; and
- (b) observers for purposes of the observer programme established under section 147, in accordance with such standards and procedures as may be prescribed or approved by the Board.

(2) An inspector or observer shall on request identify himself and produce proof of identification as an inspector or observer.

149. Application of Act to observers in areas beyond national jurisdiction

Any observer who performs duties in areas beyond national jurisdiction in accordance with this Act, any international agreement or international conservation

and management measures shall, unless the contrary is provided, continue to be subject to all provisions of this Act, and all proof of identification as an operators, crew members or other relevant persons towards such observer under this Act shall be fully applicable.

150. Requirements for monitoring of off loading

(1) The operator of any fishing vessel required as a condition of licence granted to it to land all or part of its catch in Kenya shall cause such landings to take place only where an observer or inspector is present to monitor the offloading and otherwise perform his/her functions pursuant to this Act.

(2) An operator who does not comply with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings, and in addition the applicable licence shall be cancelled and no further licence shall be issued for at least one year from the time of the offence in respect of the vessel or operator.

151. Duties of operators. etc, to inspectors and observers

(1) The operator and each crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed or to which an inspector or fishery dock observer has been assigned, shall allow and assist the inspector, observer or fishery dock observer, in the performance of his official duties, and shall allow the inspector, observer or dock observer to—

- (a) board such vessel at such time and place as the Director-General may require;
- (b) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;
- (c) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as he may have taken or used on board the vessel;
- (d) gather such information relating to fisheries as may be required for purposes of carrying out the objectives of this Act; and
- (e) disembark at such time and place as the Director-General may require or in accordance with an applicable access agreement, provided it is in accordance with the safe operation of the vessel.

(2) The provisions of subsection (1) shall apply—

- (a) when the vessel is at any place in the fisheries waters or such other place where fish taken from the fisheries waters is unloaded or transhipped as may be required in the applicable licence, access agreement or international conservation and management measures, or as may be otherwise authorized under any applicable access or other agreement, or in the applicable licence; and
- (b) in the case of a Kenya fishing vessel operating under an authorization to fish in the high seas in areas subject to international conservation and management measures, when the vessel is on the high seas in an area subject to such international conservation and management measures or otherwise in accordance with such measures or the applicable license or authorization.

(3) An operator and crew member of any vessel, or licence holder in respect of any vessel on which an observer is placed or an inspector is assigned in accordance with this Act who does not comply with subsection (1) commits an offence and shall be liable on conviction to a fine not less than ten million shillings or to a term of imprisonment not less than five years or to both.

152. Conditions for observers

(1) The operator and licence holder in respect of any vessel on which an observer is placed shall—

- (a) provide full board, accommodation and access to any (cooking and toilet) facilities and amenities at officer level or similar standard approved in writing by the Director-General and free of charge at all times;
- (b) provide a safe work area adjacent to the sample collection site, for sampling and storage of fish to be sampled, of 4.5 square meters, including the observer's sampling table and which permits the observer to stand upright and have a work area at least 0.9 m deep in the area front of the table and scale;
- (c) notify the observer at least fifteen minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer;
- (d) collect bycatch when requested by an observer;
- (e) collect and carry baskets of fish when requested by an observer;
- (f) allow an observer to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch;
- (g) take measurements, including of decks, codends, and holding bins; and
- (h) ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of any observer involved.

(2) An operator or licence holder of a vessel who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding three years or to both, and in addition the applicable licence or authorization may be suspended or cancelled.

Protection of and duties owed to authorized persons

153. Authorized persons

For the purposes of this portion, "authorized person" includes any authorized officer, inspector or observer appointed pursuant to this Act.

154. Protection of authorized persons from liability

(1) No liability shall attach to the Service and its officers, employees or other persons acting under the authority of the Service, including persons with delegated authority and any person assisting an authorized officer pursuant to section 19, for any damage sustained by any person as a result of any act or omission done or made in good faith in performance of their duties under this Act or any other law relating to fisheries.

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

- (a) and the master is required to remain in control the master shall be responsible for the safety of the vessel and each person on board the vessel until the vessel arrives at the designated place; and
- (b) no claim may be made against any authorized person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.

(3) The State shall not be held directly or indirectly liable for an act or omission of any authorized person or person assisting an authorized officer, unless such person would incur liability for the act or omission.

155. Insurance for authorized persons

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

156. Obstruction, etc of authorized persons

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

(2) No person being the operator or a crew member of a vessel—

- (a) fail or refuse to allow and assist any person identified as an authorized person—
 - (i) to safe board the vessel;
 - (ii) to have full access to and use of all facilities, gear and equipment on board which such authorized person may determine are necessary to carry out his duties, including full access to the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish; that are not of a specified size or dimension;
 - (iii) to have full access to the vessel's records including its logs, charts and documentation and other information relating to fishing, whether required to be carried and maintained under this Act or otherwise, for purposes of carrying out functions and exercising powers under this Act, including records inspection and copying;
 - (iv) to have access to all navigational and communications equipment;
 - (v) to take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes;
 - (vi) where such person is forced by circumstances to stay on board the vessel for a prolonged period of time, provide him, while on board the vessel, with food, accommodation and medical facilities equivalent to that accorded to officers of the vessel, at the expense of the operator; and
 - (vii) to safe disembark from the vessel;
- (b) fail or refuse to allow an audit, inspection, examination or search which is authorized by or under this Act to be made or impedes the conduct of such audit examination or search;

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- (c) in respect of any premises, facility, including those used for aquaculture, cold storage, export and processing, landing site or other place where person(s) engage in activities within the scope of this Act fail or refuse to facilitate by all reasonable means the entry into and inspection by an authorized person in accordance with this Act of—
 - (i) the entire premises, facility, landing site or other place including storage areas; and
 - (ii) any fish or fish product, fishing gear, equipment or records;
 - (d) fail, refuse or neglect to immediately and fully comply with every lawful instructions or directions given by an authorized person;
 - (e) deny a request by an authorized person made in the course of exercising his duties and powers under this Act, including requests for access to records, documents, areas, gear and navigation and communication equipment, and that the equipment be turned on for his or her use;
 - (f) when lawfully required to state his name, date of birth and place of abode to an authorized person fail or refuse to do so, or state a false name, date of birth or place of abode to the authorized person;
 - (g) when lawfully required by an authorized person to give information, give information which is false, incorrect or misleading in any material respect;
 - (h) resist lawful arrest for any act prohibited by this Act;
 - (i) aid, incite or encourage another person to assault, resist, intimidate or obstruct an authorized person who is carrying out his/her duties or exercising his powers under this Act, or any person lawfully acting under a authorized officer's instructions or in his/her aid;
 - (j) interfere with, delay or prevent by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act in contravention of this Act;
 - (k) fail or refuse to allow an authorized person to carry out all duties safely, or to take all reasonable measures to ensure the safety of an authorized person as appropriate in the performance of his duties;
 - (l) impersonate or falsely represent himself or herself to be an authorized officer, or to be a person lawfully acting under the Director-General's instructions or in his aid;
 - (m) impersonate or falsely represent himself to be the master or an officer, or not to be the master or an officer, of a fishing vessel;
 - (n) where the vessel is seized by an authorized person, fail to sail such vessel to a place in Kenya designated by the authorized officer or fail to ensure the safety of all those on board;
 - (o) bribe or attempt to bribe an authorized person;
 - (p) interfere with an authorized person in the performance of his duties; or in any other way obstruct or hinder an authorized person in the exercise of his powers, duties or functions under this Act;
 - (q) use abusive or threatening language or insulting gestures or behave in a threatening or insulting manner towards an authorized person who is carrying out his duties or exercising his/her powers under this Act,

or towards any person lawfully acting under the authorized officer's instructions or in his aid; or

- (r) obstruct, resist, delay, refuse boarding to, intimidate, or kidnap an authorized person who is performing his duties or exercising his powers under this Act, or any person lawfully acting under a authorized officer's instructions or in his aid; or
- (s) breach any other duty to an authorized person as required under this Act

(3) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not less than fifty million shillings or to a term of imprisonment not exceeding ten years or to both, and in addition the applicable licence may be suspended or cancelled.

Requirements for vessel monitoring systems

157. Vessel Monitoring Systems

(1) The Director-General may establish and operate vessel monitoring systems for purposes of monitoring, control and surveillance, and managing the operations of fishing vessels under this Act.

(2) The Director-General may require the operator of any fishing vessel, as a condition of licence or otherwise, to install, maintain and operate in accordance with such conditions as may be prescribed and such other conditions that may be required by the Director-General, a mobile transceiver unit or other device or equipment that is an integral component of a vessel monitoring system at all times while the fishing vessel is in the fishery waters or, in respect of a Kenya fishing vessel, in areas beyond national jurisdiction or such other area as may be prescribed or agreed in an international agreement or international conservation and management measures.

(3) The operator of each fishing vessel shall comply with all licence conditions and requirements imposed pursuant to subsection (2) and shall, where the mobile transceiver unit or other device or equipment ceases to operate, immediately—

- (a) notify the Director-General when the mobile transceiver unit or other device ceases to operate in accordance with such requirements; and
- (b) cause the vessel to cease fishing except as otherwise authorized by the Director-General.

(4) Where the mobile transceiver unit or other device ceases to operate as required, the operator shall immediately notify the Director-General and submit to him a report of the vessel's name, call sign, position expressed in latitude and longitudes to the minutes of arc and the date and time of the report at intervals of four hours or such other period as the Director-General may notify the operator, and—

- (a) cause the vessel to cease fishing except as otherwise authorized by the Director-General; or
- (b) cause the vessel to immediately return to the port of Mombasa, Lamu and Shimoni.

(5) The operator shall comply with such other conditions that may be prescribed and such additional conditions that may be required by the Director-General, including:

- (a) the type of vessel monitoring system equipment to be used;

- (b) installation procedures;
- (c) operational requirements;
- (d) information requirements;
- (e) confidentiality; and
- (f) reports.

(6) No person shall—

- (a) without lawful excuse render inoperative or otherwise interfere with a mobile transceiver unit or other device installed pursuant to this Act so that it fails to operate accurately or in accordance with any prescribed conditions;
- (b) whether within, or in areas beyond, national jurisdiction, intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any part of mobile transceiver unit or vessel monitoring system aboard a vessel licensed pursuant to this Act, or intentionally feed or input into that system information or data which is not officially required or is meaningless; or
- (c) intentionally, recklessly or negligently divulge information or data obtained from a vessel monitoring system or a system of reporting or recording required or permitted under this Act, other than in the course of duty and to a person or persons entitled to receive that information or data.

(7) A person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine not less than ten million shillings or to imprisonment for a term less than ten years or to both, and in addition the applicable licence may be suspended or cancelled.

Requirements for use of ports

158. Use of port without authorization prohibited

(1) No foreign fishing vessel shall use a port in Kenya for landing, transshipping, packaging, or processing of fish or for other port services including, *inter alia*, refuelling and resupplying, maintenance and dry docking, unless—

- (a) the port has been designated for use by foreign fishing vessels;
- (b) the operator has given at least forty-eight hours' advance notice or such other notice as may be prescribed or required by the Director-General;
- (c) the operator has provided to the Director-General such information as may be prescribed or required;
- (d) in the case of a foreign fishing vessel, a written authorization for the use of such port has been issued by the Director-General; and
- (e) where the Director-General has authorized entry of such vessel into port, the master of the vessel or, in the case of a foreign fishing vessel, the vessel's representative presents the authorization for entry into the port to an authorized officer or other competent officer upon the vessel's arrival at Port.

(2) The operator, master and charterer of a vessel which contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not

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

159. Vessels may be prohibited from entering port

(1) Authorization to enter a port shall be denied where there is sufficient proof that a vessel seeking entry into port has engaged in illegal, unreported and unregulated fishing, or in fishing-related activities in support of illegal, unreported and unregulated fishing, or appears on a list of vessels which have engaged in such fishing or fishing related activities adopted by a regional fisheries management organization in which Kenya is a member or cooperating non-member, in accordance with the rules and procedures of such organization and in conformity with international law.

(2) Without prejudice to subsection (1), authorization for a vessel to enter a port may be given exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring or eliminating illegal, unreported and unregulated fishing and fishing-related activities in support of illegal, unreported and unregulated fishing.

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

160. Denial of the use of port to a foreign fishing vessel

(1) Where a foreign fishing vessel has entered one of its ports, the Director-General shall deny that vessel the use of the port for the landing, transshipping, packaging or processing of fish which have not been previously landed, or for refuelling, resupplying, maintenance, dry-docking and other port services where—

- (a) the vessel does not have a valid and applicable authorization to engage in fishing or fishing-related activities required by its flag State;
- (b) the vessel has not been granted a valid and applicable licence to engage in fishing or fishing related activities required under this Act;
- (c) there is clear evidence that the fish on board was taken in contravention of applicable requirements of any coastal State in respect of areas under the national jurisdiction of that coastal State;
- (d) the flag State of any foreign fishing vessel does not confirm within a reasonable period of time on the request of the Director-General that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
- (e) there are reasonable grounds to believe that the vessel was otherwise engaged in illegal, unreported or unregulated fishing or fishing-related activities in support thereof unless the operator of the vessel can establish—
 - (i) that it was acting in a manner consistent with relevant conservation and management measures; or
 - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not at the time of provisioning a vessel referred to in subparagraph (e);

(2) Notwithstanding subsection (1), a vessel shall not be denied the use of port services essential to the safety and health of the crew and the safety of the vessel, provided these needs are duly proven, or, where appropriate, for the scrapping of the vessel.

(3) The operator of a vessel which uses a port where such use has been denied pursuant to subsection (1) commits an offence and shall be liable on conviction to a fine not less than fifty million shillings or to imprisonment for a term not less than ten years or to both.

(4) Any person who, knowing or having reasonable cause to believe which a vessel has been denied the use of port, takes any action in assisting such vessel to use the port, or to provide it with goods or services which have been denied, commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years or to both.

161. Inspection of foreign fishing vessels in port

(1) In carrying out inspections of fishing vessels in port, authorized officers shall follow such procedures as may be prescribed or the Director-General may require to the extent possible, and—

- (a) present to the master of the vessel an identification document prior to an inspection;
- (b) in case of appropriate arrangements with the flag State of a foreign fishing vessel, invite that State to participate in the inspection;
- (c) not interfere with the ability of the master of a foreign fishing vessel, in conformity with international law, to communicate with the authorities of the flag State;
- (d) make all possible efforts to—
 - (i) avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of authorized officers on board, and to avoid action that would adversely affect the quality of the fish on board;
 - (ii) facilitate communication with the master or senior crew members of the vessel; and
- (e) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel.

(2) A report of the inspection shall promptly be provided to the Director-General in such form as may be prescribed or as the Director-General may require.

PART XIV — REQUIREMENTS FOR ARRESTED PERSONS AND SEIZED ITEMS

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

(1) In cases of arrest or detention of foreign fishing vessels for a contravention of this Act, the Director-General shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

(2) Any foreign fishing vessel and its crew arrested for the contravention of any provision of this Act that governs any act of fishing or fishing-related activity shall be promptly released upon the posting of a reasonable bond or other security.

(3) In the absence of any agreement to the contrary with the State of which the vessel or its crew are nationals, penalties for violations of this Act in the Kenya Exclusive Economic Zone shall not include imprisonment or any form of corporal punishment.

163. Prompt judicial or administrative proceedings for arrested persons

(1) A person arrested under this Act shall promptly be brought before the Court of applicable jurisdiction or be subject to administrative proceedings in accordance with this Act.

(2) Where a person is released without being charged or where prosecution is not instituted within thirty days after a person is charged, all items seized shall be returned to the person.

(3) Where a person does not appear to answer a charge within ninety days after her arrest, any item seized from that person shall be forfeited to the State.

164. Conditions for bail

If the master of a fishing vessel is granted bail for an offence under this Act, the court granting bail may, if it thinks it necessary or desirable in the circumstances of the case, impose a condition whereby, pending the conclusion of the case, the accused is denied access to the vessel or is allowed access only on conditions determined by the Court.

165. Delivery and notice for seized items

(1) Any item seized pursuant to this Act shall be delivered into the custody of the Director-General.

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

166. Disposal of perishable items

(1) Any fish or fish products seized by an authorized officer under this Act may, at the direction of the Director-General, be sold and the proceeds of the sale held and dealt with pursuant to this Act.

(2) If any fish or other thing of a perishable nature is seized under this Act, the Director-General may, notwithstanding any other provision of this Act—

- (a) return the fish or other thing to the person from whom it was seized on receiving adequate cash security equivalent to the value of the fish or thing; or
- (b) cause the sale of the fish or other thing at a price which is reasonable in the circumstances, and, if court proceedings are instituted, pay the proceeds of the sale into a suspense account of the Service pending a court order in respect of the forfeiture of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized:

Provided that if, after making all reasonable efforts, the Director-General is unable to sell the fish or other thing, or where such fish or other things are unfit for sale, he may dispose of the same in such other manner as he deems fit, including by destruction.

(3) Where any fish or fish products are sold or otherwise disposed of pursuant to this section, the fisheries inspector shall—

- (a) give the person from whom such fish or perishable goods was seized a receipt stating the date on which the goods were sold or otherwise disposed of, the quantity of such goods, and in the case of a sale, the amount realized; and

- (b) pay the proceeds of sale into Court.

(4) The proceeds of any sale under subsection (3) shall be dealt with by the Court according to law.

167. Notice of detainment or seizure of property

(1) Upon seizure of a vessel, vehicle, aircraft or other item, reasonable efforts shall be made to notify the owner or owners of the property seized or detained pursuant to this Act of the seizure or detention of that property.

(2) A notice under the section shall—

- (a) enumerate the reasons for the seizure and/or detention;
- (b) describe the steps required for reclamation of the seized and or detained property; and
- (c) make the owner or owners aware of any deadlines and potential forfeiture of property pursuant to this Act.

168. Treatment of items detained or seized

(1) If any vessel, vehicle, aircraft or item has been seized pursuant to this Act, and a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within ninety days of the service or attempted service of notice pursuant to this Act, the Director may apply for the items to be forfeited to the State and the Court shall make such order as it shall deem fit.

(2) If the lawful owner of a vessel, vehicle, aircraft or item seized pursuant to this Act cannot be traced within ninety days of the service or attempted service of notice pursuant to this Act, the seized item shall be forfeited to the State.

(3) If the owner of a vessel, vehicle, aircraft or thing or the person having the possession, care or control of it at the time of its seizure or detention is convicted of an offence in terms of this Act and a fine is imposed, the vessel, vehicle aircraft or thing may be detained until all fines, orders for costs and penalties imposed in terms of this Act are paid.

169. Release of seized goods

(1) The Court may, on application, order the release of any fishing vessel, vehicle, aircraft or other item seized under this Act on receipt of such bond or other form of security as it may determine.

(2) In determining the value of the bond or other form of security in respect of a foreign fishing vessel or a fishing vessel which is not a Kenyan fishing vessel, the Court shall have regard to—

- (a) the aggregate amount of the fair market value of the property to be released;
- (b) an estimated total fine or other penalty provided for the offence or offences charged or likely to be charged;
- (c) the costs the prosecution would be likely to recover if a conviction were entered;

- (d) and any damages and costs assessed as a consequence of the offence or offences charged or likely to be charged, and may set the value at such aggregate amount.

(3) Notwithstanding the provisions of subsection (2), the amount determined by the Court under this Act shall not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offence charged, whichever is greater.

(4) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1), the Court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.

(5) The release of any bond or other form of security under this Act shall be conditional upon—

- (a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or in connected with in the commission of an offence under this Act; or
- (b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or in connection with the commission of an offence under this Act—
 - (i) payment in full within thirty days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and
 - (i) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(6) Nothing in subsection (1) shall require a Court to release any vessel, vehicle, aircraft or other item if it may be required as an exhibit in court proceedings or is reasonably required for any further investigations of offences against this Act.

170. Application of bond, etc

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

- (a) the discharge of any forfeiture ordered under this Act; and
- (b) the payment of all fines or penalties for offences under this Act or penalties imposed under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item.

171. Unlawful removal of seized goods

(1) No person shall remove a vessel, vehicle, aircraft or other item held under this Act and which is in the custody of the Government whether or not the person knew that the vessel, vehicle, aircraft or other item was held in the custody of the Government.

(2) Where any vessel, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of the Government, the vessel, vehicle, aircraft or other item shall be liable to seizure anywhere at any time within the jurisdiction of Kenya.

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

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

The State shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other item while in the custody of the State pursuant to this Act, provided that the State takes reasonable care given the circumstances.

PART XV — EVIDENCE

173. Certificate evidence

The Director-General or any person designated in writing by him may give a certificate stating that—

- (a) a specified vessel was or was not on a specified date or dates a Kenyan fishing vessel or a foreign fishing vessel;
- (b) a person was or was not on a specified date or dates the holder of any specified license, authorization or registration;
- (c) a specified fishing vessel was not on a specified date or dates the subject to a specified license, authorization or registration;
- (d) an appended document is a true copy of the licence or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
- (e) a particular location or area of water was on a specified date or dates within the Kenya fishery waters or a closed, limited, restricted or in any other way controlled area of the Kenya fishery waters, or an area of the Kenya fishery waters subject to specified conditions;
- (f) an appended chart shows the boundaries on a specified date or dates of the Kenya fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
- (g) a particular item or piece of equipment is fishing gear;
- (h) the cause and manner of death of or injury to any fish;
- (i) an appended document is a true copy of an approved charter agreement or an access agreement;
- (j) a call sign, name, or number is that of or allotted to a particular vessel under any system of naming or numbering of vessels;
- (k) an appended position or catch report was given for a specified vessel;
- (l) specified fishing vessel is included on a list of illegal, unreported and unregulated fishing vessels or authorized fishing vessels established by a regional fisheries management organization or pursuant to an international agreement; or
- (m) a certificate as to the condition of fish given under this Act was made in accordance with this Act and was made by the person who is signatory to the certificate.

174. Validity and procedure for certificate

(1) Unless the contrary is proved, a document purporting to be a certificate issued under section 175 shall be deemed to be such a certificate and to have been duly issued.

(2) Where a certificate is served on a defendant seven or more days before its production in court in any proceedings under this Act, the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(3) Where a certificate is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing on the prosecutor, then the certificate shall, unless the Court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(4) Where any objection is notified under subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(5) Any certificate shall be titled "Certificate made under section 175, Fisheries Management and Development Act" and no such certificate may be used as conclusive proof of the facts averred therein unless it is served with a copy of sections 175 and 177 of this Act.

(6) Any omission from or mistake made in any certificate issued under section 175 shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced by it.

(7) Where in any proceedings a certificate made under section 175 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.

(8) In this section "certificate" means a certificate issued under section 175.

175. Certificate as to the location of a vessel

(1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence committed, then a place or area stated in a certificate by an authorized officer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(2) An authorized officer shall in a certificate made under subsection (1) state—

- (a) his name, address, official position, country of appointment and provision under which he is appointed;
- (b) the name, if known, and call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits;
- (f) a declaration that the authorized officer checked the position-fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
- (g) where a position fixing instrument which is not judicially noticed as being accurate or a designated machine is used, a declaration that he

checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 172 shall apply to a certificate given under this section as if it had been a certificate issued under section 146.

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

176. Electronic location device

(1) The readings of any mobile transceiver unit or other electronic location device integral to a vessel monitoring system shall be admissible as evidence and may be used as *prima facie* evidence of the facts that they aver.

(2) The readings of the devices referred to in subsection (1) may be made from a printout or as observed from a visual display unit.

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

177. Photographic evidence

(1) Where a photograph is taken of any fishing or fishing related activity and the date and time on and position from which the photograph is taken are simultaneously superimposed upon the photograph, the date and time shall be *prima facie* evidence that the photograph was taken on the date, at the time and in the position so appearing.

(2) The provisions of this section shall apply only when—

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
- (b) the instruments which provide the date, time and position are commonly recognised as being accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.

(3) The provisions of this section shall not affect the admissibility of photographic evidence in any way.

178. Presumptions

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

(2) All fish found on board any fishing vessel in respect of which false or misleading information or no information has been provided prior to the vessel's entry into port as required pursuant to this Act, shall unless the contrary is proved, be presumed to have been caught during the commission of an offence or during illegal, unreported or unregulated fishing activities.

(3) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place.

(4) The production of a written copy or extract of the entry certified by a fisheries inspector as a true copy of the accurate extract shall be prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.

(5) Where in any legal proceedings relating to an offence under this Act—

- (a) an authorized officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fishery waters or taken by the use of illegal gear, and
- (b) the Court considers that, having regard to that evidence the grounds are reasonable,

all the fish shall be presumed to have been so taken, unless the contrary is proved.

(6) Where any information is given for a fishing vessel under this Act or an access agreement in relation to any fishing activity of a fishing vessel, it shall be presumed to have been given by the master, owner or charterer of the vessel concerned, unless it is proved it was not given or authorized to be given by any of them.

(7) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel, unless proven otherwise.

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

(9) For the purposes of subsection (6), a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any global positioning system.

(10) The readings from any vessel monitoring, communications or navigation equipment required under this Act, either made from a printout or observed from a visual display unit, and which are capable either wholly or partly of producing the readings concerned and are not merely receivers of information or data, when checked for correct working and read by a competent operator, shall, unless the contrary is proved, be presumed to give accurate readings within the manufacturers specified limits.

(11) Unless the contrary is proved, any person who is found in possession of any illegal fishing gear, including explosives, poison or any device capable of producing an electric shock on or near the fishery waters shall be presumed to be undertaking an unlawful activity contrary to this Act.

179. Onus of proof

(1) Where, in proceedings under this Act, a person is charged with having committed an offence involving an act for which a license, authorization or other permission is required, the onus shall be on that person to prove that at the relevant time, the requisite license or authorization or other permission was held by that person.

(2) Where a person is charged with the contravention of section 127, the onus shall be on that person to prove that his entry into the fishery waters was for a purpose recognized by international law.

(3) Where a person is charged with the contravention of section 80, the onus shall be on that person to prove that the information given was true, complete and correct.

180. Interference with evidence and avoidance of seizure

(1) No person shall, being on board any vessel being pursued, about to be boarded or notified that it shall be boarded by an authorized officer, whether in the Kenya fishery waters or beyond areas under national jurisdiction, who throws overboard or destroys any fish, equipment, document, explosive, noxious substance or other item with intent to avoid its seizure or the detection of any offence against this Act.

(2) No person shall destroy or abandon any fish, fishing gear, net or any other fishing appliance, electric shock device, explosive, poison or any other noxious substance, or any other thing with intent to avoid their seizure or the detection of an offence against this Act.

(3) No person shall remove from legal custody any vessel, fish, equipment or other item, or do any act or omission by which a vessel, fish, equipment or other item held in legal custody may be so removed, whether or not he knew that the vessel, fish, equipment and other item was being held in custody.

(4) No person shall intentionally, recklessly or negligently destroy, damage, render inoperative or otherwise interfere with any premises or licensed aquaculture establishment.

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

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

(1) No person shall tamper with any item, document or thing that may be used in evidence of non-compliance with this Act, including evidence relating to the catching, loading, landing, handling, transshipping, transporting, processing, possession, aquaculture and disposal of fish.

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

PART XVI — SUMMARY ADMINISTRATIVE PROCEEDINGS

182. Decision to proceed administratively

(1) The Director-General may, after consultation with the Cabinet Secretary and the written consent of the Attorney-General, proceed administratively against any person who has been charged with a contravention of this Act.

(2) The Director-General shall promptly notify the person charged that the person may, within twenty four hours of receiving such notification, consent to the compounding of the offence under this section.

(3) An offence shall be compounded under this section where the person charged, admits in writing to the offence; and—

- (a) consent to compounding proceed after being fully informed about these proceedings.

(4) Where a person consents to the compounding of an offence, the person shall—

- (a) not engage in any activity within the scope of this Act until the penalty has been paid in full; and
- (b) be deemed to have consented to any seizure in accordance with this Act in relation to the offence, and to have waived any right to a hearing in the judicial process.

(5) Upon receiving the written consent under subsection (4), the Director-General or his designee may handle the matter in accordance with this Part, in consultation with the Director-General of Public Prosecutions.

(6) Where the person fails to respond to the Director-General's written notice within twenty-four hours, the Director-General shall refer the matter to prosecution.

183. Summary administrative proceedings

(1) The Director-General may, where the person charged has fulfilled the conditions of section 182 (4), dispose of such violation by causing a compounding agreement to be drawn up by the Director of Public Prosecutions to formalise the terms and conditions for the Director-General to accept on behalf of the Government from such person an administrative penalty, the amount of which shall

- (a) not exceed the maximum fine or penalty prescribed under this Act, for the offence being compounded, in addition to the fair market value of any fish caught illegally;
- (b) not be less than the minimum level of fine calculated in conformity with the guidelines required pursuant to section 189; and
- (c) where the person charged has committed the same or a similar offence in the past, an amount not less than the fine previously set plus an additional ten per cent.

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

(3) The compounding procedure shall be null and void if the full amount of the penalty as determined under subsection (1) is not paid within three working days of the notification of the assessment of the penalty assessment to the person charged and the matter shall immediately be referred to the Court.

(4) When the penalty is paid in full under this section, the Director-General may order the release of any article, items, fish or fish products seized under this Act or proceeds of sale of such items, fish or fish products on such conditions as he or she may determine.

(5) Where the person is unable to pay the determination in full, that person may enter into an agreement for payment in instalments with the Director-General and Attorney General.

(6) In any proceedings brought against any person for an offence against this Act, it shall be a defence if such person proves that the offence for which he is charged has been compounded under this section.

(7) The Director-General may confiscate any fishing gear or other appliance used for illegal fishing connected with the vessel.

(8) Any person aggrieved by a decision of the Director-General under this section may appeal to the High Court within thirty days of the Director-General's decision.

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

184. Jurisdiction of the Court

(1) Any act or omission in contravention of any provision of this Act committed—

- (a) by a person or in respect of a vessel within the Kenya fishery waters;
- (b) outside the Kenya fishery waters by any Kenya citizen, or in respect of a vessel or by person ordinarily resident in Kenya;
- (c) outside the Kenya fishery waters by any person or vessel in contravention of section 104; or
- (d) by any person on board any Kenya fishing vessel,

shall be dealt with in a court determined by the Chief Justice, but where a foreign fishing vessel is involved, the matter shall be dealt with by the High Court and the judicial proceedings shall be taken as if the act or omission had taken place within the of Kenyan fishery waters.

(2) Where an authorized officer is exercising any powers conferred on him outside the Kenya fishery waters in accordance with this Act, any act or omission of any person in contravention of a provision of this Act shall be deemed to have been committed within the Kenya fishery waters.

(3) Notwithstanding any provision of any other law, an information or charge in respect of any offence against this Act may be laid at any time within one year of the commission of the offence.

185. Conduct of prosecutions

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

186. Forfeiture

(1) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, the Court may order the forfeiture of any of the following—

- (a) any fish, fish product, fishing vessel (including its gear, furniture, appurtenances, stores, cargo and aircraft), vehicle, aircraft, gear, equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;
- (b) where a fishing vessel, vehicle or aircraft was used in the commission of an offence, any fish on board such vessel, vehicle or aircraft at the time of the offence;
- (c) where a storage facility was used in the commission of the offence, any fish or fish products in the facility at the time of the commission of the offence; or
- (d) where any fish has been sold under section 166, the proceeds of the sale of the fish.

(2) Where a court convicts a person of an offence against this Act, or such other offences as may be prescribed for the purposes of this subsection, in the commission of which a foreign fishing vessel was used or was otherwise involved, the Court may order the forfeiture of—

- (a) the fishing vessel;
- (b) any gear and other equipment that was on the vessel concerned at the time of the offence; and
- (c) all fish or fish products on board the vessel at the time of the offence, or where the fish products have been sold, the proceeds of sale.

187. Disposition of forfeited property

(1) Any vessel or other property or security forfeited under this Act becomes the property of the State.

(2) Any vessel or other property forfeited under this Act may be—

- (a) retained;
- (b) leased; or
- (c) sold by the State by tender or by agreement approved by the Director-General and endorsed by the Cabinet Secretary,

Provided that if such forfeited property is sold by the State, the owner or apparent owner prior to forfeiture shall be afforded a reasonable opportunity to bid on or purchase such property.

(3) The Director-General or any person acting on his behalf shall not be liable in any way of any costs incurred or damages sustained as of a decision taken under subsection (2).

188. Deprivation of monetary benefits

(1) A Court convicting a person of an offence under this Act may summarily and without pleadings inquire into the pecuniary benefit acquired or saved by the person as a result of the commission of the offence, and may, upon reliable expert evidence otherwise admissible in a court of law and in addition to any other penalty imposed, impose a fine equal to the Court's estimation of that pecuniary benefit, despite any maximum penalty elsewhere provided.

(2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.

189. Costs incurred by State

(1) The operator and charterer of a vessel shall jointly and severally bear the cost or expenditure incurred by the Government, upon application by the State and as determined by the Court upon conviction, in connection with—

- (a) the seizure of a fishing vessel, vehicle or aircraft or other an offence against this Act, including any relevant costs of pursuit of the vessel, vehicle or aircraft;
- (b) the prosecution for an offence in accordance with this Act; and
- (c) the repatriation of the master or crew of any vessel seized under this Act.

(2) The amount of any costs or expenditure by the Court under subsection (1) may be recovered in the same manner as a fine and shall be imposed in addition to any fine or penalty that may be ordered by the Court.

(3) Nothing in subsection (1) shall be deemed to allow for the recovery of any cost or expenditure that has already been recovered pursuant to any other order made under this Act.

(4) If it intends to apply for pursuit costs in accordance with subsection (1), the Government shall, fourteen (14) days prior to a trial related to the offence, serve the defendant with written details of those costs.

190. Liability for non-payment of pecuniary penalties

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the State as the nominal plaintiff.

191. Liability for loss or damage

(1) A person who commits an offence against this Act shall, upon conviction, be liable for any loss or damage caused by the offence and the amount of the loss of such damage may be awarded by the Court as restitution in addition to, and recovered in the same manner as a fine.

(2) The loss or any damage caused by the offence referred to in subsection (1) shall include, as may be applicable, any costs incurred in—

- (a) detecting, apprehending, investigating or prosecuting the offence; and
- (b) detaining or seizing any property, fish, article or thing in respect of that offence.

192. Civil liability of officers of companies

(1) Subject to subsection (2), in this section, each officer of a partnership, corporation, firm, company or any other business enterprise engaged in activities governed by this Act shall be personally liable for any violation of or offence committed under this title by any member or employee.

(2) It shall be a defence to liability under this section for the officer referred to in subsection (1) to prove that he or she used due diligence to secure compliance with this Act or that the violation or offence was committed without that officer's knowledge, consent, collusion or collaboration.

193. Liability of operators

In any proceedings under this Act, the act or omission of a crew member of a fishing vessel or in association with a fishing vessel shall unless otherwise expressly provided, be deemed to be that of the operator of the vessel.

194. Continuing offences and repeat offenders.

(1) Each day of a continuing offence shall be considered a separate offence.

(2) Where the person charged has committed a similar offence in the past, a fine of an amount not less than that previously penalized plus an additional ten percent shall be charged.

195. Banning order

Where a person has been convicted of an offence against this Act, the Court may in addition to any other penalty or forfeiture, order that for a period not

exceeding five years that person be banned from going on or remaining aboard any fishing vessel in the Kenyan fishery waters.

196. Citizen suits and civil enforcement

A person who incurs loss or damage as a result of harmed by a violation of any provision of this Act or the accompanying regulations may bring a civil action in a court of competent jurisdiction against any responsible person, (except the Government and its employees).

197. Injunctions

A court of competent jurisdiction may issue an injunction to enforce any provision of this Act against any person including the Ministry.

PART XVIII — ESTABLISHMENT OF FISH MARKETING AUTHORITY

198. Establishment of Fish Marketing Authority

(1) There is established a body to be known as the Kenya Fish Marketing Authority.

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

- (a) suing and being sued;
- (b) taking, purchasing and disposing of movable and immovable property; and
- (c) doing such other things necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Fish Marketing Authority shall be in Nairobi.

199. Objects and purpose

The object and purpose of the Fish Marketing Authority shall be to market fish and fisheries products from Kenya.

200. Functions of the Fish Marketing Authority

The functions of the Fish Marketing Authority shall be to—

- (a) develop, implement and co-ordinate a national fish marketing strategy;
- (b) ensure that fish and fishery products from Kenya enjoy market access at local, national, regional and international levels as premier products and, to this end, that the products and markets are developed and diversified;
- (c) promote the sustainable use of fish by preventing, deterring and eliminating to the extent possible trade in illegal, unreported and unregulated fishing;
- (d) enforce national fisheries trade laws and international fisheries related trade rules;
- (e) identify fish market needs and trends and advise fisheries stakeholders accordingly;
- (f) organize stakeholders to ensure smooth marketing of fish and fishery products;

- (g) collaborate with national and international trade related bodies;
- (h) advise the Cabinet Secretary on issues related to national and international trade trends; and
- (i) perform any other functions that are ancillary to the object and purpose for which the Fish Marketing Authority is established.

201. Board of Directors

(1) There shall be a Board of Directors of the Fish Marketing Authority which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to fisheries or his representative;
- (c) the Principal Secretary of the ministry for the time being responsible for matters relating to finance or his representative;
- (d) The Principal Secretary for the time being responsible for matters related to Trade and Industry;
- (e) The Principal Secretary in the ministry for the time being responsible for planning and economic development, or his representative;
- (f) one person, who has knowledge and experience in matters relating to fisheries, nominated by the Council of Governors;
- (g) the Chief Executive Officer of the Fund;
- (h) the Chief Executive Officer of the Fish Marketing Authority, who shall be the secretary; and
- (i) four other members nominated or selected through a competitive process taking into consideration regional balance and gender parity and appointed by the Cabinet Secretary, of whom—
 - (i) two shall be nominated by the registered national fisheries associations; and
 - (ii) two shall be persons with knowledge or experience in matters relating to international fisheries, finance, business administration, law, marketing or a related discipline.

(2) The names of persons proposed for appointment under subsection (1)(a) and (h) shall, before they are appointed, be laid before the National Assembly for approval.

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

(4) The Board of Directors shall ensure the proper and effective performance of the functions of the Fish Marketing Authority.

(5) The Board of Directors may enter into partnership with other body or organization within or outside Kenya as it may consider appropriate, in furtherance of the objects of the Fish Marketing Authority.

(6) The members of the Board of Directors shall be paid remuneration and allowances determined by the Minister, in consultation with the Minister responsible for matters relating to finance.

202. Tenure of office and vacation of office

(1) A member of the Board of Directors appointed under section 201 (1) (a) and (f) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) A member of the Board of Directors, other than an *ex officio* member may, at any time, resign from office by giving notice, in writing, addressed to the appointing authority

(3) A member of the Board of Directors, other than an *ex-officio* member, who is absent from three consecutive meetings of the Board of Directors without sufficient cause shall cease to be a member of the Board of Directors.

(4) Where a member of the Board of Directors is, for sufficient cause, unable to act as a member, the Cabinet Secretary shall determine whether the inability would result in the declaration of a vacancy.

(5) Where there is a vacancy—

- (a) under subsection (2) or (3) or section 35(2); or
- (b) as a result of declaration under subsection (4); or
- (c) by reason of the death of a member,

the Cabinet Secretary shall appoint another person in accordance with the provisions of section 201 (1) to fill that vacancy.

203. Conduct of meeting of the Authority

The conduct of the meetings of the Board of Directors shall be in accordance with the Third Schedule.

204. Disclosure of interest

(1) A member of the Board of Directors who has an interest in a matter for consideration by the Board of Directors shall disclose, in writing, the nature of that interest and shall be disqualified from participating in any deliberations of the Board of Directors relating to that matter.

(2) A member who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Board of Directors.

205. Delegation of functions

Subject to this Act, the Board of Directors may, by resolution either generally or in any particular case, delegate to any committee of the Board of Directors or to any member, officer, employee or agent of the Fish Marketing Authority, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of Directors under this Act.

206. Appointment of chief executive and other staff

(1) The Cabinet Secretary shall, in consultation with the Board of Directors and subject to subsection (2), through a competitive process, appoint a person to be the Chief Executive Officer of the Fish Marketing Board.

(2) A person shall not be qualified for appointment as the Chief Executive Officer under subsection (1) unless that person has an advanced degree in marketing, business administration or related discipline and has at least ten years' experience at a senior management level in matters relating to Fisheries, marketing or other related sector.

(3) The chief executive officer shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(4) The Board of Directors may appoint such officers and other staff as may be necessary for the proper and effective performance of the functions of the Fish Marketing Authority.

207. Funds of the Fish Marketing Authority

(1) There shall be a general fund of the Fish Marketing Authority which shall vest in the Board of Directors and into which shall be paid—

- (a) monies appropriated by Parliament for the purposes of the Fish Marketing Authority;
- (b) monies that may accrue to or vest in the Fish Marketing Authority in the course of the performance of its functions under this Act or any other law and approved by Parliament;
- (c) monies provided to the Fish Marketing Authority from the Fund;
- (d) donations, grants and gifts made to the Fish Marketing Authority, and
- (e) monies from any other source approved by the Cabinet Secretary for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the Fish Marketing Authority any expenditure incurred by the Fish Marketing Authority in the exercise of its powers or the performance of its functions under this Act.

(3) The Fish Marketing Authority may, subject to the approval of the Cabinet Secretary for the time being responsible for finance, invest funds not immediately required for its purposes.

PART XIX — MISCELLANEOUS

208. Regulations

(1) The Cabinet Secretary may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations for any or all of the following purposes—

- (a) prescribing the conditions to be fulfilled by foreign participation in fisheries, including conditions of licensing foreign fishing vessels;
- (b) establishing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (c) prescribing the conditions of issue of, and procedures of application for, any licence or other authority under this Act or regulations thereunder, the form and the fees payable therefor;
- (d) regulating the handling, storage and processing of fish by prescribing methods of handling, storage and processing of fish;
- (e) prescribing requirements for governing the safety and quality of fish, fish products and fish feed;
- (f) providing for the management and control of fishing ports and fishing waters;
- (g) the licensing of any person to engage in any form of fishing, or of handling, transporting, processing or selling of fish products;
- (h) organizing and regulating the marketing and distribution of fish;

- (i) providing for the registration of private marks to be used to distinguish the ownership of fishing gear;
- (j) prohibiting or controlling the importation, exportation and introduction into Kenya of live fish of any kind or species;
- (k) promoting and regulating or controlling the development of aquaculture establishments;
- (l) controlling the exploitation of the Exclusive Economic Zone;
- (m) development of recreational and ornamental fisheries and establishment of fishing camps;
- (n) providing for fishing by Kenyan ships in the high seas;
- (o) providing for the management and exploitation of inland, dam and riverine fisheries;
- (p) providing for the management and exploitation of coastal fisheries;
- (q) providing for control of the manufacture, importation, marketing and introduction in Kenya fishery waters of fishing gears;
- (r) prescribing the forms to be used for various matters under the act;
- (s) any other thing he may deem necessary for the promotion of fisheries in Kenya.

209. Suprecession

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

PART XX — REPEALS AND TRANSITIONAL

210. Repeals and transitional provisions

- (1) The following Acts are repealed—
 - (a) the Fisheries Act, Cap 378;
 - (b) the Trout Ordinance, Cap 380;
 - (c) the Fisheries Protection Act, Cap 379;
- (2) Notwithstanding subsection (1), the following transitional provisions shall apply—
 - (a) any licences or permits granted under those Acts and in force immediately before the commencement of this Act shall, with the approval of the Cabinet Secretary, be deemed to have been granted under the provisions of this Act, and shall remain in force until revoked in accordance with any terms in that regard set out in the licence, as the case may be, or renewed as a licence under this Act;
 - (b) all property, except such property as the Cabinet Secretary may determine, which immediately before the commencement of this Act was vested in the Government for the use of the Fisheries Department, shall with approval of the Cabinet Secretary, and, upon the taking effect of a notice by the Cabinet Secretary published in the Gazette, and without further assurance, vest in the Service, subject to all interests, liabilities, charges, obligations and trusts affecting such property;
 - (c) except as otherwise provided in paragraph (b) in relation to property, all contracts, debts, obligations and liabilities of the Government

attributable to the Fisheries Department immediately before the commencement of this Act shall, with the approval of the Cabinet Secretary, remain vested in the Government and may be enforced by or against the Government;

- (d) all persons, being public officers, who, immediately before the commencement of this Act, are employed by the Government for the purposes of the activities of the Fisheries Department, shall at the commencement of this Act be, deemed to be on secondment to the Service in accordance with this Act, or their deemed secondment otherwise ceases in accordance with the terms of such secondment;
- (e) where, at the commencement of this Act, any penalty, other than dismissal, has been imposed on any employee of the Fisheries Department pursuant to disciplinary proceedings against such employee, and the penalty has not been or remains to be served by such employee, such employee shall, on his transfer to the Service, serve or continue to serve such penalty to its full term as if it had been imposed by the Service.

211. Consequential amendments to other Acts

The Acts specified in the Fourth Schedule are amended in the manner specified in that Schedule.

FIRST SCHEDULE

[Section 10(2)]

STAFF OF THE SERVICE

PART A — FISHERIES OFFICERS

(a) Professional Cadre

Director-General of Fisheries

Director of Fisheries

Deputy Director of Fisheries

Senior Assistant Director of Fisheries

Assistant Director of Fisheries

Principal Fisheries Officer

Chief Fisheries Officer

(b) Technical Cadre

Principal Assistant Fisheries Officer

Chief Assistant Fisheries Officer

Senior Assistant Fisheries Officer

Assistant Fisheries Officer I

Assistant Fisheries Officer II

Assistant Fisheries Officer III

B — DISCIPLINED OFFICERS CADRE

1. Commandant
2. Deputy Commandant
3. Assistant Commandant
4. Senior Superintendent Fisheries Guard
5. Superintendent Fisheries Guard
6. Chief Inspector Fisheries Guard
7. Inspector Fisheries Guard
8. Sergeant Fisheries Guard
9. Corporal Fisheries Guard
10. Constable Fisheries Guard
11. Fisheries Guard Recruit

OATH OF ALLEGIANCE

Signature of Declarant

Personal Number:

Sworn/affirmed before me

On the

D- Provisions relating to the officers of the Service

1. (1) The officers of the Service shall, in the performance of the duties conferred upon them under this Act and any other written law, conform with any lawful instructions, directions or orders which may be given by the Director-General.

(2) The Director-General may, with the consent of the Board, from time to time make and issue administrative orders to be called Service Standing Orders for the general control, direction and information of the officers of the Service.

2. (1) The Director-General shall, with the approval of the Board, issue a Disciplinary Code for Officers of the Service, which shall apply to the disciplined officers of the Service and which may provide for the following matters—

- (a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceedings;
- (b) disciplinary penalties; and
- (c) any other related matters.

(2) The following disciplinary penalties, or any combination thereof, may be included in the Disciplinary Code for infringement of the Code issued under subparagraph (1)—

- (a) dismissal from the Service;
- (b) reduction in rank;
- (c) confinement for not more than fourteen days in a guard room or restriction to the confines of any.

PART D—INTER-AGENCIES MCS UNITS (s21)

The Inter-agency Monitoring, Control and Surveillance Unit established under section 16 shall be composed of representatives of all of the agencies described

Fisheries Management and Development

as 1-7, and such agencies as the Cabinet Secretary may designate described as 8-16 below.

| Members | Designation | Status of Membership |
|--|--------------------|-----------------------------|
| Director-General(Fisheries) | Chair | Permanent |
| Representative of Police/ Internal Security | Member | Permanent |
| Representative of Judiciary | Member | Permanent |
| Representative of County Government (County Director of Fisheries) | Member | Permanent |
| Representative of BMUs | Member | Permanent |
| Representative Of NEMA | Member | Permanent |
| Representative of Public Health and Sanitation | Member | 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 Wildlife Service | Member | Co-opted |
| Representative Kenya Maritime Authority | Member | Co-opted |
| Representative Kenya Ports Authority | Member | Co-opted |
| Representative of East Africa Community/Foreign Affairs | Member | Co-opted |

SECOND SCHEDULE

[S.53 (2)]

DESIGNATED FISH LANDING STATIONS

1. Indian Ocean

| S/No. | Name of Landing site | District | Division/ Location | County |
|--------------|---------------------------------|-----------------|-------------------------------|---------------|
| . | Shimoni | Msambweni | Vanga | Kwale |
| . | Mkokoni | Lamu | Hindi | Lamu |
| . | Mombasa | Mvita | Mvita | Mombasa |

THIRD SCHEDULE

[section 201]

CONDUCT OF THE AFFAIRS OF THE FISH MARKETING AUTHORITY BOARD

(1) The Board of the Authority shall meet at least once in every three months to conduct the business of the Board of Authority.

(2) The Chairperson may or upon request call a special meeting of the Board of the Authority at any time, where he or she considers it expedient for the transaction of the business of the Board of the Authority.

(3) At the first meeting of the Board of Authority, the members shall elect a vice-chairperson, not being an ex-officio member, from among its members.

(4) Other than a special meeting, or unless three quarters of members agree, at least twenty one days' written notice of every meeting of the Board of the Authority shall be given to every member of the Board of the Authority by the secretary.

(5) The quorum at a meeting of the Board of the Authority shall be half of the members or a greater number determined by the Board of the Authority in respect of an important matter.

(6) The Chairperson shall preside at the meetings of the Board of the Authority and in the absence the vice-chairperson, and in his absence, a member of the Board of the Authority elected by the members present from among their number shall preside.

(7) The matters of the Board of the Authority shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(8) The proceedings of the Board of the Authority shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(9) Subject to the provisions of this Schedule, the Board of the Authority may determine its own procedure and the procedure for any committee of the Board of the Authority and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

FOURTH SCHEDULE

[Section 211]

1. Amendment to act No. 13 of 2013

The Agriculture, Fisheries and Food Authority Act is amended—

- (a) in the long title, by deleting the word ", Fisheries" appearing between the words "Agriculture" and "and Food Authority";
- (b) in the short title, by deleting the word ", Fisheries" appearing between the words "Agriculture" and " and Food Authority Act, 2013".
- (c) in section 1, by deleting the word ", Fisheries" appearing between the words "Agriculture" and "and Food Authority";
- (d) in section 2, in the definition "agriculture" by deleting—
 - (i) the words "(whether or not covered by water)" appearing between the words "use of land" and "for any purpose";
 - (ii) the words ",aquaculture" appearing between the words "husbandry" and " and food production";
 - (iii) paragraph (b);
 - (iv) paragraph (d);

- (e) in section 2, in the definition "Authority" by deleting the word ", Fisheries" appearing between the words "Agriculture" and "and Food Authority";
- (f) in subsection (1) of section 3, by deleting the word ", Fisheries" appearing between the words "Agriculture" and "and Food Authority";
- (g) in subsection (3) of section 3, by deleting the word ", and Fisheries Act" appearing before the word "respectively" and inserting the word "and between the words "the Crops Act" and " the Livestock Act";
- (h) in paragraph (a) of section 4 by deleting the words "and the Fisheries Act" appearing before the words "in accordance with the provisions of these Acts";
- (i) in paragraph (b) of section 4, by deleting the words—
 - (i) i)"and aquatic" appearing before the words "agricultural" ;and
 - (ii) "and the Fisheries Act" appearing at the end of the paragraph;
- (j) in paragraph (c) of section 4, by deleting the words "and aquatic" appearing before the words "agricultural" "and deleting the words "and the Fisheries Act" appearing after the words "the Crops Act";
- (k) in paragraph (d) of section 4, by deleting the words " and aquaculture" appearing between the words "agriculture" and " to advise generally on research thereof";
- (l) in paragraph (e) of section 4, by deleting the words " and aquatic" appearing between the words " on agricultural" and " levies for purposes of planning";
- (m) in paragraph (f) of section 4, by deleting the words " the Fisheries Act" appearing between the words " the Crops Act" and "and any written law";
- (n) in subsection (1) of section 11, by deleting the words "and including a Directorate of fisheries and Food production" and substituting therefor the words "and shall include a directorate on food production";
- (o) by deleting subsection (2) of section 11;
- (p) in subsection (4) of section 11, by deleting the words "and aquatic" appearing between the words "management of that agricultural" and the word "product";
- (q) in subsection (3) of section 21, by deleting the words "and fishing" appearing between the words "agricultural" and "purposes"; and
- (r) in subsection (1) of section 22, by deleting the words "and aquatic resources" appearing between the words "agricultural land" and the words "either in Kenya"; and
- (s) by deleting paragraphs (g), (h) and (i) of subsection (2).

2. Amendment to Act No. 17 of 2013

The Kenya Agricultural and Livestock Research Act is amended—

- (a) in subsection (1) (a) of section 5, by deleting the words "marine and fisheries" appearing between the words "livestock" and "genetic resources";

- (b) in subsection (2) (b) of section 32, by deleting the word "fisheries" appearing between the words "livestock" and "forestry and environment";
 - (c) in section 1, by deleting the word ",Fisheries" appearing between the words "Agriculture" and "and Food Authority";
 - (d) in the Second Schedule by deleting paragraphs (c) and (r) ;
 - (e) in the third Schedule by deleting paragraph (e); and
 - (f) in the Fourth Schedule by deleting paragraph (b).
-

APPENDIX 5A

Full text of the Seychelles Fishing Authority (Establishment) Act, consolidated to 30 June 2014.
Published in the Official Gazette.

CONSOLIDATED TO 30 JUNE 2012

LAWS OF SEYCHELLES

CHAPTER 214

Act 10 of 1984
Act 9 of 1985

SEYCHELLES FISHING AUTHORITY (ESTABLISHMENT) ACT

[31st August, 1984.]

ARRANGEMENT OF SECTIONS

1. Short title
2. Interpretation

PART II - AUTHORITY

Division 1 - Establishment

3. Establishment of Authority
4. Authority to be corporate

Division 2 - Functions and Powers of the Authority

5. Functions of the Authority
6. Powers of the Authority

Division 3 - The Board of Directors

7. Board of Directors
8. Membership of the Board
9. Chairman and Deputy Chairman
10. Fees and Allowances
11. Disclosure of interest
12. Meetings of Board

Division 4 - Staff

13. Offices
14. Use of services of public officers

Division 5 - Financial

15. Funds of the Authority
16. Borrowing by the Authority
17. Bank Accounts
18. Application of Funds
19. Surplus income to be paid into Consolidated Fund
20. Estimates
21. Exemptions
22. Accounts and Audit

PART III - MISCELLANEOUS

23. Transfer of Assets
24. Regulations

PART I - PRELIMINARY

1. This Act may be cited as the Seychelles Fishing Authority (Establishment) Act.
2. In this Act, unless the context otherwise requires -
"Authority" means the Seychelles Fishing Authority established by this Act;
"Board" means the Board of Directors of the Authority established by this Act;
"director" means a person appointed as such pursuant to section 8.

PART II - THE AUTHORITY

Division 1 - Establishment

3. There is established by this Act an authority by the name of the Seychelles Fishing Authority.
4. The Authority -

- (a) is a body corporate;
- (b) shall have a common seal; and
- (c) may sue and be sued in its corporate name.

Division 2 - Functions and Powers of the Authority.

5. The functions of the Authority are -

- (a) to promote, organize and develop fishing, fishing industries and fishing resources in Seychelles;
- (b) to assist in the formulation of the national policy with respect to fishing, fishing industries and fishing resources and in the implementation of that policy;
- (c) to conduct negotiations, or engage in meetings, seminars or discussions, with regard to fishing or fisheries or the establishment or operation of fishing industries, whether at a national or international level, on behalf of the Republic or otherwise;
- (d) to identify the manpower training requirements of Seychelles with regard to fishing and fishing industries; and
- (e) those mentioned in any other written law.

6. (1) Subject to this Act, the Authority has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions and, in particular the Authority may -

- (a) own, lease or dispose of movables or immovables;
- (b) own, operate or charter any vessel;
- (c) form companies under the Companies Act;
- (d) enter into partnership or joint ventures;
- (e) act as agent for the purpose of the management of any business or enterprise, or for any other purpose;
- (f) hold shares in, or debentures of, any company;
- (g) carry on any business or enterprise for or in connection with -
 - (i) fishing or fisheries;
 - (ii) processing, transporting, handling, marketing or distributing fish or fish products;
 - (iii) exporting fish or fish products;
 - (iv) the sale of equipment or apparatus to be used for fishing; or

- (v) any other matter relating to its functions where, in the opinion of the Authority, the carrying on of such a business or enterprise is in the best interest of the Republic;
- (h) conduct surveillance operations, in conjunction with the Ministry of Defence, in relation to fishing operations in the exclusive economic zone or in the waters super adjacent to the continental shelf;
- (i) monitor the catch of all fishing vessels; or
- (j) carry out scientific and development research.

(2) The powers under subsection (1) may be exercised by the Authority acting alone or, where appropriate, by the Authority acting in association with any other person, including the Government, a foreign Government, or any agency or instrumentality thereof.

Division 3 - The Board of Directors.

7. There shall be a Board of Directors of the Authority which -

- (a) shall be responsible for the policy, control and management of the Authority; and
- (b) shall perform the functions and may exercise the powers of the Authority.

8. (1) The Board shall consist of 5 directors who shall be appointed by the President by instrument in writing.

(2) The President may, by instrument in writing, revoke the appointment of a director.

9. (1) The President may, by instrument in writing, designate a director to be Chairman of the Board and a director to be Deputy Chairman of the Board, and may in like manner revoke any such designation.

(2) If a person designated as provided in subsection (1) ceases to be a director he also ceases to be Chairman or, as the case may be, Deputy Chairman, of the Board.

10. The authority shall pay to Directors such fees and allowances (if any) as the President may determine, in writing, either generally or in relation to a particular director or class of directors.

11. (1) A director who is directly or indirectly interested in any way in a contract made or proposed to be made by or on behalf of the Authority, or in any other matter whatsoever which falls to be considered by the Board, shall disclose the nature of his interest at a meeting of the Board and the disclosure shall be recorded in the minutes of the meeting.

(2) The director shall not, without the consent of the Board -

- (a) in the case of any such contract, take part in any deliberation or decision of the Board with respect to the contract; and
- (b) in the case of any other matter, take part in any deliberation or decision of the Board with respect to the matter if the Board decides that the interest in

question might prejudicially affect the member's consideration of the matter.

(3) For the purposes of this section, a notice given by a director at a meeting of the Board to the effect that he is a member of an identified body corporate or firm and is to be regarded as interested in any contract which is made with the body corporate or firm after the date of the notice, and in any other matter whatsoever concerning the body corporate or firm which falls to be considered by the Board after that date, is sufficient disclosure of his interest.

(4) A director need not attend in person at a meeting of the Board in order to make a disclosure which he is required to make under this section, if he takes reasonable steps to secure that the disclosure is made by notice that is taken into consideration at such a meeting.

12. (1) The Board shall hold such meetings as are necessary for the performance of its functions.

(2) The Chairman of the Board -

- (a) may convene meetings of the Board, and shall comply with any resolution of the Board with respect to the convening of meetings; and
- (b) shall, on receipt of a written request signed by not less than 3 directors, convene a meeting of the Board.

(3) If the Chairman of the Board is not available, the Deputy Chairman may convene a meeting of the Board.

(4) Subject to subsection (5), the Chairman of the Board shall preside at meetings of the Board, and in his absence the Deputy Chairman shall preside.

(5) At a meeting of the Board at which the Chairman and the Deputy Chairman of the Board are not present, the members present shall appoint one of their number to preside.

(6) The quorum at a meeting of the Board is 3.

(7) Questions arising at a meeting of the Board shall be determined by a majority of the members present and voting.

(8) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) The Board shall cause to be kept, in such manner and form as the Board determines, full and accurate minutes of proceedings at its meetings.

(10) The arrangements relating to meetings of the Board not provided for by this section shall be such as are determined the Board.

Division 4 - Staff

13. (1) There shall be a General Manager of the Authority who shall be appointed by the Authority with the approval of the President.

(2) The General Manager shall be appointed on such terms and for such period as the Authority determines and he shall be eligible for reappointment at the end of each term of office.

(3) The General Manager is the Chief Executive of the Authority and, in addition to such other functions which the Authority may assign to him from time to time and subject to the direction of the Authority, has supervision over and direction of the day-to-day affairs of the Authority.

(4) Subject to subsection (5), the General Manager shall, unless for reasons which appear to the Board to be reasonable, attend and participate in the meetings of the Board but has no right to vote at the meetings.

(5) The General Manager shall not, without the consent of the Board, attend or take part in a meeting of the Board at which any matter in which he has a direct interest is being considered.

(6) The Authority may employ such other persons as may be necessary for the proper discharge of its functions.

(7) The term and conditions of service of a person employed pursuant to subsection (6) shall be determined by the Authority.

14. For the purposes of this Act, the Authority may, with the approval of the President on such terms as may be arranged, make use of the services of any public officer to perform the functions of any office established pursuant to section 13 or for any other purposes.

Division 5 - Financial

15. The funds of the Authority shall consist of -

- (a) moneys appropriated by an Appropriation Act and paid to the Authority;
- (b) moneys derived by the Authority from carrying on any business or enterprise or by reason of its shareholding in any company;
- (c) moneys lawfully borrowed by the Authority;
- (d) moneys due on any investment made by the authority; or
- (e) other moneys lawfully received by the Authority for the purposes of the Authority.

16. (1) The Authority may, for the purpose of the performance of its functions under this Act, with the approval of the President, given either conditionally or unconditionally, borrow money in or outside Seychelles.

(2) The Authority may give security over any of its assets for the purpose of a borrowing under subsection (1).

(3) The Minister responsible for finance may, out of public moneys, make advances to the Authority of such amounts and on such terms as that Minister determines.

(4) The Authority shall make to the Republic, at such times and in such manner as the Minister responsible for Finance may direct, payments of such amounts as may be so directed in or towards the repayment of advances made pursuant to subsection (3) or of any sums issued in fulfillment of any guarantee given under any Act in respect of any amount borrowed in accordance with subsection (1) or of interest on any such advances or sums at the rate directed by the Minister responsible for finance.

(5) The Authority may, when it considers it necessary to do so, establish and operate sinking funds or other special funds for the purpose of, or in relation to, any loan borrowed by the Authority under this section.

(6) The Authority shall not borrow otherwise than in accordance with this section.

17. (1) The Authority may open and maintain an account or accounts with one, or more than one, bank and shall maintain at all times at least one such account.

(2) The Authority shall pay all funds of the Authority into an account referred to in this section.

18. (1) Subject to subsection (3), the funds of the Authority may be applied by the Authority -

- (a) in payment or discharge of the costs, expenses and other obligations of the Authority;
- (b) in payment of remuneration, fees and allowances payable to any person under this Act; or
- (c) as provided in subsection (2),

but not otherwise.

(2) Moneys of the Authority not immediately required for the purposes of the authority may be invested -

- (a) on fixed deposit with one, or more than one, bank;
- (b) in Government securities; or
- (c) in any other manner which the Authority thinks fit.

(3) Where the Authority receives any money and the money is received on the express condition that it shall be applied for a particular purpose, then the money shall be applied for that purpose and for no other purpose; but without prejudice to the operation of subsection (2) in relation to any such money when not immediately required for that purpose.

19. The Authority shall, with the approval of the President and after making adequate provisions for -

- (a) depreciation of assets;
- (b) repayment of loans and advances;

- (c) repayment of interest on all charges and expenses incurred in connection with loans;
- (d) replacement or acquisition of assets;
- (e) any sinking funds or other special funds set up under section 16(5);
- (f) any matter which the Authority deems necessary, including any investments under section 18(2),

pay the surplus income remaining for each financial year into the Consolidated Fund.

20. (1) For -

- (a) each financial year of the Authority; and
- (b) any longer period which the President may from time to time require,

the Authority shall prepare and submit to the President, not later than such date as the President directs, estimates of the income and expenditure of the Authority, including its capital budget for the coming financial year or any such longer period.

(2) The financial year of the Authority is a period of 12 months beginning each year on 1st January and ending on the 31st December next following.

21. (1) The Authority is liable -

- (a) to taxation in respect of income derived -
 - (i) from carrying on any business or enterprise of the kind referred to in section 6(1)(g) or
 - (ii) by way of dividend or otherwise from any company in which it is a shareholder,

to the same extent as it would be so liable if subsection (3) had not been enacted; and

- (b) to pay trades tax under the Trades Tax Act in carrying on any business or enterprise of the kind referred to in section 6 (1) (g) where, and to the same extent as, it would be so liable if subsection (3) had not been enacted.

(2) Nothing in subsection (3) shall be construed as operating to exempt any company formed by the Authority under the Companies Act, from any tax, duty or fee which is lawfully payable by that company.

(3) Except as provided in subsection (1) -

- (a) the Authority is not liable to any taxation imposed by law in respect of income, whether gross or net, on profits;
- (b) the Authority is not liable to any trades tax under the Trades Tax Act; and

- (c) no duty or fee is chargeable under the Stamp Duty Act, the Land Registration Act, in respect of any instrument executed by or on behalf of, or in favour of, the Authority.

22. (1) The Authority shall keep proper accounts and proper records in relation to the accounts and shall prepare, in respect of each financial year, a statement of accounts in such form as the Minister responsible for finance may direct, being a form which shall comply with the best commercial standards.

(2) The accounts and statement of accounts of the authority shall be audited by an auditor or auditors appointed annually by the Authority and approved by the Minister responsible for finance.

(3) As soon as the accounts and statement of accounts of the Authority in respect of any financial year have been audited pursuant to subsection (2), the authority shall send to the President a copy of the statement together with a copy of any report made by the auditor on that statement or on the accounts of the Authority.

PART III – MISCELLANEOUS

23. (1) The President may, by order, direct that the interest, or any part thereof, of the Government in any property identified in the order shall be transferred to the Authority and the Minister designated in the order shall take, or cause to be taken, all steps legally necessary to effect the transfer.

(2) In this section -

"Government" includes parastatal organizations, statutory corporations and other instrumentalities of the Government;

"interest", in relation to property, includes ownership;

"property" means movable and immovable property of every description.

24. The Minister may make regulations for carrying into effect the purposes and provisions of this Act.

NO SUBSIDIARY LEGISLATION

APPENDIX 5B

Full text of the Fisheries Act, 2014 from the Seychelles. Published October 27, 2014 in the Supplement to Official Gazette.

FISHERIES ACT, 2014*(Act 20 of 2014)***ARRANGEMENT OF SECTIONS****PART I - PRELIMINARY PROVISIONS****Sections**

1. Short title and commencement
2. Application of Act
3. Interpretation
4. Objects of Authority under this Act

PART II - MANAGEMENT OF FISHERIES**Sub-Part 1- Management plans and management measures**

5. Plan for management of fishery
6. Management measures
7. Collection and analysis of statistics and information
8. Record of fishing vessel to be kept by Authority

Sub-Part 2 - Special arrangements

9. Power of Minister to enter into fisheries agreements etc
10. Agreement or authority for scientific research on fisheries

PART III - LICENSING REQUIREMENTS**Sub-Part 1 - Foreign fishing vessel licence**

11. Fishing by foreign fishing vessel prohibited without licence
12. Licence and international agreement

Sub-Part 2 Obligations relating to foreign fishing vessel

13. Entry into and exit from Seychelles waters
14. Entry into Port Victoria
15. Stowage

Sub-Part 3 - Fishing vessel licence and permit other than foreign fishing vessel licence

16. Fishing vessel licence or permit
17. Refusal to grant licence
18. Sport fishing vessel permit
19. Competition sport fishing
20. Regulations requiring licence or permit for other fishing activities or fishing related activities
21. Recreational fishing
22. Validity of licence or permit
23. Grant of new licence or permit upon termination
24. Transfer of licence or permit

Sub-Part 4 - Authorisation to fish outside Seychelles waters

25. Authorisation to fish outside Seychelles waters
26. Validity of authorisation
27. Renewal of authorisation
28. Transfer of authorisation

Sub-Part 5 - Requirements and conditions relating to all fishing vessels and gears

29. Conditions relating to licence, permit or authorisation

Sub-Part 6 - Control of fishing activities

30. Conditions to fish within the Exclusive Economic Zone
31. Prohibition against use of poison etc.,
32. Prohibition against use of spear guns, chumming, catching or marine mammal
33. Fish aggregating device

Sub-Part 7 - Aquaculture

34. Aquaculture

Sub-Part 8 - General

35. Suspension, cancellation and revocation of licence, permit or authorisation
36. Procedure for suspension, cancellation or revocation by Authorisation
37. Effect of suspension, cancellation or revocation

PART IV - APPEALS BOARD

38. Establishment of Appeals Board
39. Casual vacancy
40. Meetings of Appeals Board
41. Powers with respect to witness
42. Questions of law to be decided by Board consisting with Chairperson
43. Appeal to Appeals Board
44. Procedure for commencement of appeal
45. Stay of operation of decision, etc.
46. Powers of Board of appeal
47. Appeal to Supreme Court

PART V ENFORCEMENT MEASURES

Sub-Part 1 Powers of Authorised fishery officers in Seychelles waters and beyond, and on land

48. Appointment of authorised fishery officers
49. Powers of authorised fishery officer
50. Pursuit beyond Seychelles waters
51. Powers of entry and search on land of authorised fishery officers

Sub-Part 2 Procedure upon seizure and detention

52. Custody of seized items
53. Security for release of fishing vessel
54. Procedure for detained fish and other articles

Sub-Part 3 Other enforcement measures

55. Implementation of international fishery conservation and management measures
56. Establishment of observer programme
57. Regional cooperation in surveillance and enforcement

PART VI - OFFENCES

58. Penalty for unlicensed foreign fishing vessel fishing in Seychelles water
59. Penalty for using a vessel for scientific research fisheries without approval of Minister

60. Penalty for landing, transshipping or importing fish to another State, etc.
61. Penalty for undertaking aquaculture activity in Seychelles water
62. Penalty for unlicensed or authorised etc
63. Penalty for landing, selling or receiving etc
64. Penalty for removing, tampering, or damaging of detained fishing vessel, etc..
65. Penalty for producing false or misleading document
66. Penalty where no penalty is provided
67. Proceedings before court
68. Procedure regarding articles in custody of court
69. Presumption

PART VII - MISCELLANEOUS

70. Forfeiture of vessel, fish, etc.
71. Agent
72. Compounding of offences
73. Rules of evidence regarding vessel monitoring system information
74. Rules of evidence regarding vessel monitoring device
75. Photographic evidence
76. Application of the Public Officers (Protection) Act
77. Regulations
78. Repeal
79. Savings and transitional provisions



FISHERIES ACT, 2014

(Act 20 of 2014)

I assent



J. A. Michel
President

17th October, 2014

AN ACT to provide for efficient and effective management and sustainable development of fisheries in accordance with international norms, standards and best practice and an ecosystem approach to fisheries; to provide for the licensing of fishing vessel, to regulate sport fishing, fishing activities; to provide for offences and penalties and to repeal the Fisheries Act, 1986 and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Fisheries Act, 2014 and shall come into operation on such date as by the Minister may, by Notice published in the *Gazette*, appoint.

Short title and
commencement

Application
of Act

2. This Act shall apply to —
- (a) a person, a fishing vessel, a fishing activity or fishing related activity and other matter in Seychelles or in Seychelles waters;
 - (b) a joint venture fishing vessel, a local fishing vessel, a Seychelles fishing vessel on the high seas or in waters under the jurisdiction of another State and all persons on board the vessel; and
 - (c) a person and a fishing vessel in any other waters —
 - (i) following hot pursuit in accordance with international law as referred to in Article III of the United Nations Convention on the Law of the Sea 1982; or
 - (ii) as required by an arrangement or agreement to which Seychelles is a party; or
 - (d) a citizen of Seychelles who uses any vessel registered in Seychelles and commits an offence outside Seychelles waters under this Act.

Interpretation

3. In this Act, unless the context otherwise require —
- “Appeals Board” means the board established under section 38;
- “applicant”, in relation to an application for a licence, authorisation or permit, includes any person making the application on his or her behalf and with his or her authorisation;
- “aquaculture” —
- (a) means the cultivation, propagation or farming at sea or on land of fish from eggs, spawn, spat, fingerling or seed; and

- (b) includes the rearing and ranching of fish taken locally or imported into Seychelles;

“authorised fishery officer” means a person so appointed under section 48(1) or deemed to be authorised fishery officer under section 48(2);

“Authority” means the Authority established by the Seychelles Fishing Authority (Establishment) Act 1984;

Cap 214

“authorisation” means the permission that a person or vessel shall obtain to fish in Seychelles waters or engage in fishing related activities for the purpose of scientific research or to fish outside Seychelles waters;

“beneficial owner” means the person who exercises ultimate dominion without the consent of any other person, or who is able to secure that consent by arrangement or as of right, and in the case of a trust, agency, nominee or other such arrangement (whether formal, or in writing, or otherwise) and includes the ultimate beneficiary, the principal or the person represented by the nominee respectively and cognate words shall be construed accordingly;

“by-catch” —

- (a) means fish harvested in a fishery but which —
 - (i) are not the species of fish that are directly targeted or appear to be directly targeted;
 - (ii) belong to any species not identified as by-catch in an applicable licence or plan of management for a fishery; or

- (iii) belong to any species not identified in an applicable licence or plan of management for a fishery except for the species falling within subparagraph (i);

- (b) includes discards; and

“co-management arrangement” means a partnership arrangement in which the Government, local resource users (fishers), organisations including Non-Governmental Organisations, and other fisheries and marine resource stakeholders including tourism operators who share the responsibility and authority for decision making in the management of a fishery;

“competition sport fishing” means any fishing activity which —

- (a) is undertaken for sport among competitors who are observing a prescribed set of rules;
- (b) involves the hiring, chartering or leasing of a vessel not exceeding 40 metres in length overall, and catch for charitable purposes authorised by the Authority and
- (c) does not result in the trading, offering for sale or selling of fish;

“continental shelf” has the meaning given to it under section 11 of the Maritime Zones Act;

“ecosystem approach to fisheries” means an approach that balances diverse societal objectives, by taking into account the knowledge and

uncertainties about biotic, abiotic and human components of ecosystems and their interactions, and applying an integrated approach to fisheries within ecologically meaningful boundaries;

“exclusive economic zone” has the meaning given to it under section 9 of the Maritime Zones Act;

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“fish” means any aquatic plant or animal with the exception of birds, and includes any fish, crustacean, mollusc, coral, echinoderm, holothurian, or aquatic reptile or aquatic mammal and its shell, eggs and any other naturally occurring products;

“fish aggregating device” means any device placed in the water to aggregate fish and includes any natural floating object upon which a device has been placed to facilitate its location;

“fish product” means —

- (a) any fish or part of any fish; or
- (b) any fresh, frozen, prepared or processed fish products;

“fishery —

- (a) means one or more stocks of fish, vessels and gears used to capture fish and which can be integrated as a unit for the purpose of conservation, management and development of fishery; and
- (b) includes the activities leading to, resulting in, and resulting from the harvesting of fish through the capture of wild fish or the raising of fish through aquaculture;

"fishing" —**(a) means —**

- (i) searching for, catching, taking or harvesting fish or attempting any such activity;
- (ii) placing, searching for or recovering a fish aggregating device or associated equipment including a radio beacon; and

(b) includes activities performed in support of fishing;**"fishing related activity" means —**

- (a) transshipping fish to or from any vessel;
- (b) landing of fish from any vessel;
- (c) storing, packaging or processing of fish;
- (d) transporting fish except as part of a general cargo;
- (e) refuelling or supplying fishing vessels;
- (f) attempting or preparing to do any of the acts referred to in paragraphs (a) to (e);

"fishing vessel" —

- (a) means any vessel used, intended to be used or capable of being used for fishing or fishing related activity; and
- (b) includes a support ship, carrier vessel and any other vessel directly or indirectly involved in fishing operations or used for the treatment or

processing of fish or wholly or partly for the transport of fish;

"foreign fishing vessel" means a vessel not registered in Seychelles;

"gear" includes any net, pot, trap, line, pole, dredge, fish aggregating device or other apparatus of any kind and any attachment of any kind thereto, used or capable of being used for catching fish including mechanical equipment used or capable of being used for the casting or hauling of any such item and includes all and any electronic devices wholly or partly used or capable of being used for locating fish or establishing the position of fish;

"harbour" means harbour of Victoria and any bay, roadstead or place within three nautical miles from any coast within Seychelles;

"international fisheries conservation and management measure" means a measure established by a Regional Fisheries Management Organisation or other international fisheries management organisation to which Seychelles is a party;

"joint venture fishing vessel" means a fishing vessel which —

- (a) is registered in Seychelles under the Merchant Shipping Act;
- (b) exceeds 18 metres in length overall;
- (c) is to be licensed for tuna and tuna-like species, and other species as per condition of the licence.

- (d) is wholly beneficially owned by a company established under any the written law of which at least 51 per cent of the actual effective shares are beneficially owned by a citizen of Seychelles and having a place of business in Seychelles;

“licence” means the permission that a person shall obtain before engaging in a fishing activity or fishing related activity;

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

- (a) registered or identified as such under the Merchant Shipping Act; and
- (b) wholly beneficially owned by one or more citizens of Seychelles or by a company established under any written laws of which all of the shares are beneficially owned by citizens of Seychelles;

“Minister” means the Minister responsible for fisheries;

“master”, in relation to a vessel, means the person for the time being in command or in charge of the vessel;

“observer” means a person appointed by the Seychelles Fishing Authority as such under section 56(2);

“owner”, in relation to a vessel —

- (a) means a beneficial owner; and
- (b) includes —

Cap 127A

- (i) any part owner;
- (ii) charterer, whether bareboat, time or voyage;
- (iii) a person who acts in the capacity of a charterer; and
- (iv) a party upon whom control over the destination, function, operation of the vessel is conferred under a management agreement or a similar agreement;

“permit” means the permission that a person shall obtain before engaging in a fishing activity or fishing related activity in Seychelles waters;

“recreational fishing” means any fishing activity undertaken by a vessel not exceeding 10 metres for recreational purposes which does not involve any commercial activity and result in the trading, offering for sale or selling of fish;

“Regional Fisheries Management Organisation” means a subregional or agreement having the competence to establish conservation and management means for particular straddling fish stocks or highly migratory fish stocks as specified in the United Nations Fish Stocks Agreement 1995;

“Register” means the register of ships kept by the Registrar under the Merchant Shipping Act;

Cap 127A

“sedentary species” means any organism which, at the harvestable stage, are immobile on or under the sea-bed or unable to move except in constant physical contact with the sea-bed or the subsoil;

Cap 127A

"Seychelles fishing vessel" means any fishing vessel which is —

- (a) registered in Seychelles under the Merchant Shipping Act;
- (b) to be licensed for tuna and tuna-like species; and other species as per condition of the license; and
- (c) wholly beneficially owned by one or more foreign citizens only or by a company established under the written laws of Seychelles of which all of the shares are beneficially owned by foreign citizens;

"Seychelles waters" means the exclusive economic zone, the territorial sea, archipelagic waters, internal waters and all other waters subject to the fisheries jurisdiction of Seychelles;

"sport fishing" means any fishing activity undertaken for sport or recreation which involves the hiring, chartering or leasing of a vessel and its' annexes not exceeding 40 metres in length overall but which does not result in the trading, offering for sale or selling of fish;

"sport fishing permit" means the permission that a vessel shall obtain before it engages in any form of sport fishing;

"vessel" includes every description of water craft used or capable of being used as a means of transportation on water;

"vessel monitoring device" means a device, instrument or equipment which monitors and

records and/or transmits automatically, either independently or in conjunction with other equipment, information relating to all aspects of the fishing operations of the vessel;

"vessel tracking device" means a device, instrument or equipment installed or placed on board a fishing vessel which independently transmits and records automatically, information relating to the location and fishing activities including sailing route of the vessel;

"vessel monitoring system" means a satellite based monitoring system approved by the Authority which at regular intervals provides data from the vessel monitoring device on board a vessel to the Authority.

4. The objects of the Authority under this Act shall be to provide for the effective management and sustainable development of fisheries in accordance with —

Objects of
Authority
under this
Act

- (a) internationally recognised norms, standards and best practice including the United Nations Convention on the Law of the Sea (1982) and the Code of Conduct for Responsible Fisheries, 1995 of the Food and Agriculture Organisation, Indian Ocean Tuna Commission Conservation and Management measures; and
- (b) an ecosystem approach to fisheries which ensures that the development and management of fisheries addresses the multiple needs and desires of the society without jeopardising the options for future generations to benefit from the full range of goods and services provided by marine ecosystems.

PART II - MANAGEMENT OF FISHERIES

Sub-Part 1 Management plans and management measures

Plan for
management
of fishery

5.(1) The Authority shall prepare and keep under review a plan for management of a fishery.

(2) A plan for management of a fishery may set out —

- (a) the current state of the fishery;
- (b) the biological, ecological and socio-economic objectives for the fishery;
- (c) the management strategy for the fishery including biological, ecological and socio-economic indicators and reference points;
- (d) the management measures by which the objectives and strategy are to be attained, including harvest control rules;
- (e) the amount of fish or fishing effort to be allocated, if the measures include quota systems, between individuals or fishing fleets;
- (f) measures to mitigate ecosystem impacts in accordance with best practice for adoption of an ecosystem approach to fisheries, including by-catch and habitat damage;
- (g) the licensing measures to be applied;
- (h) the role of stakeholders in decision making relating to the management plan; and
- (i) performance criteria against which, and time frames within which, the measures taken

under the plan of management may be assessed.

(3) In the preparation or review of the plan for the management of a fishery, the Authority shall consult the fisheries industry, local fishermen and such other persons engaged in fishing and fishing related activities as appear to the Authority to be appropriate.

(4) In the management of a fishery, the Authority, if it considers necessary, may enter into a co-management arrangement with any person.

(5) The Authority may consult the fisheries management authorities of other States in the Indian Ocean, and in particular with those sharing the same or related stocks, with a view to ensuring the harmonisation of their respective plans for the management of fisheries.

(6) The fishery management plan or review of the plan shall be submitted to the Minister for approval.

(7) The Minister shall cause the plan for the management of a fishery or review of the plan approved under subsection (6) to be published in the *Gazette*.

(8) Compensation is not payable, where a management plan is made or amended or anything previously permitted is prohibited or regulated under the plan.

(9) Subsection (8) does not prevent regulations or a management plan providing for payment of compensation.

6.(1) The Minister may make regulations prescribing measures for the proper management of a fishery.

Management
measures

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) closed seasons;
- (b) closed areas or waters;
- (c) species of fish to be regulated;
- (d) specifications of authorised gear;
- (e) size or other characteristics of fish;
- (f) prohibited fishing method and gear;
- (g) limitation of catch or effort by restricting entry or by determining a total allowable catch or total allowable effort including the establishment of any quota system allocating catch or effort;
- (h) fishing capacity controls; and
- (i) by-catch, discards and habitats to be avoided.

(2) Any regulations made under this section prescribing management measures may regulate the following —

- (a) taking, possessing, purchasing, selling, importing or exporting of any gear or fish; or
- (b) engaging in fishing or fishing related activities in the closed areas or waters or possessing or using a vessel, aquaculture equipment, fish aggregating device or anything else in the closed areas or waters.

(3) Compensation is not payable if measures for the proper management of a fishery are made or amended or anything previously permitted is prohibited or regulated under the regulations.

(4) Subsection (3) does not prevent regulations made under this section providing for payment of compensation.

7.(1) The Authority shall collect and analyse statistical data and other information on fisheries, fishing related activities and aquaculture, including fishermen engaged in fishing activities.

Collection
and analysis
of statistics
and
information

(2) Every person engaged in fishing, fishing related activities or aquaculture shall supply information regarding such activities to the Authority in such form and manner as may be prescribed by the Minister.

(3) A person who receives information pursuant to this Act shall not use or disclose such information except for the purposes of this Act.

(4) Without prejudice to subsection (3), information relating to the position of a fishing vessel received by the Authority pursuant to this Act shall be communicated to the relevant authority —

- (a) upon request, for the purposes of search and rescue; or
- (b) where the Authority has reasonable grounds for believing that an offence is being or is about to be committed or for the purposes of a criminal investigation.

(5) The Minister may enter into arrangements or agreements with other States or territories, either directly or through an international organisation, providing for the exchange, in a standardised format, and in a manner consistent with applicable confidentiality requirements, of fisheries information, including evidentiary information relating to breaches of national fisheries legislations and international fisheries conservation and management measures.

Record of
fishing
vessel to be
kept by
Authority

8.(1) The Authority shall make and maintain a Record of fishing vessels that have been granted a licence, permit or an authorisation under this Act and take all measures to ensure that all such fishing vessels are entered in the Record of fishing vessels.

(2) The Record of fishing vessels shall contain —

- (a) the name of the fishing vessel;
- (b) the port and country of registration;
- (c) the identification number of the fishing vessel;
- (d) any identification mark assigned to the fishing vessel;
- (e) previous registration details;
- (f) communication details;
- (g) the Lloyds or International Maritime Organisation registration number;
- (h) the international radio call sign;
- (i) the length overall, draft and beam;
- (j) the engine power;
- (k) the net and gross tonnage;
- (l) the type of refrigeration system;
- (m) the material of build;
- (n) the hold capacities in cubic metres;
- (o) the date of build;
- (p) the number of crew including fishermen;

- (q) the name and address of the agent in Seychelles;
- (r) the name, address and nationality of any person with beneficial ownership of the fishing vessel;
- (s) particulars of any previous offences committed by the use of the fishing vessel;
- (t) type of gear; and
- (u) any other information as the Authority may determine.

(3) If a person in control of a fishing vessel is convicted of an offence under this Act involving the use of a fishing vessel, the Authority may, in appropriate circumstances, record the conviction in the Record of Fishing Vessels against the licence, permit or authorisation applying to the vessel even though the person is not the holder of the licence, permit or authorisation.

Sub-Part 2 Special arrangements

9.(1) The Minister may enter into agreements with other states, intergovernmental organisations or associations representing foreign fishing vessel owners, allocating fishing rights in Seychelles waters to vessels of those states, organisations or associations.

Power of
Minister to
enter into
fisheries
agreements
etc

(2) The total fishing rights allocated by agreements made under subsection (1) shall be in accordance with any applicable plan for the management of a fishery or international fisheries conservation and management measures, and where such plan or measures do not exist, a precautionary approach shall be applied.

(3) An agreement negotiated under subsection (1) shall include provisions establishing the responsibility of those

other states, intergovernmental organisations or associations representing foreign fishing vessel owners, to take all necessary measures to ensure compliance by their fishing vessels in Seychelles waters with —

- (a) any such agreement;
- (b) the written laws of Seychelles relating to fishing and fishing related activities;
- (c) any international fisheries conservation and management measures; and
- (d) such other provisions as may be prescribed.

10.(1) The Authority, having received the approval of the Minister, shall —

- (a) enter into agreements with persons or institutions to carry out fisheries-related research in any part of Seychelles waters; or
- (b) in writing grant an authorisation to any person or vessel to fish in Seychelles waters or engage in fishing related activities for the purpose of scientific research.

(2) An authorisation under subsection (1)(b) may be on terms and conditions specified by the Authority.

PART III - LICENSING REQUIREMENTS

Sub-Part 1 Foreign fishing vessel licence

11.(1) A foreign fishing vessel shall not be used for fishing or any fishing related activity in Seychelles waters or for sedentary species on the continental shelf, except under and in accordance with a licence granted by the Authority.

Agreement or
authorisation
for scientific
research on
fisheries

Fishing by
foreign fishing
vessel
prohibited
without
licence

(2) An application for a licence shall be made to the Authority in the prescribed form and manner accompanied with the prescribed fee.

(3) Subject to this section, the Authority may, on terms and conditions determined by it, grant a licence in the prescribed form, authorising the use of a foreign fishing vessel for the purpose of fishing or any fishing related activity in Seychelles waters or for sedentary species on the continental shelf.

(4) A licence under subsection (3) shall —

- (a) be granted on payment of such fee as provided for in an international agreement under section 12; or
- (b) in the absence of an agreement under section 12, be granted on payment of the prescribed fee.

(5) A licence under this section shall, unless earlier cancelled or revoked under section 35, not extend beyond the term of the licence or an international agreement under section 12.

(6) The Authority shall refuse to grant a licence under this section —

- (a) until an application in respect of the licence notifies the Authority of the name and address of the vessel's agent, pursuant to section 71;
- (b) where the foreign fishing vessel in respect of which the licence is sought has a record of non-compliance with international fisheries conservation and management measures except where the ownership of the vessel has

- subsequently changed and the new owner provides sufficient evidence to the satisfaction of the Authority that the previous owner or master has no legal, beneficial or financial interest in, or control of, that foreign fishing vessel;
- (c) where the foreign fishing vessel in respect of which the licence is sought is included in a list of fishing vessels having engaged in, or supported, illegal, unreported or unregulated fishing established by a Regional Fisheries Management Organisation or any other appropriate regional or international organisation;
 - (d) where the foreign fishing vessel in respect of which the licence is sought is not recorded on the list of authorised fishing vessels by a Regional Fisheries Management Organisation to which Seychelles is a party or on any other list of authorised fishing vessels that is recognised by the Authority;
 - (e) where an application in respect of a foreign fishing vessel has not provided sufficient financial and other guarantees for the fulfilment of all obligations as may be determined by the Authority;
 - (f) unless it is satisfied that the vessel in respect of which the licence is sought has satisfied all financial obligations in respect of previous fishing activities or fishing related activities in Seychelles waters under a previous licence granted under this Act, by that fishing vessel, its master or owner at the time of the application for a licence.

12. A foreign fishing vessel licence shall not be granted under section 11, unless —

Licence and international agreement

- (a) there is an agreement in force between the Republic of Seychelles and an intergovernmental organisation to which a member State of the organisation in which the vessel is registered has delegated the power to negotiate fishing agreements;
- (b) there is an agreement in force between the Republic of Seychelles and an association representing foreign fishing vessel owners of which the owner of the fishing vessel is a member;
- (c) there is an agreement entered into under section 9; or
- (d) the Minister determines that an agreement under section 9 is not practical and the applicant provides sufficient financial and other guarantees for the fulfilment of all obligations under this Act as the Minister may determine.

Sub-Part 2 Obligations relating to foreign fishing vessel

13. The master, of a foreign fishing vessel licensed under section 11, shall at least 24 hours before the vessel enters into and exits from, Seychelles waters, provide by fax or email or any other means approved by the Authority, to the Authority, in addition to any other authority or body required under any other written law, its position at the time of entry into, and exit from, the Seychelles waters and the quantity of fish on board by species.

Entry into and exit from Seychelles waters

14. The master of a foreign fishing vessel —

- (a) not licensed pursuant to section 11 shall, by fax or email or any other means approved by the Authority, at least 48 hours; or

Entry into harbour or Port Victoria

- (b) licensed pursuant to section 11 shall, by fax or email or any other means approved by the Authority, at least 24 hours,

before the expected time of arrival of the vessel in the harbour or Port Victoria, notify the Authority, in addition to any other authority or body required under any other written law, of the purpose of its call and provide any position report that may be required.

Stowage

15. A foreign fishing vessel that is not licensed pursuant to section 11 shall, at all times that it is in Seychelles waters, keep its gear stowed in such manner as may be prescribed and deactivate and not use any device on board that is used directly or indirectly for detecting fish.

Sub-Part 3 Fishing vessel licence or permit

Other
fishing
vessel
licence or
permit

16.(1) A joint venture fishing vessel, a local fishing vessel or a Seychelles fishing vessel shall not be used for fishing or any fishing related activity in Seychelles waters except under and in accordance with a licence granted by the Authority.

(2) An application for a licence under this section shall be made to the Authority in the prescribed form and manner and accompanies with prescribed fees.

(3) An application under subsection (2) shall provide the Authority with such information as it require for a proper consideration of the application.

(4) Subject to section 17, the Authority may, on such terms and conditions as it may determine, grant a licence in the prescribed form, for the use of the vessel for the purpose of fishing or any fishing related activity in Seychelles waters.

(5) A licence under subsection (4) shall be granted on payment of the prescribed fee.

Refusal to
grant
licence

17. The Authority shall refuse to grant a licence under section 16—

- (a) unless it is satisfied that the vessel in respect of which the licence is sought is a joint venture fishing vessel, a local fishing vessel or a Seychelles fishing vessel as defined;
- (b) in respect of a Seychelles fishing vessel, until the application in respect of the vessel notifies the Authority of the name and address of the vessel's agent, pursuant to section 71;
- (c) where the grant of the licence is not compatible with this Act, a regulation made thereunder or a licensing programme specified in a plan for the management of a fishery under section 5;
- (d) unless it is satisfied that the applicant will be able or willing to comply with the terms and conditions of the licence;
- (e) unless it is satisfied that the applicant has satisfied such requirements as the Authority may determine;
- (f) where the fishing vessel in respect of which the licence is sought has a record of non-compliance with international fisheries conservation and management measures except where the ownership of the fishing vessel has subsequently changed and the new owner provides sufficient evidence to the satisfaction of the Authority demonstrating that the previous owner or master has no legal, beneficial or financial interest in, or control of, the fishing vessel; or
- (g) where the fishing vessel in respect of which the licence is sought is not included in a list of vessels having engaged in, or supported,

illegal, unreported or unregulated fishing established by a Regional Fisheries Management Organisation or any other appropriate regional or international organisation.

Sport fishing
vessel
permit

18.(1) A vessel shall not be used for sport fishing in Seychelles waters except under and in accordance with a sport fishing permit granted by the Authority.

(2) An application for a sport fishing permit under this section shall be made to the Authority in the prescribed form and manner accompanied with the prescribed fees.

(3) Subject to this section the Authority may, on such terms and conditions as it may determine, grant a sport fishing permit in the prescribed form authorising a vessel to be used in Seychelles waters or, for such sport fishing activities as may be specified in the permit.

(4) A sport fishing permit under subsection (3) shall be granted on payment of the prescribed fee.

(5) The Authority shall refuse to grant a sport fishing permit under this section unless it is satisfied that —

- (a) the grant of the sport fishing permit is compatible with this Act, a regulation made thereunder or a licensing programme specified in a plan for the management of a fishery under section 5;
- (b) the applicant will be able or willing to comply with the terms and conditions of the sport fishing permit;
- (c) the vessel in respect of which the sport fishing permit is sought has no record of non

compliance with international fisheries conservation and management measures except where the ownership of the vessel has subsequently changed and the new owner provides sufficient evidence to the satisfaction of the Authority that the previous owner or master has no legal, beneficial or financial interest in, or control of, the vessel; or

- (d) the vessel in respect of which the sport fishing permit is sought is not included in a list of vessels having engaged in, or supported, illegal, unreported or unregulated fishing established by a Regional Fisheries Management Organisation or any other appropriate regional or international organisation.

19.(1) A person shall not organise or cause to be organised a competition sport fishing in Seychelles waters except under and in accordance with a permit granted by the Authority.

Competition
sport fishing

(2) A vessel shall not be used for the purposes of competition sport fishing in Seychelles waters except under and in accordance with a permit granted by the Authority.

(3) A holder of a sport fishing permit may apply for a permit under this section.

(4) An application for a permit under subsection (1) or (3) shall be made in such form as may be determined by the Authority.

(5) A permit under this section shall be granted on payment of the prescribed fee and on such terms and conditions as the Authority may determine.

Regulations
requiring
licence or
permit for
other fishing
activities
and fishing
related
activities

20.(1) The Minister may make regulations requiring a licence or permit for—

- (a) any kind of fishing or fishing related activity in Seychelles waters or for sedentary species on the continental shelf, with or without the use of a vessel or, any fishing gear; or
- (b) the use of a vessel for any fishing related activity.

(2) Where a licence or permit is required under subsection (1), it may be granted by the Authority in the prescribed form and, subject to such terms and conditions and payment of such fee as may be prescribed.

(3) A licence or permit required by regulations made under this section shall authorise any person to conduct any kind of fishing or fishing related activity for which the licence or permit is required.

Recreational
fishing

21. A vessel used for recreational fishing in Seychelles waters shall be exempted from the requirement of having a licence or permit save as otherwise prescribed.

Validity
of licence
or permit

22.(1) A licence or permit granted under this Sub-Part or regulations made under section 20 shall—

- (a) unless earlier cancelled or revoked under section 35, be valid for a period not exceeding twelve months from the date of grant of the licence or such period specified in the licence or permit or be valid for such period prescribed; or
- (b) automatically terminate where a fishing vessel in respect of which the licence or permit has been granted ceases to be such a fishing vessel under this Act or regulations made under section 20.

(2) Where a joint venture fishing vessel, local fishing vessel or Seychelles fishing vessel ceases to be registered under the Merchant Shipping Act, any licence granted under this Sub-Part shall lapse.

23.(1) A licence or permit under this Sub-Part or regulations made under section 20 shall not be renewed.

Grant of new
licence or
permit upon
termination

(2) The holder of the licence or permit under this Sub-Part or regulations made under section 20 may apply to the Authority for the grant of a new licence or permit and this Sub-Part shall apply.

(3) Compensation shall not be payable if the Authority refuses to grant a new licence or permit under this Sub-Part.

24. A licence or permit granted under this Sub-Part or regulations made under section 20 shall not be transferable except as otherwise prescribed for the limitation of entry into a fishery.

Transfer of
licence or
permit

Sub-Part 4 Authorisation to fish outside Seychelles waters

25.(1) Subject to this section, except for joint venture fishing vessels, local fishing vessels or Seychelles fishing vessels, no fishing vessels or vessels which Seychelles is bound by an international agreement not to authorise shall be used for fishing or fishing related activities outside Seychelles waters.

Authorisation
to fish outside
Seychelles
waters

(2) No joint venture fishing vessel, local fishing vessel or Seychelles fishing vessel shall be used for fishing outside Seychelles waters except under and in accordance with an authorisation granted by the Authority.

(3) An application to fish outside Seychelles waters shall be made to the Authority in the prescribed form and manner and accompanied with the prescribed fees.

(4) The applicant shall give such information or evidence that the Authority requires for considering the application.

(5) An authorisation shall be granted on payment of the prescribed fee and subject to such conditions as the Authority may specify or determine.

(6) An authorisation under subsection (5) may be varied at any time.

(7) The Authority may, in writing, refuse to grant an authorisation where the fishing vessel in respect of which the application is made —

- (a) is included in a list of vessels having engaged in, or supported, illegal, unreported or unregulated fishing established by a Regional Fishing Management Organisation or any other appropriate regional or international organisation; or
- (b) has a record of non compliance with international fisheries conservation and management measures.

Validity of
authorisation

26. An authorisation granted under section 25 shall —

- (a) unless earlier cancelled or revoked under section 35, be valid for a period not exceeding twelve months from the date of grant of the authorisation or for such period as may be specified in the authorisation or be valid for such period prescribed; or
- (b) automatically terminate where the fishing vessel in respect of which the authorisation has been granted ceases to be such a fishing vessel under this Act or regulations made thereunder.

27.(1) An authorisation under section 25 shall not be renewed.

Renewal of
authorisation

(2) The holder of an authorisation under section 25 may apply to the Authority for the grant of a new authorisation and this Sub-Part shall apply.

(3) Where the Authority refuses to grant a new authority, compensation shall not be payable.

28. An authorisation shall not be transferred under this Act, regulations made thereunder or a plan for the management of a fishery.

Transfer of
authorisation

Sub-Part 5 - Requirements and conditions relating to fishing vessels and gears

29.(1) Every fishing vessel or fishing gear required under this Act to be used in accordance with a licence, permit or authorisation, shall be used in accordance with this Act or regulations made thereunder, and, in the case of a foreign fishing vessel, with requirements made applicable to the fishing vessel by an agreement under section 12, and, in all cases, subject to any terms and conditions which may be provided in the licence, permit or authorisation, including terms and conditions relating to —

Conditions
relating to
licence,
permit or
authorisation

- (a) the type and method of fishing or any fishing related activity authorised;
- (b) the areas within which, and periods during which, such fishing or fishing related activity is authorised;
- (c) the target species and amount of fish authorised to be taken, including any restriction on by-catch;
- (d) communication equipment, vessel monitoring devices, position fixing equipment and any other equipment; and

- (e) mandatory reporting requirements.

(2) Where it is expedient for the proper management of a fishery, any terms and conditions attached to a licence, permit or authorisation may be varied by the Authority.

(3) Where any terms and conditions attached to a licence, permit or authorisation is varied under subsection (2), the holder of the licence, permit or authorisation shall be notified in writing of such variation as soon as practicable and the variation shall apply from the date of it being received by the holder of the licence, permit or authorisation.

Sub-Part 6. Control of fishing activities

30.(1) A person shall not fish within the Exclusive Economic Zone specified under the Maritime Zone Act —

- (a) with a net except under and in accordance with a licence granted by the Authority;
- (b) with a trap except under and in accordance with a permit granted by the Authority.

31.(1) A person shall not —

- (a) use any poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering such fish more easily caught; or
- (b) carry or have in his or her possession or control on board a vessel, any explosive, poison or other noxious substance in circumstances indicating an intention of using such explosive, poison or other noxious substance for any of the purposes referred to in paragraph (a).

Conditions to fish in within the Exclusive Economic Zone under Maritime Zone Act, 1999

Prohibition against use of poison etc

(2) Any explosive, poison, or other noxious substance found on board any vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1).

32.(1) Subject to the regulations, a person shall not use any spear gun for fishing or be in possession of a spear gun in circumstances which raise a reasonable inference that the spear gun has been used or is intended for fishing in Seychelles.

(2) Subject to the regulations, a person shall not use any unauthorised gear in Seychelles waters.

(3) Subject to the regulations, a person shall not attract shark in Seychelles waters by placing in the water fish, part of fish, blood, or such matter upon which shark feed, lured to, for the purpose of making use of shark for any sport, game, or any activity, and this shall not restrict any approved scientific research or activity.

(4) A person shall not kill, chase, take any marine mammal alive or dead in Seychelles waters.

33.(1) Subject to the regulations, a person shall not place or set any fish aggregating device without the written authorisation of the Authority in Seychelles waters.

(2) The Authority may, under such terms and conditions as it may determine or as otherwise prescribed, authorise the placing or setting of fish aggregating device under subsection (1).

Sub - Part 7 Aquaculture

34.(1) The Authority shall manage the development of aquaculture in any part of Seychelles or Seychelles waters through an aquaculture sector plan.

(2) Subject to the regulations, a person shall not install or operate an aquaculture establishment in any part of

Prohibition against use of Spear guns, unauthorised gear, chumming, catching of marine mammal

Fish aggregating device

Aquaculture

Seychelles or Seychelles waters otherwise than under the authorisation of, and in accordance with the conditions of, an aquaculture licence granted by the Authority.

(3) Subject to the regulations, a licence granted under this section shall be valid for such period and subject to such conditions including the payment of such fees, as may be prescribed.

(4) Without prejudice to the generality of subsection (3), a licence may, in particulars, contain —

- (a) conditions of sitting, design and materials used in the construction of the aquaculture establishment;
- (b) health conditions of fish;
- (c) prohibition of the introduction of species that are not naturally occurring in Seychelles;
- (d) measures for the prevention of the spread of fish diseases to the wild stocks;
- (e) measures for the control of pollution and infrastructure impacts on the environment resulting from aquaculture; and
- (f) commercial provisions relating to the marketing of fish and fish products.

Sub-Part 8 General

35.(1) The Authority may suspend, cancel or revoke a licence, permit or authorisation granted by it on any of the following grounds —

- (a) the suspension, cancellation or revocation is necessary or expedient for the management and conservation of fish resources;

Suspension
cancellation
and
revocation of
licence,
permit or
authorisation

- (b) a vessel or any gear in respect of which the licence, permit or authorisation was granted has been used, or any activity has been conducted, in contravention of this Act, any regulations made thereunder, or any terms and conditions of the licence, permit or authorisation;
- (c) a fishing vessel or gear does not comply with marking requirements as prescribed; or
- (d) the holder has been convicted of an offence under this Act.

(2) The Authority shall, while taking any decision under subsection (1), have regard to —

- (a) the prescribed criteria or a plan for the management of a fishery for the suspension, cancellation or revocation of a licence, permit or authorisation; and
- (b) if the holder has been convicted of an offence under this Act, the category of the offence under this Act and penalty imposed by the court for the offence.

(3) When the Authority suspends, cancels or revokes a licence, permit or authorisation, the Authority may also suspend, cancel or revoke any other licence, permit or authorisation issued by it that are held by the holder.

36.(1) The Authority shall not suspend, cancel or revoke a licence, permit or authorisation under section 35 without giving the holder of the licence, permit or authorisation a written notice that —

- (a) states the proposed action;

Procedure for
suspension,
cancellation or
revocation by
Authority

- (b) states the grounds for the proposed action;
- (c) outlines the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is suspension of the licence, permit or authorisation, states the proposed suspension period; and
- (e) invites the holder to show cause, within period of 14 days, as to why the proposed action should not be taken,

inform the agent of the flag vessel, the flag state or association, if the licence was issued under an agreement.

(2) If, after considering all written representations made within the period provided under subsection (1) (d), the Authority still considers grounds to take the proposed action exists, the Authority may —

- (a) suspend the licence, permit or authorisation for a specified period, for a period not exceeding the proposed suspension period; or
- (b) cancel or revoke the licence, permit or authorization.

(3) The Authority shall inform the holder of the decision by a written notice, stating —

- (a) the reasons for the decision; and
- (b) that the holder may appeal against the decision to the Appeals Board within a period of 28 days.

(4) The decision shall take effect on the next day —

- (a) when the notice is given to the holder; or
- (b) of effect stated in the notice.

(5) Where the licence, permit or authorisation is suspended, cancelled or revoked on the grounds of the conviction of the holder for an offence —

- (a) the suspension, cancellation or revocation does not take effect until —
 - (i) the end of the period to appeal against the conviction; and
 - (ii) if an appeal is made against the conviction, the appeal is finally decided; and
- (b) the suspension, cancellation or revocation has no effect if the conviction is quashed on appeal.

(6) The compensation shall not be payable if the Authority suspends, cancels or revokes a licence, permit or authorisation.

(7) Subsection (6) does not prevent regulations or a plan for the management of a fishery providing for payment of compensation.

37.(1) Where a licence, permit or authorisation is suspended, it continues to be suspended until the end of the suspension period.

Effect of
suspension,
cancellation
or revocation

(2) Where a licence, permit or authorisation is cancelled or revoked under section 35(1)(a), the proportion of any fees paid with respect to the unexpired portion of the licence, permit or authorisation shall be refunded to the holder of the licence, permit or authorisation.

(3) Where a licence, permit or authorisation in respect of a fishing vessel registered under the Merchant Shipping Act is cancelled or revoked, the fishing vessel may, upon notification by the Authority, be removed from the Register kept by the Record of fishing vessel kept under section 8.

PART IV - APPEALS BOARD

Establishment
of Appeals
Board

38.(1) There is hereby established an Appeals Board.

(2) The Appeals Board shall consist of the following members appointed by the President —

- (a) an Attorney-at-Law who shall be chairperson of the Board; and
- (b) 4 other members, at least 2 of whom shall have knowledge and experience in fishing industry, and at least 1 of whom shall be a member of the Board of the Authority.

(3) The President shall cause the names of the Chairperson and other members of the Appeals Board to be published in the *Gazette* and every appointment shall take effect from the date of publication.

(4) The Chairperson and other members of the Appeals Board shall hold office for a period of 2 years and are eligible for re-appointment at the end of a term of office.

(5) The Chairperson and members of the Appeals Board shall be paid such allowance as the Minister may in consultation with the Minister responsible for Finance, determine.

(6) The Chairperson and other members shall be removed from office by the President, if he or she —

- (a) is absent from 3 consecutive sittings of the Board without the Chairperson's leave and without reasonable excuse;
- (b) commits an offence which calls into question his or her professional standing;

- (c) becomes employed by, or a contractor of, the Authority;
- (d) engages in misbehavior, becomes incapable of performing the function of a member because of physical or mental incapacity; or
- (e) is adjudged insolvent.

(7) A member of the Appeals Board may resign by signed notice of resignation given to the President.

39. Where before the expiry of the term of office of the Chairperson, or any other member, a vacancy arises for any reason, the person appointed to fill the vacancy shall hold office for the unexpired period of the term for which his or her predecessor would have held office if such vacancy had not arisen.

Casual
vacancy

40.(1) The sittings of the Appeals Board shall be held at the time and place fixed by the Chairperson.

Meetings
of Appeals
Board

(2) The Appeals Board may be formed by the Chairperson and 3 other members to hear an appeal.

(3) The Chairperson or, in the absence of the Chairperson, a member elected by the members present to preside at the meeting, shall preside at a sitting of the Appeals Board.

(4) Any questions at a sitting of the Appeals Board shall be decided by a majority of the votes of the members present and, in the event of an equality of votes, the Chairperson or the member presiding shall have a casting vote.

(5) The Appeals Board is not bound by the rules of evidence and may inform itself in a way it considers appropriate, while observing the principles of natural justice.

(6) Subject to the procedural rules prescribed by regulations, the Appeals Board may regulate its own proceedings.

Powers of
witness

41.(1) The Chairperson, or a member of the Appeals Board authorised by the Chairperson may, by written notice, require any person to appear before the Board at a specified time and place to give evidence or to produce a document.

(2) The Chairperson, or a member of the Appeals Board authorized by the Chairperson, may administer an oath or affirmation to the person appearing as a witness before the Appeals Board.

(3) A person who is given a notice under subsection (1) shall —

- (a) attend the sitting of the Appeals Board as required by the notice; and
- (b) continue to attend the sitting of the Appeals Board as required by the Chairperson until excused from further attendance.

(4) A person appearing as a witness before the Appeals Board shall not refuse —

- (a) to take an oath or make an affirmation when required by the chairperson; or
- (b) without reasonable excuse, to answer a question the person is required to answer by the chairperson; or
- (c) without reasonable excuse, to produce a document the person is required to produce by a notice under subsection (1).

(5) A person may upon giving reasonable excuse, refuse to answer a question or to produce a document, if by

answering the question or producing the document may incriminate that person.

42. The Appeals Board referred to in sections 40(2), shall decide a question of law in a proceeding before the Board.

43.(1) A person whose interests are adversely affected by an order, direction or other decision of the Authority, and who is dissatisfied with the decision, may appeal against the decision to the Appeals Board on the following grounds —

- (a) the decision of the Authority was contrary to provisions this Act; or
- (b) the decision of the Authority was manifestly unfair.

(2) No appeal shall lie to the Appeals Board against —

- (a) any policy of the Authority;
- (b) a decision of the Authority about an officer or employee of the Authority in the person's capacity as an officer or employee;
- (c) a decision of the Minister about making a management plan or regulations for measures or plans for the management of fisheries; or
- (d) a decision of the Minister on appointment or removal of a person as an authorised fishery officer.

(3) In this section, a reference to a decision includes a reference to a failure to make a decision within a reasonable period.

44.(1) An appeal shall commence by filing a written notice of appeal with the Appeals Board in the form approved by the Appeals Board.

Questions of law
to be decided by
Board consisting
with Chairperson

Appeals to
Appeals
Board

Procedure for
commencement
of appeal

(2) The notice of appeal shall be accompanied by the fees prescribed under the regulations.

(3) The Appeals Board shall give a copy of the notice of appeal to the Authority.

(4) The notice of appeal shall be filed within 28 days after the appellant receives notice of the decision appealed against.

(5) The Appeals Board may at any time for good cause shown extend the period for filing the notice of appeal.

(6) The notice of appeal shall state the grounds of the appeal.

45.(1) The Appeals Board may stay a decision appealed against.

(2) A stay may —

(a) be given on conditions the Appeals Board considers appropriate;

(b) operate for the period specified by the Appeals Board; and

(c) be revoked or amended by the Appeals Board.

(3) The period of a stay specified by the Appeals Board shall not extend past the time when the Board decides the appeal.

(4) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

46.(1) In deciding an appeal, the Appeals Board shall —

(a) confirm the decision appealed against;

(b) set the decision aside and substitute another decision; or

(c) set the decision aside and return the matter to the Authority with directions the Appeals Board considers appropriate.

(2) In substituting another decision, the Appeals Board has the same powers as the Authority.

(3) If the Appeals Board substitutes another decision, the substituted decision shall be taken, for the purposes of this Act, to be the decision of the Authority.

47.(1) An appellant dissatisfied with the decision of the Appeals Board may appeal to the Supreme Court and the Supreme Court may make such order as the justice of the case requires.

Appeal to
Supreme
Court

(2) The Chief Justice may make rules of court regulating the procedure in appeals under subsection (1) and until such rules are made the procedure relating to appeals to the Supreme Court from a decision of a magistrates' court in civil proceedings shall apply.

PART V - ENFORCEMENT MEASURES

Sub-Part 1 Powers of Authorised fishery officers in Seychelles waters and beyond, and on land

48.(1) The Minister may appoint in writing an officer or other employee of the Authority or any other persons as the Minister thinks proper, to be authorised fishery officers for the purposes of this Act, on such terms as may be determined by the Minister.

Appointment
of authorised
fishery
officers

(2) Without prejudice to subsection (1), the following persons shall be deemed to be authorised fishery officers for the purposes of this Act —

Stay of
operation of
decisions etc.

Stay of
operation of
decisions etc.

Powers of
Appeals
Board on
appeal

- (a) public service officers requested by the Minister to assist authorised fishery officers in the performance of their functions;
- (b) members of the Defence Forces, the Seychelles Police or the National Drugs Enforcement Agency requested by the Minister either generally or in specific matters, or Authority in case of urgency; or
- (c) any other person as the Minister may consider necessary.

(3) An authorised fishery officer shall, while in the exercise of his or her powers under this Act, produce on request such means of identification as determined by the Authority for the purposes of enforcing this Act.

(4) An authorised fishery officer may, in the exercise of his or her powers under this Act or any regulation made thereunder use or employ such force as may be reasonably necessary.

(5) An authorised fishery officer appointed under this section may, when exercising any powers or performing any functions under this Act or any regulations made thereunder, be assisted by persons referred to in subsection (2).

(6) A person referred to in subsection (2)(b) may take with him or her any equipment or materials including firearms or other weapons to assist the authorised fishery officer in the exercise of his or her powers or the performance of his or her functions under this Act.

(7) An authorised fishery officer may arrest a person whom he or she has reasonable grounds to believe to have committed an offence under this Act.

(8) The Minister may, without assigning a reason, revoke in writing the appointment of an authorised fishery officer, whereupon his or her appointment shall be immediately terminated.

(9) A person whose appointment as an authorised fishery officer has been revoked under subsection (8), shall return to the Minister or such other person as the Minister shall designate, his or her appointment and all other documents and items in his or her possession solely referable to his or her having been an authorised fishery officer.

49.(1) For the purposes of enforcing this Act and any regulations made thereunder, an authorised fishery officer may stop, board, search and inspect —

Authorised
fishery
officer

- (a) any fishing vessel in Seychelles or Seychelles waters; or
- (b) on the high seas —
 - (i) a joint venture fishing vessel, a local fishing vessel or a Seychelles fishing vessel; or
 - (ii) a fishing vessel flying the flag of a State party to a bilateral or an international agreement to which Seychelles is a party and which provides for such stopping, boarding, searching, seizure and detention of such fishing vessel.

(2) An authorised fishery officer may, in the exercise of his or her powers under subsection (1) —

- (a) if the fishing vessel is underway, order it to be stopped or manoeuvred as directed for the purposes of identification or of allowing him or her to go on board it;

- (b) require the master to facilitate the boarding of the fishing vessel by all appropriate means;
- (c) go on board the fishing vessel and take with him or her other persons as he or she may require to assist him or her in the exercise of his or her powers;
- (d) require the master or any member of the crew of the fishing vessel to produce the certificate of registry, licences, authorisations, logbooks or other records relating to the fishing vessel and examine and take extracts from or copies of them;
- (e) require the master to produce for examination records of crew or any member thereof or any person on board the vessel;
- (f) request and take the name and address of any person on board the vessel;
- (g) muster the crew of the vessel;
- (h) require the owner, master or any member of the crew of the fishing vessel to produce for examination any fishing gear or equipment on board the vessel and any fishing gear used from the vessel and for that purpose order the owner, master or any member of the crew of the vessel to bring on board any fishing gear that may be in use;
- (i) require the master of the vessel to appear before him or her and give any explanation concerning the vessel and any fishing gear or equipment on it or concerning the vessel's fishing activities and the certificates, licences, permits, authorisations, logbooks, or other records relating to it and any crew or any person on board it;

- (j) search the fishing vessel including any package, hold, tank, container or other craft on board;
- (k) inspect any vessel monitoring device, vessel tracking device, communication equipment, fish locating or monitoring equipment, positioning equipment and any other equipment on board the vessel;
- (l) require the owner, master or a member of the crew of the vessel to demonstrate the operation of any of the device or equipment referred to under paragraph (k) for the purposes of verifying whether that device or equipment is or has been operated properly, has not been tampered with or otherwise modified or interfered with and is protected against improper use;
- (m) take samples of any fish or fish products found on board; or
- (n) make any search, examination or enquiry which he or she shall consider necessary to find out whether any provision of this Act or any regulations made thereunder have been contravened.

(3) An authorised fishery officer may, if he or she has reasonable grounds to believe that an offence against this Act or any regulations made thereunder has been, is being or is about to be committed, without a warrant seize —

- (i) and detain any fishing vessel, including its equipment, gear, furniture, appurtenances, store and cargo;
- (ii) any logbook, record, document or equipment, any computer or other

electronic device that may be used as evidence in any proceedings under this Act;

- (iii) any fish which he or she believes have been taken or fish products produced in the commission of such offence;
- (iv) any prohibited gear, unlicensed fishing appliance, fish-aggregation device or marine culture system;
- (v) any article which he or she has reason to believe has been used, or was in the possession of someone, in contravention of this Act; or

(4) An authorised fishery officer may, if he or she has reasonable grounds to believe that a violation of a fishery measure under an international agreement to which Seychelles is a party has been committed on the high seas, without a warrant—

- (i) seize and detain a fishing vessel other than a foreign fishing vessel; and
- (ii) where authorised by an international agreement to which Seychelles is a party, seize and detain a foreign fishing vessel,

together with its gear, store and cargo, fish, fishing gear or other article which he or she has reason to believe has been used in the commission of the offence or violation or in respect of which the offence or violation has been committed.

(5) The Authority upon seizure of a foreign fishing vessel shall promptly notify the flag state, through appropriate channels, of the action taken and of any penalties imposed.

(6) An authorised fishery officer may require the master to take the fishing vessel and other articles seized under subsection (3) or (4) together with such persons on board, to the harbour or Port Victoria or other suitable place in Seychelles or Seychelles waters as he or she reasonably believes he or she would require for the purposes of investigating the offence.

(7) The powers contained in this section may be exercised in respect of a fishing vessel irrespective of whether the vessel is at the time of such exercise engaged in fishing or any fishing related activity.

50. An authorised fishery officer may, without a warrant, following hot pursuit in accordance with international law as referred to in Article 111 of the United Nations Convention on the Law of the Sea 1982—

Pursuit
beyond
Seychelles
waters

- (a) stop, board and search outside the Seychelles waters, any foreign fishing vessel which he or she has reason to believe has been used in the commission of an offence under this Act and bring such vessel, all persons and articles on board to the harbour, Port Victoria or any suitable place in Seychelles; and
- (b) exercise beyond the Seychelles waters all powers conferred to an authorised fishery officer under this Act.

51.(1) For the purposes of enforcing the provisions of this Act and any regulations made thereunder, an authorised fishery officer may, without a warrant—

- (a) stop any person conveying or believed to be conveying fish or fish products and inspect any such fish or fish products which the person is found to be conveying, and for that purpose open, search and examine any

Powers of
entry and
search on land
of authorised
fishery
officers

vehicle, equipment, baggage, package or container in which such fish or fish products are or may be or are believed to be conveyed;

- (b) enter, at all reasonable times and have access to the interior of—
- (i) any premises (other than a dwelling) used for carrying on business in connection with the operation of fishing vessels and activities ancillary thereto;
 - (ii) any premises (other than a dwelling) of a person engaged in the business of catching, keeping, offering for sale, selling, storing, processing or disposing of fish or fish products, or in any way regarding aquaculture, or carrying goods which relate to any of the foregoing activities;
 - (iii) any pier, quay, wharf, marina, jetty, dock or dock premises, seafood factory, processing facility or warehouse;
 - (iv) any vehicle, aircraft, vessel or other means of conveyance and open, search and examine any equipment, baggage, package or container;
 - (v) any premises (other than a dwelling) of any person engaged in the business of retaining documents containing information on the activities referred to in subparagraph(i) and (ii);
- (c) verify the accuracy of information in any document or record which relates to any of

the activities referred to in paragraph (b)(i), (ii) or (v);

- (d) examine all fish or fish products found in any place which he or she is authorised by this Act to enter and for that purpose to open any package found in that place containing or believed to contain fish or fish products;
- (e) check the size, weight, characteristics of fish or fish products and the operation of any equipment used for the measurement and weighing of fish or fish products.

(2) For the purposes of enforcing the provisions of this Act and any regulations made thereunder, where an authorised fishery officer has reasonable grounds to believe that an offence under this Act or any regulations made thereunder has been, is being or is about to be committed, he or she may, without a warrant—

- (a) seize any vehicle;
- (b) seize any document, gear, article, fish or fish products, that may be used as evidence in any proceedings under this Act or regulations made thereunder;
- (c) request and take the name and address of any person having custody of any fish or fish products, gear or other article which he or she is authorised under this Act to examine or inspect, and request and take from that person the name and address of the owner of such fish, fish products or gear or other article;
- (d) require the owner of or a person connected with—
 - (i) any of the premises referred to in subsection (1)(b)(i), (ii), (iii) or (v);

- (ii) any ship, vessel, aircraft, lorry or other vehicle referred to in subsection (1) (iv),

to give to him or her such information and produce to him or her such documents or records within the power or procurement of that person as he or she may reasonably require relating to any of the activities mentioned in subsection (1) (b) (ii) and to examine and take the documents or records or copies of, or extracts from, such documents or records.

Sub-Part 2 Procedure upon seizure and detention

Custody of
seized items

52.(1) Any article seized or detained under Sub-Part 1 shall be delivered in the custody of the Authority and shall, pending judicial proceedings or compounding, and dealt in accordance with this Sub-Part.

(2) If no proceedings in respect of any article seized or detained are instituted within 15 days of its delivery to the Authority, it may be released by an order of the court on demand to any person who appears to be entitled thereto.

(3) Where proceedings are instituted in respect of any article seized or detained and produced in evidence, the court may retain it pending the outcome of such proceedings and, where proceedings are instituted in any other court, may deliver it into the custody of that court which shall deal with it in accordance with this Sub-Part.

Security for
release of
fishing vessel

53.(1) Where a fishing vessel is seized or detained under this Act and a charge is laid against the master, owner or charterer of the vessel in respect of the offence for which the vessel has been detained, the master, owner or agent of the vessel may at any time before the determination of the charge apply to the court by which the charge is due to be determined for the release of the vessel on the provision of security in accordance with this section.

(2) On hearing an application under subsection (1), the court, on ensuring that no evidence that may be required is thereby prejudiced, shall —

- (a) on being satisfied that reasonable security has been given to the Government in respect of the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses incurred or reasonably foreseen to be incurred by the Authority and the Government, the Authority shall order the prompt release of the fishing vessel; or
- (b) order the release of the fishing vessel on the production, by any suitable person or persons approved by the court, of a reasonable bond in favour of the Government in the prescribed form, and conditioned in accordance with subsection (3), in an amount not less than the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses incurred or reasonably foreseen to be incurred by the Authority and the Government.

if— (3) The conditions of the bond or security shall be that,

- (a) the defendant is not found guilty of the charge; or
- (b) the defendant, on being convicted of the charge, pays in full within fourteen days after he or she is convicted the amount of the fine imposed by the court and the amount of all costs and expenses due by him or her to the Authority and the Government, then the bond shall be of no effect but that otherwise the bond shall remain in full force and effect.

(4) The amount specified in the bond shall be recoverable in a court as a debt due to the Government jointly and severally by the person or persons by whom the bond is given unless the person or persons prove the due performance of the condition for which the bond was made.

(5) For the purposes of this section, "fishing vessel" includes all equipment on board or used by the vessel and also includes all fish or fish products or other perishable articles that have been seized from the fishing vessel under this Act.

Procedure for
detained fish
and other
articles

54.(1) The court may, on an application, order —

- (a) any fish, fish products or other perishable articles seized under this Act, to be sold;
- (b) any live fish seized under this Act, to be returned to the sea; or
- (c) any fish or fish products or other perishable articles seized under this Act which are likely to become unfit for human consumption before the matter can conveniently be dealt with by the court, to be destroyed.

(2) The proceeds of any sale under subsection (1)(a) shall be held and dealt with in accordance with this Act as though they were the articles which have been seized.

(3) An authorised fishery officer shall create a certificate in writing describing the fish returned to the sea, or fish, fish products or other perishable articles destroyed under subsection (1)(b) or (c) respectively and any marks, peculiarities or other particulars thereof.

(4) A certificate under subsection (3) shall be prima facie evidence in a court of all such matters of fact stated in it unless otherwise proven.

Sub-Part 3 Other enforcement measures

55.(1) Where a foreign fishing vessel is in the harbour, Port Victoria or other place in Seychelles waters or at a Seychelles offshore terminal, no fish or fish products shall be landed or transhipped unless an authorisation to do so has been granted by the Authority and, where required, or directed by the Authority, an inspection of the fishing vessel has been carried out by an authorised fishery officer.

Implementation
of international
fishery
conservation
and
management
measures

(2) Where pursuant to an inspection under this Act, the Authority has reasonable grounds to believe that a foreign fishing vessel has engaged in, or supported, illegal, unreported and unregulated fishing or is included in a list of vessels having engaged in, or supported, such kind of fishing established by a Regional Fisheries Management Organisation or any other appropriate regional or international organisation, the Authority shall —

- (a) deny the vessel the use of the harbour, Port Victoria or other place in Seychelles waters or offshore terminal for landing, transhipping, packaging or processing fish or for other port services, including, *inter alia*, refuelling and resupplying, maintenance and dry docking, save where the use of port services is essential to the safety and health of the crew or the safety of the fishing vessel;
- (b) promptly notify the competent authority of the flag State of the vessel of its decision and, as appropriate, relevant coastal State, Regional Fisheries Management Organisation and other international organisations; and
- (c) request the flag State of the vessel to fully and immediately investigate the matter and for that purpose provide it with any information, including evidentiary material, relating to that matter.

Establishment
of observer
programme

56.(1) An observer programme shall be established by the Authority for the purpose of collecting and reporting reliable and accurate information on the activities of fishing vessels.

(2) The Authority may appoint a person to be an observer for the purposes of the observer programme under subsection (1).

(3) An observer may be appointed in accordance with such manner and on such terms and conditions as may be prescribed or as contained in a fishing agreement under section 12.

Regional
cooperation
in
surveillance
and
enforcement

57. The Minister may enter into arrangements or agreements with other States in the Indian Ocean, directly or through an international organisation, providing for joint or harmonised surveillance and enforcement measures in respect of foreign fishing vessels.

PART VI - OFFENCES

Penalty for
unlicensed
foreign
fishing vessel
fishing in
Seychelles
water

58. Where a foreign fishing vessel that is not licensed in accordance with section 11 is used for fishing or any fishing related activity in Seychelles waters or for sedentary species on the continental shelf, the owner and master each commits an offence and is liable on conviction, where the foreign fishing vessel is —

- (a) of a length overall not exceeding 24 metres, to a fine not less than SCR2,500,000;
- (b) of a length overall exceeding 24 metres but not exceeding 50 metres, to a fine not less than SCR12,500,000; or
- (c) of a length overall exceeding 50 metres or more, to a fine not less than SCR18,750,000 and not exceeding SCR31,250,000.

Penalty for
using a vessel
for scientific
research
fisheries
without
approval of
Minister

59.(1) A person who uses a vessel in contravention of section 10(1)(a) (b) or section 10(2) commits an offence.

(2) Where a foreign fishing vessel licensed pursuant to section 11 —

- (a) is used in contravention of any terms and conditions of the licence under section 11(3); or
- (b) is used in contravention of any measure provided for under a fishing agreement applicable to that vessel under section 12,

the owner and master each commits an offence.

(4) The owner and master of a foreign fishing vessel who contravene section 13, 14(a), 14(b) or 15 each commits an offence.

(5) Where a joint venture fishing vessel or Seychelles fishing vessel that is required to be licensed under section 16(1) or authorised under section 25(2), is not so licensed or authorised and is used for fishing or a fishing related activity in Seychelles waters or outside Seychelles waters, the master commits an offence.

(6) Where the master of a joint venture fishing vessel or Seychelles fishing vessel —

- (a) fails to comply with any terms and conditions of the licence imposed under section 16(4); or
- (b) fails to comply with any condition of the authority imposed under section 25(5),

he or she commits an offence.

(7) A person who —

- (a) uses a vessel for sport fishing in contravention of section 18(1); or
- (b) fails to comply with any terms and conditions of a sport fishing permit imposed under section 18(3),

commits an offence.

(8) A person who contravenes section 25(1), 31(1)(a) or 31(1)(b) commits an offence.

(9) A person who —

- (a) commits an offence (1), (2), (3), (4), (5), (6), (7) or (8) is liable on conviction to a fine —
 - (i) not less than SCR1,250,000 and not exceeding SCR6,250,000, if the offence involves the use of a foreign fishing vessel or Seychelles fishing vessel;
 - (ii) not less than SCR625,000 and not exceeding SCR1,875,000, if the offence involves the use of a joint venture fishing vessel;
 - (iii) not exceeding SCR625,000 if a vessel is used for sport fishing or sport fishing competition;
 - (iv) not less than SCR1,250,000 and not exceeding SCR6,250,000 in all other cases not falling under subparagraph (i), (ii) or (iii).

60.(1) A person who, within Seychelles or Seychelles waters —

- (a) on his or her own account, or as partner, agent or employee of another person, lands, transships, imports or otherwise brings into Seychelles or Seychelles waters, exports, transports, sells, receives, acquires or purchases; or
- (b) causes or permits a person acting on his or her behalf, or uses a fishing vessel, to land, transship, import or otherwise brings into Seychelles or Seychelles waters, export, transport, sell, receive, acquire or purchase,

Penalty for landing, transshipping or importing fish to Seychelles etc

any fish in contravention of the laws of another State or of an international conservation and management measure, commits an offence and is liable on conviction to a fine not exceeding SCR18,750,000.

(2) In addition to any penalty imposed under subsection (1), any fish or fish product on board the vessel or any fish unlawfully caught shall be forfeited.

61. Any person —

- (a) who undertakes any aquaculture activity in Seychelles or Seychelles waters in contravention of section 34(2); or
- (b) who undertakes any aquaculture activity in contravention of any conditions of a licence in contravention of section 34(3),

Penalty for undertaking aquaculture activity in Seychelles water

commits an offence and is liable on conviction to a fine not exceeding SCR5,000,000.

Penalty for
unlicensed or
authorised
etc.

62.(1) Where a local fishing vessel that is required to be licensed under section 16(1) or authorised under section 25(2), is not so licensed or authorised and is used for fishing in Seychelles waters or outside Seychelles waters, the owner and master each commits an offence.

(2) Where the owner and master of a local fishing vessel fail comply with any —

- (a) terms and conditions of the licence imposed under section 16(3); or
- (b) conditions of the authority imposed under section 25(5),

the owner or master each commits an offence.

(3) Where the master and owner each commits an offence under subsection (1) or (2), he or she is liable on conviction to a fine not exceeding SCR350,000.

Penalty for
landing,
selling or
receiving
etc

63.(1) Any person who —

- (a) lands, sells, receives or is found in possession of fish or fish products, knowing or having reasonable cause to believe them to have been taken in contravention of section 31(1)(a) or 31(1)(b);
- (b) fails without reasonable cause to comply promptly with any order, request, requisition, search or inspection, given, made or requested by an authorised fishery officer under this Act;
- (c) wilfully obstructs or delays an authorised fishery officer in the performance of his or her functions under this Act;

- (d) threatens, intimidates or assaults an authorised fishery officer or an observer in the course of his or her duties under this Act;
- (e) offers to pay or pays any bribe or offers or furnishes any inducement to an authorised fishery officer or observer to improperly discharge or refrain from properly discharging any of his or her duties under this Act;
- (f) contravenes section 19(1) or 19(2);
- (g) fails to comply with any terms and conditions of an authority imposed under section 19(4);
- (h) in any manner holds himself or herself out to be, or personates an authorised fishery officer,

commits an offence and is liable on conviction to a fine not exceeding SCR500,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) An authorised fishery officer or observer who accepts a bribe or an inducement in the circumstances set out in subsection (1)(e) commits an offence and is liable on conviction to a fine not exceeding SCR500,000 or to imprisonment for a term not exceeding 3 years or to both.

64.(1) Any person who —

- (a) removes or attempts to remove a detained fishing vessel from detention;
- (b) falsifies, conceals or destroys evidence which could be used in the course of inquiries or judicial proceedings relating to matters under this Act;

Penalty for
removing,
tampering,
or damaging
to detained
fishing
vessel, etc

- (c) tampers or wilfully destroys, damages, renders inoperative or otherwise interferes with the vessel monitoring device or the vessel tracking device of a fishing vessel;
- (d) tampers or wilfully destroys, damages, renders inoperative or otherwise interferes with the gear monitoring device or the gear tracking device of a fishing vessel;
- (e) tampers or wilfully destroys, damages, renders inoperative any fish aggregating device;
- (f) places any fish aggregating device in Seychelles waters in contravention of section 33(1);
- (g) fails to comply with any terms and conditions of an authorisation imposed under section 33(2);
- (h) is required to supply information under this Act, who fails to supply such information or supplies false or misleading information;
- (i) engages in fishing in breach of any measure provided in a plan for the management of a fishery;
- (j) contravenes any prescribed international fisheries conservation and management measure;
- (k) when obliged to so do under this Act, fails to comply with the rules and procedures relating to the taking of any observer on board any designated fishing vessel or the disembarking of the observer;

- (l) is in possession of or uses in Seychelles waters any prohibited or unauthorised fishing gear or method in contravention of sections 32(1) and 32(2);
- (m) who takes fish in a prohibited or closed area or during a closed period;
- (n) attracts shark in contravention of section 32(3); or
- (o) kills, chases or takes any marine mammal in contravention of Section 32(4),

commits an offence and is liable on conviction to a fine not exceeding SCR450,000.

65. A person who —

- (a) produces or submits any false or misleading document or makes any false or misleading statement regarding the licensing of or use of a vessel as a foreign fishing vessel;
- (b) produces or submits any false or misleading document or makes any false or misleading statement regarding the licensing or use of a vessel as a fishing vessel other than a foreign fishing vessel; or
- (c) conspires, attempts, procures, counsels, aids or abets any of the activities under subsections (a) and (b),

commits an offence and is liable on conviction to a fine —

- (i) not exceeding SCR6,250,000 if the offence involves a foreign fishing vessel;

Penalty for
producing
false or
misleading
document

- (ii) not exceeding SCR2,500,000 if the offence involves a fishing vessel other than a foreign fishing vessel.

Penalty
where no
penalty is
provided

66. Any person who contravenes any provisions of this Act for which no specific penalty is provided, commits an offence and is liable on conviction to a fine not exceeding SCR500,000 or to a term of imprisonment not exceeding 1 year or to both.

Proceedings
before court

67. In respect of proceedings for offences against this Act, a court may award the Government such costs and expenses incurred in relation to those proceedings as it may deem proper.

Procedure
regarding
articles in
custody of
court

68.(1) Where an article in the custody of a court is not ordered to be forfeited, it shall be held until all fines imposed for any offence in the commission of which the article was used, or which was committed in respect of the article, and the costs and expenses due by the offender to the Republic have been paid.

(2) If within 30 days following the imposition of a fine, any part of such fine, costs or expenses remains unpaid, such article may be sold, and the proceeds applied towards payment of the fine, costs or expenses.

Presumption

69. All fish or fish products found on board any vessel which have been used in the commission of an offence against this Act shall be presumed to have been caught in the commission of the offence, unless the contrary is proved.

Forfeiture
of vessel,
fish, etc

70. Where a person is convicted of an offence under this Act, the court may, in addition to any other penalty —

- (a) order the forfeiture of the fishing vessel, any gear or article used in the commission of the offence;

- (b) order the forfeiture of any fish caught in breach of this Act;
- (c) order that the master of the vessel shall be prohibited from operating or boarding any fishing vessel in Seychelles waters for a period of two years from the date of his or her conviction.

PART VII - MISCELLANEOUS

71.(1) The person notified to be the agent of an applicant in an application for a licence under this Act shall be the agent of that person for all purposes under this Act until the person notifies the Authority in writing, of the name and address of another person to be his or her agent in place of that person.

Agent

(2) Service of any process, notice or any document whatsoever on the agent shall be deemed for all purposes in law to be good and valid service on the said person who is notified to be such at the date of service, notwithstanding any law or practice to the contrary.

(3) If the person notified as agent under subsection (1) no longer resides or have a business address in Seychelles or for any other reason cannot be promptly served as required, such other person as the court may order, shall be the agent of the applicant for the purpose of service.

72.(1) The Minister, in consultation with the Attorney General may, for a first offence, if he or she is satisfied that an offence has been committed under this Act and if the person admits the commission of the offence and agrees in writing to its being dealt with under this section —

Compounding
of offences

- (a) compound the offence in lieu of instituting legal proceedings for a sum of money that shall not be less than the minimum and not more than the maximum fine specified for the

offence together with the forfeiture of any articles (including the vessel); or

- (b) order the release of any vessel or other article seized in connection with the offence on payment of a sum of money not exceeding the estimated value of the vessel or other article together with the maximum fines and costs that may be imposed in relation to the offence.

(2) Any sum of money received under this section shall be dealt with as though it were a fine imposed by a court.

(3) The Minister shall determine the sum of money to be paid by the offender and the articles to be forfeited under subsection (1) (a), having due regard to the provisions of this Act, the nature, the circumstances, extent and gravity of the offence, the past behaviour of the offender, the extent of the damage caused by the offence on marine resources and ecosystems, and the financial benefit accrued from the violation to the offender.

(4) An ad-hoc compounding committee may be established to advise the Minister in the determination of the sum of money to be paid by the offender and of the nature and extent of any article to be forfeited in accordance with subsection (3).

(5) Upon determination of the sum of money to be paid by the offender by way of fine and upon determination of the nature and extent of any article to be forfeited (or the sum to be paid by the offender in lieu of forfeiture if the Minister so agrees) in accordance with subsection (3), the Minister shall sign the compounding agreement and serve it on the offender who shall pay the sum of money, and hand over all articles determined to be forfeited (to the extent that they are not already in the control of the court), within 14 days from the date of service.

(6) In the event the offender fails to pay the sum of money within the period set out in subsection (5), the compounding agreement shall be null and void and the judicial proceedings shall be instituted or continued as the case may be.

(7) On payment of the sums mentioned in this section and on the effective forfeiture of articles determined to be forfeited, or on payment of the sum of money to be accepted in lieu of forfeiture, the compounding of any offence under subsection (1) shall be filed in court and thereupon the proceedings in connection with the commission of the offence which is pending shall be noted as compounded and the offender absolutely discharged.

(8) The compounding of an offence under this section shall be conclusive and final.

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

73.(1) Any information or data transmitted by a vessel tracking device shall be *prima facie* evidence of the position of the vessel at the time and date stated and that such information or data—

- (a) comes from the vessel so identified; and
- (b) was accurately and securely relayed or transferred to the Authority.

(2) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, a place or area stated in a certificate given by a authorised fishery officer shall be *prima facie* evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

Rules of
evidence
regarding
Vessel
Monitoring
System
information

(3) An authorised fishery officer shall in any certificate made under subsection (2) state —

- (a) his or her name, address, official position and place of appointment;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located; and
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits.

Rules of
evidence
regarding
vessel
monitoring
device

74.(1) Any video recording, information or data recorded by a vessel monitoring device shall be *prima facie* evidence of the fishing operation and position of the vessel at the time and date stated and that such video recording, information or data —

- (a) comes from the vessel so identified; and
- (b) was accurately and securely, downloaded by, or relayed or transferred to the Authority.

(2) Where in any proceedings under this Act, the type of fishing activity or fishing related activity a vessel is alleged to have been conducting and the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then the fishing operation, place or area stated in a certificate given by an authorised fishery officer shall be *prima facie* evidence, unless the contrary is proved, of the fishing activity or fishing related activity that was conducted and place or area in which the vessel was at the date and time or during the period of time stated.

(3) An authorised fishery officer shall in any certificate made under subsection (2) state —

- (a) his or her name, address, official position and place of appointment;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in paragraph (d) and their accuracy within specified limits; and
- (f) the brand and model name of the monitoring device, sensors or other device or equipment used to monitor the fishing activity or fishing related activity of the vessel.

75.(1) Where a photograph or film is taken of any fishing activity and simultaneously the date and time and position from which the photograph or film is taken are superimposed upon the photograph or film, it shall be *prima facie* evidence, unless the contrary is proved, that the photograph or film was taken on the date and, at the time in which the position so appear.

Photographic
evidence

(2) The presumption set out in subsection (1) shall arise only if —

- (a) the camera taking the photograph or film is connected directly to the instruments which provide the date, time and position concerned; and

- (b) the photograph was taken by an authorised fishery officer.

(3) Any authorised fishery officer who takes a photograph or film in accordance with subsection (2) may issue a certificate appending the photograph or film by stating —

- (a) his or her name, address, official position and place of appointment;
- (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
- (c) the brand and model names of the camera, watch, clock or other devices supplying the date and time and the position fixing instrument, the matters set out in subsection 2(a);
- (d) the accuracy of the position fixing instrument used within specified limits; and
- (e) the maximum possible distance and the bearing of the subject of the photograph or film from the camera at the time the photograph or film was taken.

Application
of Public
Officers
(Protection)
Act
Cap 192

76.(1) The Public Officers (Protection) Act 1976 is extended to all Seychelles waters and to any fact, act or omission that takes place outside the Seychelles waters in accordance with this Act.

(2) Employees of the Authority performing functions under this Act shall be deemed to be public officers for the purposes of the Public Officers (Protection) Act, and sections 372 and 373 of the Penal Code.

Regulations

77.(1) The Minister may make regulations for carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may provide for —

- (a) the terms and conditions for licensing, permitting and authorising of fishing vessels, forms, format and content of licences, permits and authorisations and the procedure for their issuance, suspension, cancellation and revocation;
- (b) the holder of any licence to execute a bond or give other guarantee of his or her obligations under the licence;
- (c) the establishment of a compliance bond system;
- (d) any vessel licensed, permitted or authorised to be equipped with specified communication equipment and vessel tracking device and any other equipment or device designed to enhance monitoring of fishing activities;
- (e) a plan for the management of a fishery and management measures;
- (f) measures for the protection of corals and shells and other invertebrates;
- (g) measures for the protection of marine mammals and turtles;
- (h) measures for the protection, conservation and management of marine protected areas and establishing marine reserves;
- (i) in consultation with the Seychelles Maritime Safety Administration, measures to ensure the safety and security of fishermen at sea;

- (j) in consultation with the Seychelles Maritime Safety Administration, measures for the safety and security of fishing vessels;
- (k) the terms and conditions governing the placing or setting of fish aggregating devices and regulating fishing in their vicinity;
- (l) for the operation of, conditions and procedures, to be observed by any foreign fishing vessel entering and leaving the Seychelles waters and while in Seychelles waters;
- (m) the management of fishery resources and fishing activities in relation to sports and recreational fishing and competition sport fishing;
- (n) the placing of observers on board a fishing vessel licensed under this Act to fish or carry out fishing related activities in Seychelles waters or beyond, as the case may be, and the rules relating to observers;
- (o) such other measures to combat illegal, unreported and unregulated fishing activities;
- (p) aquaculture;
- (q) delimiting areas of Seychelles waters in which fishing shall be reserved to vessels of Seychelles citizens and local fishermen, including survey and registration of fisherman for permitting or restricting any activity in any specified fisheries;
- (r) compensation payable to Seychelles citizens or to the Government in the event of any loss

- or damage caused by a foreign fishing vessel to other vessels or their gear or catch, or to cables or to other Seychelles interests;
- (s) such other information to be contained in the Record of Fishing Vessels under section 8(2);
- (t) the import and export of live fish and fish products;
- (u) with respect to fishing by Seychelles flagged tuna fishing vessels, joint venture fishing vessels or Seychelles fishing vessels beyond the limits of Seychelles waters;
- (v) the conditions for landing and transhipment of any fish;
- (w) the marking of fishing vessels and gear;
- (x) the catching of certain classes of fish;
- (y) the conservation and management measure adopted by a Regional Fisheries Management Organisation or any other regional fisheries body or arrangement to which Seychelles is a party;
- (z) amending any schedules;
- (aa) fees or charges payable in respect of matters arising under or provided for or authorised by this Act;
- (bb) fines or penalties;
- (cc) any other matter relating to fisheries which is required or authorised to be prescribed under this Act.

(3) Any regulations made under this section may provide that any person who contravenes any regulation commits an offence and is, on conviction, liable to a fine not exceeding SCR20,000.

Repeal

78. The Fisheries Act, 1986 is hereby repealed.

Savings and
Transitional
provisions

79.(1) All regulations made, directions issued and notification issued under the repealed Act shall continue in effect, in so far as they are not inconsistent with this Act, until they are repealed or amended under this Act.

(2) All acts done, decisions taken, licences, permits or authorisations granted by the Minister, Chief Executive Officer, officers or employees of the Authority under the Fisheries Act 1986, which were validly done, taken or granted under any written laws or under and pursuant to the repealed Act shall continue to have effect in accordance with the terms or until amended, annulled or withdrawn in accordance with the relevant written laws.

(3) Notwithstanding subsection (1), the Minister may make necessary regulations for the transition from the repealed Act to this Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 7th October, 2014.



Ms. Luisa Waye-Hive
Assistant Clerk