

SPECIAL ISSUE

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**MIGORI COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2016

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**THE MIGORI COUNTY FISHERIES AND
AQUACULTURE ACT, 2016**

No. 2 of 2016

Date of Assent: 8th August, 2016.

Date of Commencement: See Section 1

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**THE MIGORI COUNTY FISHERIES AND
AQUACULTURE ACT, 2016**

**AN ACT of the County Assembly of Migori to provide
for the sustainable utilization, management and
development of Fisheries, Aquaculture and other
Aquatic resources and for connected purposes**

ENACTED by the County Assembly of Migori, as
follows—

PART I — PRELIMINARY

1. This Act may be cited as the Migori County Fisheries and Aquaculture Act, 2016 and shall come into force on such a date as the County Executive Committee member responsible for fisheries, with the concurrence of the Governor, may appoint and different dates may be appointed for different provisions. Citation and commencement.
2. This Act shall apply to all of Migori County Fishery waters and related fisheries activities and establishments. Application.
3. In this Act, unless the context otherwise requires — Interpretation.

“Aquaculture” means the cultivation of live fisheries resources for sale other than in circumstances prescribed under a regulation;

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

“Authorized officer” means a fisheries officer of and above the rank of Assistant 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 CEC Member, by notice in the Gazette, to be an authorized officer for the purposes of this Act.

“Beach Management Unit (BMU)” means an organization of fishers, fish traders, fish processors and other beach stakeholders who have traditionally depended on beach fisheries activities for their livelihoods.

“Board of Trustee” means a board that administers the Fisheries Development Trust Fund.

“Breeding areas” means an area within the administrative boundaries of Migori county fisheries waters which the county director has, by notice in the gazette, designated to be a fish breeding area and includes the nurseries for ova, fry spawn, brood, spat, and young of fish thereof.

“Buy” includes—

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

“CEC Member” means County Executive Committee member in the County Government of Migori for the time being responsible for fisheries and aquaculture.

“County fishery waters” means natural water bodies, including dams within the administrative boundaries of the county as stipulated in the constitution and other related legislations and for the purposes of this act excludes government fish ponds and any private fish ponds not established for commercial purposes.

“Chief Officer” means a Chief Officer in the County government of Migori for the time being responsible for fisheries and aquaculture.

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

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

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"Devolved Competent Authority" means the department responsible for health control and monitoring of fish production conditions throughout the fish supply chain;

"Director" means a person appointed to the office of Director of Fisheries in the County Public Service;

"Directorate" means the Directorate of Fisheries and Aquaculture Development in the County Government of Migori;

"Financial year" means expenditure period of the County Government which starts on 1st July of every year and ends on 30th June of the next year;

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

"Fish landing stations" means a place on shores of County fisheries waters designated by Director under section 13 where fishing vessels may resort for loading and offloading of fish and fishing equipment, shelter or servicing;

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

"Fisher" means a person who engages in fishing in the County waters;

"Fisheries officer" means the Director and any employee in County Public Service in the Directorate, of or above the rank of Assistant Fisheries Officer;

"Fishing" means—

- (a) the catching or taking of fish searching for, attracting, locating or harvesting;

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

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

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

“Fish processing” means icing, freezing, canning or any other action 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, fish maws) 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, of whatever size and in whatever way propelled, used in fishing operations or for the processing, storage or carriage of fish or for any fishing operations ancillary thereto, including transshipment;

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

“Licensing committee” means the director and any other four persons serving in the county public service appointed in writing by the CEC to consider applications for fisheries licences and permits;

“Licensing officer” means the director or any other person in the county public service in the directorate of fisheries above the rank of Assistant Fisheries Officer.

“Related activity” means—

- (a) trans-shipping fish to or from any vessel;
- (b) storing, processing or transporting fish taken from the county fisheries waters up to the time it is first landed;

- (c) refueling or supplying fishing vessels or performing other activities in support of fishing operations; or
- (d) exporting fish or fish products from the country
- (e) attempting or preparing to do any of the above.

“Sell” means—

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

“Sport fishing” means angling or fishing for recreation;

“Test fishing operation” means any fishing operation undertaken over a limited period of time with the approval of the Director for the purpose of testing the feasibility of commercial fishing operations with a view to establishing fishery operations.

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

“Valid license” means a license issued by the Director under this act and that issued by counties with which the county government has in force an agreement in the management of shared fishery waters

“Value chain” means every step of fisheries or aquaculture business from raw material to the eventual end user.

PART II—ADMINISTRATION

4. (1) The Director shall, subject to the directions of the CEC Member through the Chief Officer, be responsible for the administration of this act

Functions of the
Director

- (2) (a) 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 or other government agencies as he may think fit
- (b) Save that in the exercise of powers in subsection (a) above, the Director shall detail interagency collaboration framework where more than one agency is involved.

PART III—FISHERIES AND AQUACULTURE MANAGEMENT

DEVELOPMENT MEASURES

5. The Director may, in consultation with other appropriate agencies and other departments of Government, promote the development of traditional and industrial fisheries, aquaculture and related industries through—

Fisheries
development
measures.

- (a) providing a framework of extension and training services;
- (b) up scaling of fin fish, crustacean and sea weed culture;
- (c) demarcation of fish breeding areas;
- (d) development and maintenance of fish handling and marketing infrastructure across the value chain;
- (e) development of fish hatcheries and multiplication centers (county fish seed bulking units);
- (f) promoting co-operation among fishers;
- (g) spearheading arrangements for the orderly marketing of fish;
- (h) stocking waters with fish and supplying fish for stocking;
- (i) promoting the adoption of alternative means of livelihood amongst fishers;
- (j) promoting the development of ornamental fisheries;
- (k) providing for the establishment of investor -friendly licensing and approval systems;

No. 2

- (l) developing a comprehensive fish marketing system, including fish auction, through strengthening of linkages along the market value chain;
- (m) encouraging persons in the private sector to organize into associations and form a County coordinating mechanism to ensure efficient marketing systems that that adhere to sanitary and phytosanitary requirements;
- (n) facilitating participation in County, national, regional and international trade negotiations and meetings;
- (o) promoting value addition and utilization of fish by - products and by catch; and
- (p) provide for the establishment of fish safety and quality infrastructure facilities.

6. (1) The CEC member may by notice in the gazzete, with the approval of the County Assembly enter into an inter-governmental agreement establishing a collaboration framework and arrangements with other County Government/s having shared interests in the sustainable utilization and management of Fisheries and Aquaculture resources with the County Government of Migori.

Inter-governmental agreements and arrangements.

(2) The Director shall give notice on any management measures resulting from an inter-governmental fisheries and aquaculture management agreement or arrangement to which the County Government of Migori is or becomes a party to pursuant to subsection (1).

7. The Director shall in consultation with the CEC member ensure that the national government is kept informed of County management of fisheries and aquaculture in accordance with any written national laws regarding fisheries and aquaculture management.

Relation between National and county governments

8. (1) The Director may in consultation with the CEC Member through the chief officer, by notice in the *Gazette* establish a management plan for each fishery in such form as he may deem appropriate.

Fisheries management plans.

(2) Prior to publication of the management plan under subsection (1) the Director shall cause a draft plan to be

prepared and shall take reasonable steps to engage in consultation thereon with all interested persons.

(3) A management plan shall take effect upon approval by the CEC Member and its publication in the *Gazette*.

(4) A management plan for a fishery must state—

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

(5) In establishing a management plan under section 8(1) the director shall give effect to agreed management measures by parties sharing Lake Victoria.

(6) The management plan may make provision about anything prescribed in this Act or any subsidiary regulations.

FISHERIES MANAGEMENT MEASURES

9. (1) The Director may with the approval of the CEC Member through the chief officer, by notice in the *Gazette*, impose any of the following measures which may be necessary for the proper management and control of any fishery—

Fisheries
Management
Measures.

- (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 stations;

- (f) control of the introduction into, or harvesting or removal from, Migori County fishery waters of any aquatic plant;
- (g) define and identify fragile aquatic ecosystems including fish breeding areas and provide structures to enable collaborative protection; and
- (h) provide for the regulation of identification of trade in endangered species;
- (i) any other measures pursuant to this law.

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

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

(4) Any Director 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.

10. Where under the Act or its Regulations the Director may exercise any power by notice, the notice shall be—

Manner of publication of notice.

- (a) published in *County Gazette*; or
- (b) exhibited at each place where a register of licences, permit or certificate of registration is kept pursuant to these Regulations.

11. (1) The Director 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 information on fisheries and forward the same to the Director.

Fisheries Statistics and information.

(2) Every person engaged in fisheries and aquaculture value chain shall supply such information regarding these activities in such form as the Director may require.

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

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

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

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

MONITORING, CONTROL AND SURVEILLANCE

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

CEC Member may prescribe monitoring devices.

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

13. (1) The Director may with the approval of the CEC Member through the chief officer establish suitable areas to be *gazetted* Fish Landing stations,

Fish landing stations.

(2) The gazette notice issued under subsection 1 shall provide for mode of the delineation of fish landing stations.

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

14. (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 writing communicate in such manner as to bring it to the attention of persons affected thereby, and to revise them to effect the limitation.

Limitation of fishing.

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

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

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

(4) (a) A person aggrieved by the action taken by the Director under subsection (1) may appeal in writing to the CEC Member who shall give a verdict within thirty days .

(b) If the CEC member fails to communicate the verdict within the duration stipulated in subsection 4 (a) then the Director's decision holds.

15. (1) No person shall use any explosives, poisonous or noxious substances or electric shock devices for the purpose of killing, stunning, or disabling fish so as to render them more easily caught.

Prohibited methods of fishing.

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

PART IV—REGISTRATION AND LICENSING

16. (1) No person shall introduce any new vessel for fishing in Migori County fishery waters unless there is in force in relation to the vessel a valid certificate of registration.

Registration of fishing vessels.

(2) A certificate of registration in the prescribed form may on application to the licensing committee and on payment of the prescribed fee be issued by a licensing 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 issued with a reflective number plate marked in such manner as the Director may require. A registration certificate issued to a fishing vessel under this section shall unless earlier revoked

(b) in the case of subsequent convictions, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

17. (1) An application for a fishing vessel license shall be made in the prescribed form to a licensing committee through a licensing officer.

Application for fishing vessel license.

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

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

(4) The master and owner of a fishing vessel which any person uses or attempts to use in fishing or any fishing operation without a fishing vessel licence issued under this section, and a fisherman's licence issued under section 20 (1) shall each be guilty of an offence and liable to a fine not exceeding five 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.

18. (1) A fishing vessel licence shall, unless earlier revoked or suspended, expire on the 30th June of the financial year in which it was issued

Validity of fishing vessel licence.

(2) The Director may revoke or suspend a licence in respect of a 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 judgment of the Director the action is necessary for the proper management of fisheries.

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

Requirement for a fishing licence

(2) The CEC Member in consultation with the director and other stake holders 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 the County.

(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 collecting of information.

(5) Any person who catches fish for commercial purposes in Migori County Fishery waters without a license, or in contravention of the conditions attached to a licence issued under this Act, commits an offence and shall be liable on conviction to a fine not exceeding five thousand shillings.

20. (1) Unless otherwise provided under this Act, any licence issued under this Act shall, unless earlier cancelled or suspended in accordance with section 21 (1), expire on the 31st December of the calendar year in which it is issued.

Validity of fishing licences.

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

21. (1) A fishing licence may be revoked or suspended where the Director is satisfied that—

Cancellation or suspension of fishing licence.

- (a) it is necessary to do so in order to give effect to any licensing programme or participatory right, scheme or other effort control programme specified in the fishery management plan; or
- (b) the vessel in respect of which the licence has been issued has been used in contravention of this Act or any regulations made thereunder, or of any condition of the licence, or in breach of any applicable access agreement or arrangement.

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

(3) Any notification given under subsection (3) shall be in writing.

22. Any person aggrieved by—

(a) the refusal of the Director to issue or renew a licence; or

(b) the cancellation or suspension of a licence issued may within thirty days of the receipt of notification appeal to the CEC Member who may vary or stay the Directors decision.

23. There shall be payable in respect of every licence issued under this Act such fees and other charges as may be prescribed vide *gazzete* notice.

Appeals on
cancellation or
suspension.

Fees and other
charges.

OTHER LICENSES

24. (1) The CEC Member may, in addition to issuing licences for fishing vessels, make regulations requiring a licence for any fishery activities, including sport fishing or the use of any gear or method of fishing, with or without the use of a vessel, or for fish processing or fish trading and movement.

Other licences
requirements.

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

25. (1) No fishing vessel shall be used for sport fishing for hire or reward in the Migori County fisheries waters without a sport fishing vessel licence issued by the Director.

Sport fishing
licence.

(2) The Director may issue a commercial sport fishing vessel licence to any vessel described in subsection (3).

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

(4) A sport fishing vessel licence, unless earlier cancelled or suspended in accordance with section 20(1), shall be valid for the period stated thereon.

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

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

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

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

Fishery Scientific
Research and test
fishing operations
or surveys.

(a) fishery scientific research; or

(b) exploratory fishing

(c) Test fishing operations or surveys, in the Migori County fishery waters.

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

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

(4) Any person who undertakes or assists in any fishery scientific research or test fishing operations or surveys in the Migori County fisheries waters—

(a) without authorization under subsection (1); or

(b) in contravention of any requirements or any conditions attached to the authorization under subsection (2),

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

PART V— ENFORCEMENT

27. (1) For the purpose of enforcing this Act and any regulations made there under, any authorized officer may, Powers of authorized officers. without a warrant —

- (a) stop, board and search any fishing vessel, transport vessels in the Migori county fisheries waters,
- (b) Question any person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;
- (c) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act or concerning the operation of any vessel;
- (d) make an entry dated and signed by him in any vessel's log;
- (e) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or expedient for any purpose specified in this Act or to provide for the compliance of the vessel or the master or any crew member thereof with the conditions of any licence;
- (f) stop, enter and search any vessel, vehicle or which, on reasonable grounds, he suspects is transporting fish or fish products or is being or has been used or involved in the commission of an offence against this Act or regulations made thereunder;
- (g) make such inspection or inquiry as may appear necessary to him concerning any place, premises, vessel, vehicle or in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
- (h) require to be produced, and examine, any fish, fishing net, fishing gear or explosive or other noxious thing whether on the waters or on land;

- (i) at all reasonable times enter and inspect any fish processing establishment for which a licence is held or required or any other place or premises where a related activity is authorised or conducted or in respect of which a licence or other authorisation is issued or required under this Act; and
- (j) Require to be shown or produced, and examine, any fish, fish product, fish processing device or equipment, or other thing used in fish processing or for or in connection with a related activity or such other activity for which a licence is issued or required under this Act.

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

- (a) enter and search any vessel, vehicle, , place or premises, other than a place or premises used exclusively as a dwelling house, in which he believes the offence has been committed or where he believes that fish illegally taken or explosives for use contrary to section 15 are being stored;
- (b) take samples of any fish found in any vessel, vehicle, , place or premises searched under this section;
- (c) give directions to the person in charge of or otherwise responsible for operation of a place or premises and any persons in the place or premises entered under subsection (1) (j), as may be necessary or expedient for any purpose specified in this Act or to provide for the compliance by such person with the conditions of any licence or authorization;
- (d) order the destruction of any fish or fish product kept in a fish processing establishment or a place or premises where a related activity is conducted or in relation to which a licence or other authorization is issued or required under this Act, which the officer believes are processed or kept contrary to the requirements of this Act or are diseased;

- (e) order, in relation to a fish processing establishment or a place or premises in which a related activity or other activity for which a licence or authorisation is issued or required under this Act, the cessation of activities, which the officer believes are being undertaken contrary to the provisions of this Act;
- (f) order the suspension or cessation of fishing, related activity or any other activity that the officer believes is being conducted in contravention of the provisions of this Act;
- (g) seize —
 - (i) any vessel together with its fishing gear, equipment, stores and cargo, and any vehicle, or hovercraft which he believes has been or is being used in the commission of an offence, or which he knows or believes has been forfeited in accordance with any provision of this Act;
 - (ii) any explosive, poison or other noxious substance which he believes has been used or is being possessed or controlled in contravention of this Act;
 - (iii) any logs, charts or other documents required to be maintained by this Act or under the terms of any licence or authorisation or which he believes show or tend to show the commission of an offence against this Act; and
 - (iv) anything which he has reasonable grounds to believe might be used as an exhibit in any proceedings under this Act;
- (h) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act and, where it is impracticable immediately to bring that person before a magistrate or court of competent jurisdiction without unnecessary delay, detain him; and
- (i) arrest any person who assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of, or otherwise interferes with, an authorised officer in the performance of his duties, or fails to comply with any lawful order, requirement or request of an

authorised officer or otherwise contravenes this section or section 37 and, where it is impracticable immediately to bring that person before a magistrate or court of competent jurisdiction without unnecessary delay, detain him.

(3) A written receipt in a prescribed format, stating the grounds for seizure, shall be given for any article or thing seized under this section

(4) An authorised officer may when exercising his powers under subsection (1) (a), (b), (h) and (i), use such force as is reasonably necessary in the circumstances.

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

Seizure of vessel
by authorised
officer.

(2) The master shall be responsible for the safety of the crew, vessel, himself and any other person on board while bringing the vessel to landing station as directed by an authorized officer.

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

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

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

Seizure of vehicle
by authorised
officer.

(2) The driver of the vehicle shall be responsible for the safety of the vehicle and for any crew, himself and any other

person thereon or in while bringing the vehicle to the designated place.

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

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

30. (1) No person should be allowed to remove any part or parts of any vessel, vehicle detained under the provisions of this Act for the purpose of immobilizing that vessel, vehicle.

Immobilizing of
seized vessel,
Vehicle.

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

(3) Any person who—

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

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

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

Power of
authorised officer
to direct persons
under his
command.

(2) A person who receives a direction under subsection (1) shall have, for the purpose of carrying out the specified

duties, all the powers and protections accorded to an authorised officer under this Act.

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

Duty to comply with instructions.

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

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

Powers beyond county fisheries waters.

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

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

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

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

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

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

- (a) compound the offence by accepting and receipting an amount of money equivalent to the maximum possible fine for that offence if it were to be taken before a court of law; or
- (b) order the release of any vessel or any other thing, seized in connection with the offence, on payment of a sum of money not exceeding the value of the vessel, or, if the value of such a thing is small, such person shall be liable to pay a fine not exceeding ten thousand shillings:

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

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

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

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

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

36. Any person who —

Offences
committed against
an authorized
officer.

- (a) assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with, an authorised officer, in the performance of, his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
- (b) fails to comply with any lawful order, requirement or request of an authorised officer or otherwise contravenes section 53 or section 54;
- (c) uses threatening language or behaves in a threatening manner or uses abusive language towards an authorised officer while in the execution of his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
- (d) incites or encourages any other person to assault, obstruct, resist, delay, refuse boarding or entry, intimidate or otherwise interfere with an authorised officer while carrying out his duties, or any person lawfully acting under the order of the authorised officer or in his aid;
- (e) knowingly furnishes to an authorised officer any particulars which are false or misleading in any respect;
- (f) impersonates or falsely represents himself to be the master or other officer of a fishing vessel;
- (g) resists lawful arrest;
- (h) interferes with, delays or prevents by any means, the lawful apprehension or arrest of another person under this Act; or
- (i) is in breach of any duty to the authorised officer required under this Act,
- (j) commits an offence and shall be liable on conviction to a fine not exceeding three hundred

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

37. Any person who impersonates or falsely represents himself to be an authorised officer commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Impersonating an authorised officer.

38. Any person who —

(a) being on board any vessel being pursued, about to be boarded or which has been notified of intended boarding by any authorised officer, or

Destruction of evidence and avoidance of seizure.

(b) being in a fish processing establishment or a place or premises where a related activity is conducted or in relation to which a licence, permit or other authorisation is issued or required under this Act, throws overboard, discards or destroys any fish, fish products, fishing gear, explosive, poison, noxious substance, chart, log, document or other thing with intent to avoid the seizure thereof or the detection of any offence against this Act.

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

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

Receiving fish in respect of which offence has been committed.

PART VI—PROSECUTION, HANDLING OF SEIZED GOODS AND EVIDENCE

40. 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 there under and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

Conduct of prosecutions.

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41. (1) If any fish or other thing of a perishable nature is seized under this Act, the Director may, notwithstanding any other provision of this Act—

Forfeiture and disposal of perishables.

- (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 directorate 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:
- (c) Provided that if, after making all reasonable efforts, the Director 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 after inviting the owner.

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

42. (1) If any vessel, vehicle or other thing has been detained or seized in terms of paragraph 51 (2) (g), and—

Treatment of seized goods.

- (a) a person who has been properly charged with an offence in relation thereto fails to appear to answer the charge within ninety days of the detention or seizure, the Director may apply to the court for the vessel, vehicle, or other thing to be forfeited to the County government, and the court shall make such order as it shall deem fit.
- (b) the lawful owner cannot be traced within fourteen days in case of a fishing gear and ninety days in case of a vessel of such seizure, the same shall be forfeited to the County Government and may be disposed in such a manner as the Director may consider appropriate.
- (c) the court does not order the forfeiture of it, any proceeds realized from its disposal shall be returned

to the owner thereof or the person having the possession, care or control of it at the time of such detention or seizure.

(2) If the owner of a vessel, vehicle, 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 or thing may be detained until all fines, orders for costs and penalties imposed in terms of this Act have been paid.

(3) If any payment contemplated in subsection (2) is not made within such time as the court may determine, the vessel, vehicle, or thing may be sold in satisfaction and the proceeds shall be dealt with in accordance with section 43.

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

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

Application of Security.

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

44. The Directorate shall be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, or other thing while in the custody of the Directorate in terms of this Act.

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

45. (1) Any person who knows or can reasonably be expected to know that a vessel, vehicle, or other thing is

Removal from Custody.

held in the custody of the Directorate in terms of this Act and who removes it commits an offence.

(2) If any vessel, vehicle, or other thing held or forfeited in terms of this Act has been unlawfully removed from the custody of the Directorate it shall be liable to seizure in accordance with any relevant law.

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

Forfeiture.

- (a) order anything other than immovable assets used in connection with the offence, including any vessel so used together with its fishing gear, stores and cargo, appurtenances as well as anything in respect of which the offence has been committed, to be forfeited;
- (b) order all fish found on board any vessel or vehicle used in connection with the offence to be forfeited, except that any fish that is proved not to have been caught in the course of the commission of an offence shall not be forfeited.

47. (1) The Director may give a certificate stating—

Certificate of evidence.

- (a) that an appended document is a true copy of the licence, permit, authorization or certificate of registration issued to a vessel or person;
- (b) that a particular location or area of water was within the county fisheries waters or within any other controlled area of the county fisheries waters subject to specified conditions;
- (c) that an appended chart shows the boundaries of the county fisheries waters, or other areas delineated for any specified purpose;
- (d) that a particular item or piece of equipment is fishing gear;
- (e) the cause or manner of death of or injury to any fish.

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

- (a) his address and official position;

(b) the name and call sign, if known, of the fishing vessel concerned;

(c) the place or area in which the vessel was located, and

(d) the date and time or period of time the vessel was in the place or area stated in paragraph (c) and

(3) Any certificate given under this section shall be headed "Certificate Given Under section 47 of the Fisheries and Aquaculture Management Act".

(4) The provisions under this section are in addition to and not in derogation from Cap. 80 any requirement for admissibility of evidence as provided for in the Evidence Act.

48. (1) The conviction of the holder of a licence, permit or certificate of registration or his authorised agent for any offence under the Act or any regulation made thereunder shall, unless the Director in writing otherwise directs, have the effect of cancelling the licence, permit or certificate of registration and such instrument shall cease to be valid from the moment of conviction. Effect of conviction

(2) Any person convicted of an offence under the Act or these Regulations shall, unless the Director in writing otherwise directs, stand disqualified from holding a licence, permit or certificate of registration related to the provisions under which he has been convicted, for a period of two years from the moment of conviction.

(3) The holder of any licence, permit or certificate or registration which is cancelled pursuant to paragraph (1) shall, within fourteen days from the date of conviction, surrender the licence, permit or certificate of registration or any document evidencing permission or authority to engage in business for which authority is required under the Act or these Regulations to a licensing officer.

(4) The licensing officer shall record the surrender of the instrument in the appropriate register.

(5) Any person who contravenes this regulation shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months or to both.

**PART VII—THE FISHERIES DEVELOPMENT
TRUST FUND**

49. (1) There is hereby established a fund to be known as the Fisheries Development Trust Fund which shall be administered by a composition of board of trustees.

Fisheries
Revolving Fund

(2) The object of the fund shall be to facilitate research and technological developments, conservation efforts, development of essential fisheries and aquaculture infrastructure, capacity building intended to further the development of fisheries and aquaculture management,

(3) The CEC shall by notice in the *gazette* provide the mode of administration of the fund established under subsection 1.

(4) There shall be paid into the fund—

- (a) monies levied on licence and permit holders as shall be determined by the board of Trustees;
- (b) such monies as may be provided by the county assembly;
- (c) such sums of money as may be received by the Fund in the form of donations, endowments, grants and gifts from whatever source and specifically designated for Fund; and
- (d) such other sums of money or other assets as may be specifically designated to the Fund by the county assembly.

**PART VIII—PREVENTION OF POLLUTION AND
PROTECTION AND CONSERVATION OF COUNTY
FISHERY WATERS**

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

Pollution
Prevention Zone.

51. (1) Except in the cases of emergency involving the safety of a fishing craft or crew, no person shall intentionally or negligently place or discharge into County fishery waters .

Discharge of
Pollutants
prohibited.

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

52. (1) No person shall place or by act of omission cause to be placed any species of live fish in any body of water without authorization issued in writing by the Director, except where—

Placing of live fish.

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

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

PART IX—AQUACULTURE DEVELOPMENT

53. The Director may with the approval of the CEC Member, by notice in the Gazette, and for purposes of proper management of aquaculture make regulations outlining—

Regulations for Aquaculture.

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

54. The Director may co-operate with other bodies which deal with fisheries in neighboring counties for the purposes of—

Co-operation with other bodies.

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

PART X—FISH SAFETY AND QUALITY

55. (1) The county Department responsible for Fisheries shall be the Devolved Competent Authority responsible for the official control of the safety of fish, fishery products and fish feed in Migori County in consultation with the National Competent Authority.

Devolved
Competent
Authority.

(2) The management of the Devolved Competent Authority in matters related to this Act shall be the responsibility of County level standing and technical committees.

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

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

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Migori County Fisheries and Aquaculture

- (j) issue health certification of fish, fishery products and fish feed subject to the consignment meeting set requirements ;
- (k) grant approval for the fishery enterprises that meet applicable requirements prescribed by the CEC Member.
- (l) perform such other functions as may be necessary or expedient for food safety conditions of fishery products in accordance with this Act.

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

56. The Director may in consultation with the CEC Member enter into arrangements or agreements with other counties within shared fishery resources for the purpose of harmonization of fish safety and quality standards.

Harmonization of fish safety and quality standards.

PART XI—COMMUNITY PARTICIPATION

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

Establishment of Beach Management Units.

(2) Regulations made under (1) shall give due considerations to agreement made with counties sharing lake victoria and may provide, in respect of the beach management units, for—

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

58. The Director may, with the approval of the CEC Member for the purposes of promotion of fish production and marketing—

Promotion of fish production and marketing.

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

PART XII— MISCELLANEOUS

59. The CEC Member may make regulations for the better carrying into effect of the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the CEC Member may make regulations for any or all of the following purposes—

- (a) 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;
- (b) 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;
- (c) regulating the handling, storage and processing of fish by prescribing methods of handling, storage and processing of fish;
- (d) Prescribing requirements for governing the safety and quality of fish, fishery products and fish feed;
- (e) Providing for the management and control of fish landing stations and County fishery waters;
- (f) licensing of any person to engage in any form of fishing, or of handling, translanding stationing, processing or selling of fish products;
- (g) organizing and regulating the marketing and distribution of fish;
- (h) providing for the registration of private marks to be used to distinguish the ownership of fishing gear;
- (i) prohibiting or controlling the importation, exportation, and introduction in to the county of live fish of any kind or species;

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- (j) promoting and regulating or controlling the development of aquaculture establishments;
- (k) development of recreational and ornamental fisheries and establishment of fishing camps;
- (l) sport fishing regulations
- (m) providing for the management and exploitation of dam and riverine fisheries;
- (n) providing for control of the manufacture, marketing and introduction in county fishery waters of fishing gears;
- (o) prescribing the forms to be used for various matters under the act;
- (p) any other thing he may deem necessary for the promotion of fisheries in the county .

60. Where any conflict arises between the provisions of this Act and any other written County laws in matters relating to fisheries, the provisions of this Act shall prevail. Suprecession.

REGULATIONS IMMEDIATELY NEEDED TO GIVE EFFECT TO THE ACT

1. Fisheries and aquaculture “General“ Regulations to give effect to the licences, permits, management, measures.

2. Fisheries “Safety of Fish, fisheries products and fish feeds” regulations to give effect to the fish health certifications systems, procedures and processes.

3. Fisheries “Beach Management Unit“ Regulations to give effect to the effective participation of the fishers in the management of the fisheries.

4. Fisheries “Cage Culture“ regulations to give directions on the establishment and operations of cage farms in the lake.