



## **REGULATORY IMPACT ASSESSMENT**

**FOR**

**THE MARINE FISHERIES (ACCESS AND DEVELOPMENT) REGULATIONS, 2022**

**MARCH, 2022**

*This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of 2013).*

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## ABBREVIATIONS

AIMS	–	Africa Integrated Maritime Strategy
AU	–	African Union
BE	–	Blue Economy
DWFN	–	Distant Water Fishing Nation
EEZ	–	Exclusive Economic Zone
FAO	–	Food and Agriculture Organization
FLTF	–	Fish Levy Trust Fund
GDP	–	Gross Domestic Product
HLP	–	High Level Panel for Sustainable Ocean Economy
IOTC	–	Indian Ocean Tuna Commission
IUU	–	Illegal Unregulated and Unreported
KeFS	–	Kenya Fisheries Service
KFAC	–	Kenya Fisheries Advisory Council
KFMA	–	Kenya Fish Marketing Authority
KMFRI	–	Kenya Marine and Fisheries Research Institute
KWS	–	Kenya Wildlife Service
LDC	–	Least Developed Countries
MT	–	Metric Tonne
MTP	–	Medium-Term Plan
NEMA	–	National Environmental Management Act
RIA	–	Regulatory Impact Assessment
RIS	–	Regulatory Impact Statement
SDFA&BE	–	State Department of Fisheries and Aquaculture and Blue Economy
SDGs	–	Sustainable Development Goals
SIDs	–	Small Island Developing Countries
TAC	–	Total Allowable Catch
USD	–	United States Dollars
UNCLOS	–	United Nations Convention on the Law of the Sea
WIOMSA	–	Western Indian Ocean Marine Science Association

## **1. INTRODUCTION**

### **1.1 Regulatory-making Authority and the Legal Mandate**

Articles 61 and 62 of the United Nations Convention on the Law of the Sea (UNCLOS) provide for conservation and utilization of the living resources in the Exclusive Economic Zone (EEZ). Specifically, a coastal state has the responsibility for the determination of the allowable catch, protection of endangered from-exploitation, restoration of populations of harvested species and promotion of optimum utilization of living marine resources. In Kenya, these provisions are given effect under the Fisheries Management and Development Act No. 35 of 2016 (the Act).

Section 208 of the Act provides that the Cabinet Secretary may make regulations on the following:

- (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 therefore;
- (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; and
- (g) the licensing of any person to engage in any form of fishing, or of handling, transporting

In exercise of the above powers, the Cabinet Secretary has drafted the Marine Fisheries (Access and Development) Regulations (the proposed Regulations). The proposed Regulations are intended to give full effect to the Act. This Regulatory Impact Statement (RIS) is prepared in accordance with the requirements of the Statutory Instruments Act No. 23 of 2013.

### **1.2 Requirements of the Statutory Instruments Act**

The Statutory Instruments Act, No. 23 of 2013 (SIA) is the legal framework governing the conduct of Regulatory Impact Statement (RIS) in Kenya. Sections 6 and 7 require that *if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.*

The Act further sets out certain key elements that must be contained in the RIS namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

Section 5 of SIA requires that a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

### **1.3 What is a Regulatory Impact Statement?**

Regulatory Impact Statement is a systematic policy tool used to examine and measure the likely benefits, costs, and effects of new or existing regulations. A RIS is an analytical report to assist decision makers to arrive at an informed policy decision. As an aid to decision making RIS includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit. Typically, the structure of a RIS should contain the following elements:

- (a) title of the proposal;
- (b) the objective and intended effect of the regulatory policy;
- (c) an evaluation of the policy issue;
- (d) consideration of alternative options;
- (e) assessment of all their impacts distribution;
- (f) results of public consultation;
- (g) compliance strategies, and
- (h) processes for monitoring and evaluation<sup>1</sup>.

RIS is usually conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation to assess whether the regulation is likely to achieve the desired objectives. RIS promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, the RIA should confirm whether a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. RIS therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

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<sup>1</sup> Regulatory Policy Division Directorate for Public Governance and Territorial Development: Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers. OECD, 2008

## **2. PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS**

### **2.1 Realization of Kenya's Marine Fisheries Potential**

Management of Kenya's marine fisheries is based on annual licensing for distant waters fishing fleets, a system prone to a number of weaknesses including transshipment of catch without landing, over fishing as well as illegal, unreported and unregulated (IUU) fishing. This state of affairs translates to low landings, loss of revenue and generally an under-developed marine fisheries sector.

Enactment of the Fisheries Management and Development Act, 2016 was intended to promote conservation, management and development of fisheries and other aquatic resources and to enhance the livelihood of communities' dependent on fishing. The Act provides for a rights-based marine fisheries system, mandatory landing, charging of levies and introduction of fishing quotas to curb overfishing. These measures are intended to increase landed catch, maximize foreign exchange earnings by companies fishing in Kenya's EEZ, create employment, develop local marine fisheries and enhance food security. However, the Act has not been fully implemented since the enabling Regulations have not been developed. The applicable Regulations are those which were developed under the repealed Act and do not support the progressive provisions in the new Act.

The development and implementation of the proposed Regulations will enable Kenya to fully realize her marine fisheries potential especially in the EEZ.

### **2.2 Scope**

The scope of the proposed Regulations is to:

- (a) provide for the requirements for a Kenyan citizen and a foreign national to enter Kenya marine waters to undertake fishing;
- (b) promote the use of marine fisheries resources in Kenya marine waters in a manner that can bring economic benefits both to the country;
- (c) promote food and nutrition security;
- (d) introduce industry supportive mechanisms such as levies remitted to a revolving fund to promote the development of artisanal fishers;
- (e) establish mechanisms for management and conservation of marine fisheries; and
- (f) strengthen monitoring control and surveillance to eradicate illegal, unreported, and unregulated fishing within Kenya's marine waters.

### **2.3 General Objective**

The general objective of the proposed Regulations is to give full effect to the Fisheries Management and Development Act No. 35 of 2016 by providing a framework to ensure sustainable, beneficial use of the Kenya marine fisheries resources.

### **2.4 Specific Objectives**

Specifically, the proposed Regulations seek to:

- (a) define the modalities and criteria for allowing access to Kenya's marine resources;
- (b) enable the realization of economic benefits from marine resources to the country;



- (c) promote food and nutrition security;
- (d) provide levies for promoting development of artisanal fishers;
- (e) establish mechanism for management and conservation of marine fisheries: and
- (f) strengthen monitoring control and surveillance and combat Illegal, unreported and unregulated (IUU) fishing within Kenya's marine waters.

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### **3. BACKGROUND AND CONTEXT OF THE PROPOSED REGULATIONS**

#### **3.1 Background of Marine Fisheries**

The fishing industry across the world comprises raising or harvesting fish and other aquatic life both in freshwater bodies (about 10% of all catch) and the oceans (about 90%). About 500 million people worldwide are economically dependent on fisheries. 179 million tonnes of fish were produced in 2018 (FAO,2020), but overfishing is an increasing problem, causing declines in some populations. In the case of Kenya however, marine fisheries account for less than 10% of the national fish landings. The marine fisheries sustain jobs of more than one million individuals (fisherfolk, processors, traders and other service providers) whose income depend directly or indirectly on fishing. Specifically, 13,426 fishers are directly employed in the marine fisheries in Kenya.

Marine fisheries sector is affected by several challenges including overfishing, use of illegal fishing gears and methods, fisheries related crimes and environmental issues (climate change, pollution and ocean acidification). The challenges have necessitated changes in the enabling framework to facilitate sustainable exploitation of the marine fisheries resources. Modern jurisdiction over fisheries is regulated by a mix of international treaties and local laws. These frameworks are key to creation of jobs, enhancing food and nutrition security, increasing private sector investment, generating sustainable tax revenue and preserving and protecting marine ecosystem.

Diminishing fish stocks, marine pollution and devastation of important terrestrial and coastal ecosystems has introduced increasing uncertainty in important fisheries worldwide, threatening economic security and food security in many parts of the world. These challenges are further complicated by the changes in the ocean caused by climate change and the attendant sustainability concerns.

There is an obvious and manifest need to boost Kenya's marine fisheries for reasons explained in this report to:

- (a) develop Kenya's marine fisheries as a coastal State and to reap the attendant benefits; and
- (b) transform the license-based management and conservation regime to a rights-based system.

#### **3.2 International and Regional Context of Marine Fisheries**

International attention has for a long time been focused on preserving coastal ecosystems and supporting more sustainable economic practices for coastal communities, including in their fishery and aquaculture practices. The world's oceans and seas are a major source of wealth, creating trillions of dollars in goods and services. The United Nations Food and Agriculture Organization (FAO) estimates that fish provide more than 4.2 billion people with more than 15 percent of their animal protein intake<sup>2</sup>. Internationally, fish stocks are affected by Illegal Unregulated and Unreported (IUU) fishing which accounts for 26 million tons of fish annually or more than 50% of the total catch (World Bank, 2017). Moreover, overfishing and overcapacity incur about 80 billion USD annually in forgone economic benefits.

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<sup>2</sup> FAO, 2014. State of the World Fisheries and Aquaculture: Opportunities and Challenges.

United Nations Convention on the Law of the Sea (UNCLOS) is the public international law governing the geographic jurisdictions of coastal States and the rights and duties among States in the use and conservation of the ocean environment and its natural resources.

In September 2018 the High-Level Panel for Sustainable Ocean Economy (HLP) was established by serving world leaders who are building momentum for a sustainable ocean economy in which effective protection, sustainable production and equitable prosperity go hand in hand. By enhancing humanity's relationship with the ocean, bridging ocean health and wealth, working with diverse stakeholders, and harnessing the latest knowledge, the initiative aims to facilitate a better, more resilient future for people and the planet. The Ocean Panel is the only ocean policy body made up of serving world leaders with the authority needed to trigger, amplify, and accelerate action worldwide for ocean priorities.

In the African context, fisheries represent the leading agriculture export commodity for Africa, contributing 19% of the total agricultural volume but 5% of the total value (AU, 2017). However, the region loses between 2 to 5 billion USD annually due to the mismanagement in the sector (AU, 2016). The contribution of the sector to GDP remains small, about 2%, in some countries. Surmounting these challenges and unlocking the potential of the sector require well thought out policy interventions. Under the Malabo declaration (2014) the Africa heads of states and government took cognizance of the limited investment in agricultural sector and committed themselves to allocate at least 10 percent of the national budget to the sector. This initiative has led to the 2050 Africa Integrated Maritime Strategy (AIMS), among other initiatives.

Kenya's Fisheries Management and Development Act, 2016 takes into account provisions of the relevant international treaties and best practices and positions the country to reap the benefits of marine fisheries. The proposed Regulations are intended to give full effect to the salient provisions of the Act.

### **3.3 Domestic Context of Marine Fisheries**

Kenya has an abundance of untapped potential in maritime resources along its marine coastline which extends over 650 kilometres, translating to a total area 9700 square kilometres of territorial waters and an Exclusive Economic Zone (EEZ) constituting a further 142,400 square kilometres. The government recognizes the potential of this enormous maritime resource to boost the country's economy and has made Blue Economy (BE) part of the economic pillar in its development blueprint.

The Indian Ocean is the second most productive tuna fishery in the world, and most of this tuna is caught in the western part of the Indian Ocean. According to Fortune Business Insights, the global tuna fish market was valued at US\$ 39.27 billion in 2021 and is expected to grow to US\$ 48.19 billion with an annual compounded growth rate of 2.65% annually on the back of rising demand in Europe and Asia as well as growing consumer preference for seafood and healthy diets<sup>3</sup>. Indonesia and the Philippines are among the top tuna producers in the world. The tuna species is highly migratory and Kenya's EEZ lies in the Indian Ocean Tuna migratory belt. This belt traverses Mauritius, Seychelles, Comoros, Mozambique, Tanzania, Kenya, Somalia, and Maldives. The tuna migratory cycle covers one year and therefore if Kenya is unable to catch this high-in-demand species, the possibility is that it will be harvested in another jurisdiction.

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<sup>3</sup> <https://www.globenewswire.com/news-release/2021/07/23/2267813/0/en/Tuna-Fish-Market-Worth-USD-48-19-Billion-at-2-65-CAGR-by-2028-Owing-to-Increasing-Demand-for-Canned-Tuna-in-Europe.html>

Indeed, although this fish swims deep below the ocean, Kenya's EEZ is one of the two EEZs located in the rich (upwelling) tuna fishing ground in the West Indian Ocean.

In 2015, Kenya's marine fisheries sector employed about 27,000 fishers.<sup>4</sup> The number of people supported indirectly by the sector as traders, processors, input suppliers, merchants of fishing accessories, or providers of related services, is considered much higher.<sup>5</sup> A major challenge for the sector is that fishing-related activities, especially at the community level, are largely unregulated, hence accurate figures are difficult to obtain. In addition, fish is a critical source of affordable animal protein<sup>6</sup> for consumption, particularly for coastal communities, and the sector is also important for preservation of culture and national heritage, including related industries such as tourism, and for recreational purposes.

The fishery resources of Kenya contribute to the national economy through tax and foreign exchange earnings, employment generation, food and nutrition security support and support for industrialisation as well as agri-business. Of Kenya's 2019 population census of 47.5 million, the fisheries sector provided employment to 2.5 million and livelihood for at least 2.3 million people. According to the 2021 Economic Survey, Kenya landed fish worth Kshs 26.2 billion. Over 80% of fish landings come from freshwater lakes, about 10% from marine sources, and the rest from aquaculture, a situation that is converse to more prosperous coastal states, where marine fish landings account for close to 90% of the fish landings.

Kenya's marine fishery industry continues to perform dismally despite the great potential of its marine resources. Several scientific studies by the Food and Agricultural Organization (FAO) and other organizations have estimated that Kenya's annual potential catch (total allowable catch (TAC)) of fish in our part of the Indian ocean at between 150,000 MT to 300,000 MT, valued at least KShs 100 billion annually. This fish, if it was landed and value-added on Kenya's shores, has the capacity to create at least 60,000 direct and indirect jobs, and contribute at least KShs 5 billion to State revenue annually. Currently, the average annual budgetary allocation to the fisheries sector is Kshs.2.2 billion suggesting that this is a sector that can fully fund itself from internally generated resources.

Unfortunately, the country lands about 1,972 MT fish from marine industrial fishing vessels in the EEZ, valued at about KShs 792 million (KNBS, 2021). This represents loss of billions of Kenya shillings in revenue collection. The fisheries sector, because of its sub-optimal performance continues to be a burden on the exchequer, when it could potentially fund itself and positively support the rest of the economy if its value chain was properly developed and managed.

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<sup>4</sup> UNEP-Nairobi Convention and WIOMSA (2015). The Regional State of the Coast Report: Western Indian Ocean. UNEP and WIOMSA, Nairobi, Kenya

<sup>5</sup> <https://kemfsed.org/wp-content/uploads/2021/05/PAD-Kenya-Marine-Fisheries-and-Socio-Economic-Development-Project.pdf>

<sup>6</sup> In November 2018 the President launched an 'eat more fish' campaign aimed at encouraging Kenyans to increase dietary intake of fish.

## **4. RATIONALE AND JUSTIFICATION FOR THE PROPOSED REGULATIONS**

### **4.1 Policy Issue**

The enactment of the Fisheries Management and Development Act, 2016 was intended to promote conservation, management and development of fisheries and other aquatic resources and to enhance the livelihood of communities' dependent on fishing. The Act incorporated regional and international policies, treaties and conventions and regulated fishing in Kenya's territorial waters including the EEZ and beyond Kenyan's national territory. The Act also provides for a development-oriented fisheries management framework with provisions for a rights-based fishery, mandatory landing before transshipment, investments in Kenya, employment creation, and maximization of foreign exchange earnings by companies fishing in Kenya's EEZ.

Despite these progressive provisions, Kenya's fisheries management is still based on open access with annual licensing for distant waters fishing fleet which encourages transshipment without landing. There is therefore no reliable data on the amount of fish which foreign vessels catch in Kenya's waters, since most fish is currently transhipped at sea. Notwithstanding her strategic location in the rich tuna migratory path, Kenya has not been able to benefit from this multi-billion industries. Kenya's EEZ remains largely underutilized despite its enormous potential. This state of affairs is attributable to the fact that the Fisheries Management and Development Act has not been fully implemented due to the absence of enabling Regulations. Indeed, Kenya continues to implement the Regulations developed under the repealed Fisheries Act, Cap. 378, which did not have the progressive marine fisheries conservation and management provisions.

### **4.2 Opportunities for Kenya to realize the Potential for Marine Fisheries**

#### **4.2.1 *Location on the Rich Indian Ocean Tuna Migratory Belt***

Kenya is a member of the Indian Ocean Tuna Commission (IOTC) which is a FAO approved intergovernmental organization that co-ordinates the regulation and management of tuna in the Indian Ocean. Under the multilateral treaty establishing the Commission, Kenya's reporting obligations include giving regular reports on licensed national and foreign fishing vessels, fisheries statistics, data on import of bigeye tuna, interactions with marine turtles, cetaceans and whale sharks, incidental bycatch of seabirds, among others. This information is particularly important not just for reporting purposes but also for putting in place the necessary conservation and management measures.

As noted earlier, Kenya is located on the Indian Ocean Tuna migratory belt that traverses Mauritius, Seychelles, Comoros, Mozambique, Tanzania, Kenya, Somalia, and Maldives. It is also one of the major global upwelling regions, rich in tuna and tuna like species and other fish. The tuna migratory cycle covers one year and therefore lack of adequate capacity to exploit this cycle means that Kenya loses as these high-in-demand species are harvested elsewhere in the belt.

Table 1: Comparing EEZ Fisheries of Kenya, Seychelles, and Mauritius

PARAMETER	KENYA	SEYCHELLES	MAURITIUS
Size of Exclusive Economic Zone (in km <sup>2</sup> )	162,794	1,331,964	1,272,765
Primary production (in mg/Cm <sup>2</sup> /day)	564.58	357.03	239.37
Total Allowable Catch	300,000	n/a	n/a
Fish Landings per year	1,530MT – 2019  No tuna fish processing facility	220,000 MT in 2018 (346,000 in 2003) (136,200 MT reported to IOTC by Seychelles (2017) + 98,000MT by Seychelles - based vessels) Cannery alone produces 90,000-110,00MT canned product per year	18,576 MT domestic catch, and about 200,000 MT total landings from regional fishing.  <u>Note:</u> Mauritius Princes cannery turnover is 90,000MT canned fish per year,
Value	US\$ 3 million per year  About Kshs 306 million	525 mil US\$/year (exports) (FAO country report 2019)	600 mil US\$/year (Mauritius fisheries masterplan) Mauritius Seafood Hub turnover is about 285 mil US\$
State Revenue	0.2% of value of catch. (maximum license fee -US\$ 50,000 per purse seine, catching about 7,500MT annually)	12-13% of gross revenue from fisheries (licenses, levies, access agreements)	10-11% of gross revenue from fisheries (licenses, levies, access agreements)

Source: [http://www.seaaroundus.org/sea-around-us-area-parameters-and-definitions/#\\_Toc421807913](http://www.seaaroundus.org/sea-around-us-area-parameters-and-definitions/#_Toc421807913) on 2 March 2022 and own research

Table 1 clearly shows that, despite Kenya having a smaller Exclusive Economic Zone (EEZ), it has a much higher potential that remains unexploited to date. Seychelles and Mauritius, whose EEZs are not within the upwelling region but are in the same tuna fishery migratory pathway lands much higher quantities of fish. Seychelles lands about 220,000 MT annually, while Mauritius has a vibrant fisheries hub that lands at least 200,000MT annually. Both countries have built robust fisheries industries, including the top 10 canneries globally, with the same tuna resource.

#### 4.2.2 Contribution to Revenue

Kenya's marine fishery industry continues to perform dismally in terms of contributing to national economic development. Several scientific studies by the Food and Agricultural Organization (FAO) and other organizations have consistently estimated Kenya's annual potential catch (total allowable catch (TAC)) of fish in our part of the Indian ocean at between 150,000 MT to 300,000 MT, valued at least KShs 100 billion annually. This fish, if it was landed and value-added on Kenya's shores, has the capacity to create at least 60,000 direct and indirect jobs, and contribute at least KShs 5 billion to State revenue annually. This revenue is sufficient to not only finance all costs related to fisheries management, but also contribute to other national development priorities.

Unfortunately, the country lands about 1,530 MT fish from foreign distant waters fishing nations (DWFN) fleet in the EEZ, valued at about KShs 306 million, which presents about 0.68% of our potential earnings (estimated at about KShs 45 billion). It is worth noting that the amount of fish caught in Kenya's EEZ by foreign fleets is however much higher, as most vessels tranship in deep waters or sail away with their catch to land in other ports in the region, and international markets. Cumulatively, Kenya has lost at least KShs 2 trillion in potential earnings from fisheries resources since the United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982, and about 60,000 jobs annually, compounding the unemployment challenge.

Further, the South West Indian Ocean Commission recommends that coastal states should recover at least 12% of their total EEZ fisheries value as State revenue. However, Kenya is recovering about 0.2% of our EEZ fisheries value as State revenue. The State therefore losses about KShs 5.4 billion annually which could have been paid as taxes and levies by companies that exploit our EEZ fisheries.

#### *4.2.3 Failure to Exploit Sport and Deep-Sea Fishing*

Kenya is renowned as a top deep-sea fishing destination on the coast of East Africa. Deep-sea and sport fishing along the Kenyan coast dates to the days of Ernest Hemingway in the 1930s and became well established in the 1950s and more prominent in the mid-1980s due to increased tourism. Kenya is one of the few countries including Seychelles, Mauritius, Mozambique and South Africa in the Western Indian Ocean with the unique sport and recreational billfish fishery (Pepperell et al., 2017). In addition, the presence of six types of billfish species (blue marlin, black marlin, swordfish, striped marlin, sailfish, and the short-billed spearfish) makes Kenya a destination for sport fishing competitions. Several records have been set by anglers by catching a fantasy slam (consisting of 5 billfish species), a grand slam (3 different billfish species), or a record grander (a marlin weighing 1000 pounds or more). This spurred sport fishery for billfish in the late 1980s. Much of the fishery for billfish exists as catch and release after tagging African Billfish Foundation in Watamu. The data on the movement of the species can be used to understand migratory and feeding movements, daily habits, and survival rates after release. Major billfish fishing zones in Kenya include fishing grounds off Watamu, Malindi, Kilifi, Diani, Shimoni and Lamu which have representative sport fishing clubs.

Given that fishing effort on billfish is largely focused on industrial fisheries, the growing interest along with other competing resource users such as artisanal and sport fisheries have the potential to increase fishing pressure on these fisheries. The tourism and lifestyle potential of this phenomena have declined and remains largely unexploited or is exploited by only a few players, reducing their possible impacts to the wider community and the country.

#### *4.2.4 Reliance on Annual Licensing Regime*

Kenya has been using licensing as a management tool to control access to her marine fisheries for a long time. This management approach has not been effective in addressing the challenge of overfishing in Kenya's coastal waters. Fish stocks in the coastal waters continue to dwindle. Besides overfishing, transshipment is another challenge affecting marine fisheries. Whereas transshipment is banned by the Fisheries Management and Development Act, No. 35 of 2016, mechanisms for enforcing landing of fish caught in the EEZ are lacking thus leading to continued transshipment of fish caught in our EEZ in breach of the provisions of the Act. The Distance Water Fishing Nations (DWFNs) do not submit full and correct data on what they catch which in turn contributes to loss of revenue.

#### 4.2.5 *An Under-Developed Fishing Sector*

Most of the marine fish harvested in Kenya is by artisanal fishermen who restrict their operations within a few kilometres from the coastline as they are not sufficiently equipped to venture into the deep sea. There are, however, several commercial fishermen operating modern fishing vessels that trawl prawns along the Kenyan coast. The main challenges facing fishermen are acquisition of efficient fishing gears such as motorized boats, and ice for the storage of their catch. The fishing industry's contribution to the economy remains low. The low contribution to the economy contributes to low budgetary support to the sector leading to insufficient empowerment of the fisher folks and weak fishing organizations. Weak fishing organizations are unable to add value such as fish storage, processing, packaging, net-making, boat building and restaurants business.

This vicious cycle must be broken by attaining self-sustenance of the sector through transformation from licensing regime to a right-based system for fisheries management where affordable levies and fees are charged to all fishers based on the value of total landed fish.

#### 4.2.6 *Illegal Unregulated and Unreported (IUU) Fishing*

Apart from denying the country the much-needed revenue base, IUU creates the risk of overfishing and depleting certain species of fish besides other international crimes including piracy and drug trafficking. The proposed Regulations propose to introduce a scientifically derived quota system based on total allowable catch for all categories of fishers. This is expected to promote sustainability and curb overfishing.

### 4.3 **Conclusion**

These regulations will strengthen the Legal and Institutional framework needed to exploit Kenya's potential in the marine fisheries sector and make it substantively contribute to the national development agenda. This is will be realized through increased fish landings which will in turn translate to increased revenue collection, job opportunities and contribute to food security.



## **5. POLICY AND LEGAL FRAMEWORK FOR THE PROPOSED REGULATIONS**

### **5.1 United Nations Convention on the Law of the Sea (UNCLOS)**

UNCLOS sets out a comprehensive legal framework governing all activities and uses of the world's seas and oceans. The convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas. Specifically, Articles 61 and 62 provide for conservation of the living resources and utilization of the living resources respectively.

#### *5.1.1 Conservation of the living resources*

The convention requires a coastal State to:

- (a) determine the allowable catch of the living resources in its exclusive economic zone.
- (b) considering the best scientific evidence available to it, ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not endangered by over-exploitation.
- (c) restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States.
- (d) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
- (e) exchange on a regular basis through competent international organizations the available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks including States whose nationals are allowed to fish in the exclusive economic zone.

#### *5.1.2 Utilization of the living resources*

The coastal State is under obligation to:

- (a) promote the objective of optimum utilization of the living resources in the exclusive economic zone.
- (b) determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws, and regulations, give other States access to the surplus of the allowable catch.
- (c) in giving access to other States to its exclusive economic zone, the coastal State shall consider all relevant factors, including the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests.
- (d) give due notice of conservation and management laws and regulations.
- (e) nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following:

- (i) licensing of fishermen, fishing vessels and equipment and payment of fees and other forms of remuneration;
- (ii) determining the species which may be caught, and fixing quotas of catch;
- (iii) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (iv) fixing the age and size of fish and other species that may be caught;
- (v) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (vi) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes;
- (vii) the placing of observers or trainees on board such vessels by the coastal State;
- (viii) the landing of all or any part of the catch by such vessels in the ports of the coastal State;
- (ix) terms and conditions relating to joint ventures or other cooperative arrangements;
- (x) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research; and
- (xi) enforcement procedures.

The development of these regulations is intended to give full effect to the Act which domesticates the above obligations under the international law of the sea.

## **5.2 UN 2030 Agenda for Sustainable Development Goals**

The 17 UN 2030 Agenda for Sustainable Development Goals (SDGs) are an integrated global call of action to end poverty, protect the earth's environment and climate, and ensure that people everywhere can enjoy peace and prosperity.

SDG goal 1 calls for the end of poverty in all forms. The pledged to '*Leave No One Behind*' aims to eradicate every form of extreme poverty including the lack of food, clean drinking water, and sanitation. Achieving this goal includes finding solutions to new threats caused by climate change and conflict. This SDG focuses not just on people living in poverty, but also on the services people rely on and social policy that either promotes or prevents poverty. Target 1.1 purposes to eradicate extreme poverty for all people everywhere by 2030 while target 1.2 aims at reducing at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions. In line with target 1.3 nationally appropriate social protection systems and measures for all.

SDG goal 2 aims at achieving '*zero hunger*'. Target 2.1 calls for an end to hunger and ensure access by all people to safe, nutritious, and sufficient food all year round. Target 2.2 aims at ending all forms of malnutrition, by 2025 whereas target 2.3 seeks to double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists, and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment. Target 2.4 aims at ensuring sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding, and other disasters and that progressively improve land and soil quality.

Goal 14 on '*Life below Water*' aims to conserve and sustainably use the oceans, seas, and marine resources for sustainable development (United Nations, 2015; UN, 2018). Within this goal, targets 14.4 and 14.6 emphasize the importance of action on overfishing, illegal unreported and unregulated (IUU), and fisheries subsidies, while target 14.7 focuses on enhancing the economic benefits to SIDS and coastal LDCs from the sustainable use of marine resources, through sustainable management of fisheries, aquaculture, and tourism (UN, 2014; UN, 2015; UNDP, 2018).

Kenya is working with the UN partners to achieve these goals and has already mapped them in the country's development blueprint, Vision 2030.

### **5.3 High-Level Panel for a Sustainable Ocean Economy**

The High-Level Panel for a Sustainable Ocean Economy (Ocean Panel) is a unique initiative by world leaders seeking to build momentum for a sustainable ocean economy in which effective protection, sustainable production and equitable prosperity go hand in hand. The Panel includes leaders from Norway and Palau, Australia, Canada, Chile, Fiji, Ghana, Indonesia, Jamaica, Japan, Kenya, Mexico, Namibia, Norway, Palau, and Portugal.

The oceans and their resources are therefore critical to food security and human welfare, while providing an essential buffer to global climate warming and to the decline of biodiversity. A sustainable ocean economy is one where humanity effectively safeguards marine and coastal ecosystems, uses ocean resources such as seafood in a sustainable way, and ensures that benefits from the ocean and ocean industries are shared fairly and can last into the future

As a member of the High-Level Panel for a Sustainable Ocean Economy, Kenya has committed, that by 2025, it will achieve 100% sustainable ocean management of areas under its national jurisdiction, guided by Sustainable Ocean Plans. This will be complemented by 74 priority actions in five critical areas of ocean wealth, ocean health, ocean equity, ocean knowledge and ocean finance to deliver a sustainable ocean economy. These commitments include adherence to the global target of protecting 30% of her oceans under highly protected Marine Protected Areas (MPAs) by 2030. In doing so, Kenya will build a sustainable ocean economy that supports achievement SDG 1, SDG 2, and SDG 14 under the 2030 Agenda for Sustainable Development as oceans, seas and coastal areas provide numerous goods fundamental to human well-being and food security.

### **5.4 2050 Africa Integrated Maritime Strategy**

Kenya is equally committed to the 2050 Africa Integrated Maritime Strategy (AIMS), a plan that aims to create wealth from Africa's oceans, seas, and inland waterways to foster a thriving maritime economy. The objective of the Africa Blue Economy Strategy is to guide the development of an inclusive and sustainable blue economy that becomes a significant contributor to continental transformation and growth, through the management of fishing activities on the aquatic spaces including the EEZ. Blue Economy advocates for the sustainable use of ocean resources for economic livelihoods and jobs, and ecosystem. It challenges the notion that socio-economic development.

### **5.5 Kenya Vision 2030**

The Kenya Vision 2030 is the long-term development blueprint expected to transform the country into a rapidly industrializing middle-income nation enjoying a high quality of life by the year 2030. The Vision, which is being implemented through successive five-year medium

term plans, aims to create a cohesive, equitable and just society based on democratic principles and issue-based politics grounded on the existing rich and diverse cultures and traditions. The vision aims to raise incomes in agriculture, livestock and fisheries to support job creation, industrial production and the manufacturing sector.

The Blue Economy Sector was added as the 8<sup>th</sup> Sector under the Economic pillar in the Medium-Term Plan (MTP) III of the Vision 2030. This is an indication of the economic potential of the Blue Economy Sector and more so the Marine Fisheries is expected play a major part in the realization of the economic pillar. Realization of the socio-economic benefits from the marine fisheries will be achieved through development of fisheries management measures that increase landing of fish caught in the EEZ, curb trans-shipment and control overfishing.

As part of the Kenya Vision 2030, the government has prioritized the Big Four Agenda which focuses on food and nutrition security, affordable housing, universal health care, and manufacturing. The agenda aims at ensuring that the ordinary Kenyan is employed or has a reliable source of livelihood, has enough and quality food, owns a home and is able to access universal health care. The new rights-based approach to fishing is expected to increase landed fish which will spur investments including manufacture of fishing gear, fish processing industries thereby creating employment, and promoting food security.

## **5.6 The Constitution of Kenya, 2010**

The national values and principles of governance set out under Article 10 (2) of the Constitution recognizes human dignity and sustainable development as binding the State in making and implementation of public policy. These values are further amplified in the Bill of Rights, specifically under Article 42 which provides that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69 and to have obligations relating to the environment fulfilled under Article 70.

Article 69 of the Constitution places the following obligations on the State regarding the environment:

- (a) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- (b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- (d) encourage public participation in the management, protection, and conservation of the environment;
- (e) protect genetic resources and biological diversity;
- (f) establish systems of environmental impact assessment, environmental audit, and monitoring of the environment;
- (g) eliminate processes and activities that are likely to endanger the environment; and
- (h) utilize the environment and natural resources for the benefit of the people of Kenya.

Article 70 provides for enforcement measures and grants the court the power to order for redress and compensation. Article 71 requires that any transaction that involves the grant of a right or concession by or on behalf of any person, including the national government, to another person

for the exploitation of any natural resource of Kenya shall be subject to ratification by Parliament. Article 72 requires Parliament to enact legislation to give full effect to the constitutional provisions.

The Fourth Schedule to the Constitution recognizes fisheries as a shared function. This means that the two levels of government have their respective roles to promote fishing. The Schedule distributes the following functions as shown:

- (a) national government: the use of international waters and water resources, National economic policy and planning, statistics, research, international trade, protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, fishing and water protection and agricultural policy.
- (b) County governments: Agriculture including fisheries, licensing and control of undertakings that sell food to the public, trade development and regulation including trade licenses and the implementation of specific national government policies on natural resources and environmental conservation.

### **5.7 Maritime Zones Act (CAP 371)**

This is the principal Act of Parliament which consolidates the law relating to the territorial waters and the continental shelf of Kenya. It provides for the establishment and delimitation of the exclusive economic zone (EEZ) of Kenya and for the exploration, exploitation, conservation, and management of the resources of the maritime zones. The Act domesticates international law on the law of the sea as codified under UNCLOS as it relates to the delimitation of maritime zones for coastal states.

The Act establishes and delimits the exclusive economic zone and grants Kenya sovereign rights with respect to the exploration and exploitation and conservation and management of the natural resources (living and non-living) of the zone. The establishment and delimitation of Kenya's EEZ is in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Further, the Act provides for the application of the Fisheries Act (now the Fisheries Management and Development Act, 2016) together with the Regulations made thereunder to Kenya's exclusive economic zone. Article 62 of UNCLOS recognizes the power of coastal states to regulate and exercise sovereignty over resources in the EEZ.

### **5.8 Environmental Management and Co-Ordination Act, 1999**

This is an Act of Parliament which provides the legal and institutional framework for the management of the environment throughout the territory of Kenya.

The scope of the Act covers Kenya's Maritime zones as it can be deduced from the following salient definition of terms and phrases:

- (a) "territorial waters" means territorial waters provided for under section 3 of the Maritime Zones Act (Cap. 371);
- (b) "environment" includes the physical factors surroundings human beings including land and water, among others;
- (c) "environmental resources" to include the resources of the air, land, flora, fauna, and water together with their aesthetical qualities.

The Act also provides for the protection of the coastal zone and requires the Cabinet Secretary to conduct a survey of the coastal zone and prepare an integrated national coastal zone management plan based on the report. It also requires the Cabinet Secretary to issue special guidelines for access to and exploitation of living and non-living resources in the continental shelf, territorial sea, and the Exclusive Economic Zone. It establishes the National Environmental Management Authority (NEMA) which supervises and coordinates all aspects relating to environmental matters and is the principal agency for implementing all government policies relating to the environment. This makes NEMA a key stakeholder in the implementation of the proposed Regulations.

## **5.9 Wildlife Conservation and Management Act, 2013.**

This is an Act of Parliament to provide for the protection, conservation, sustainable use, and management of wildlife in Kenya.

The Act defines “wildlife” to mean any wild and indigenous animal, plant or microorganism or parts thereof within its constituent habitat or ecosystem on land or in water, as well as species that have been introduced into or established in Kenya. All species of fish are therefore recognized as wildlife and fall within the ambit of the Act.

The Act has a schedule which declares certain species of fish to be critically endangered, vulnerable, nearly threatened, and protected species and prohibits any person from carrying out any activity involving the listed a species. It also provides for marine park to be protected area where no fishing, construction work or any disturbance is allowed unless with written permission of the Director-General. Regarding the importation and exportation of wildlife species, the Act prohibits any person from importing, exporting, or introducing any specimen or product of a wildlife species into or from Kenya without a permit issued by the Service under this Act. This prohibition extends to taking any species within Kenya or Kenya’s territorial waters and the high seas.

The Act also establishes the Kenya Wildlife Service (KWS) whose mandate includes conservation of all wildlife areas including protected areas. This mandate also makes the KWS another major stakeholder in the fisheries industry in Kenya.

## **5.10 Fisheries Management and Development Act, 2016**

This is the parent Act under which the proposed Regulations are being promulgated. The Act provides for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of the communities that are dependent on fishing. The Act declares that 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.

This Act applies to all Kenya fishery waters and areas over which Kenya exercises jurisdiction or sovereign rights, fishing and fishing related activities, persons (including non-citizens) and vessels (including foreign vessels) in and in relation to the Kenya fishery waters, among others. The broad 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.

The following are some of the institutional frameworks established under the Act, namely the:

- (a) Kenya Fisheries Advisory Council;
- (b) Kenya Fisheries Service, with a Board of management, a DG and Secretariat;
- (c) Fisheries Research and Development Fund;
- (d) Fish Levy Trust Fund;
- (e) Kenya Fish Marketing Authority;
- (f) Kenya Marine Fisheries Research Institute;
- (g) Kenya Coast Guard Service;
- (h) Kenya Wildlife Service;
- (i) Kenya Maritime Authority;
- (j) Kenya Navy;
- (k) Bandari Maritime Academy; and
- (l) Kenya Fishing Industries Corporation (KFIC).

It is critical to note that several of these institutions have duplicating and overlapping mandates and that there may be need to review the obtaining institutional framework to streamline these mandates and promote efficiency in the fisheries sector.

The Act empowers the Cabinet Secretary to make regulations for the better carrying into effect of the provisions of this Act in the following areas:

- (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; and
- (s) any other thing he may deem necessary for the promotion of fisheries in Kenya.

### **5.11 Other Legal Frameworks Impacting on Marine Fisheries**

The Kenya Marine and Fisheries Research Institute (KMFRI) is established under the Science, Technology and Innovation Act No. 28 of 2013 as a national research institution. KMFRI's mandate is to undertake research in "marine and freshwater fisheries, aquaculture, environmental and ecological studies, and marine research including chemical and physical oceanography", in order to provide scientific data and information for sustainable exploitation, management and conservation of Kenya's fisheries and other aquatic resources, and contribute to National strategies of food security, poverty alleviation, clean environment and creation of employment as provided for under Vision 2030. It is expected that this institute will provide a critical role undertaking marine research which will inform the determination of fish landing quotas for the different fish species.

The Kenya Coastal Guard Act, 2018 establishes the Kenya Coast Guard Service (KCGS) to be deployed in the territorial waters for purposes of among, others, enforcing maritime security and safety, pollution control, and sanitation measures; prosecuting maritime offenders, port and coastal security and the protection of maritime resources including fisheries. This Service will play a critical role in enforcement of the proposed Regulations.

### **5.12 Conclusion**

The Constitution of Kenya provides the basis for a sustainable exploitation of natural resources, declares a clean and healthy environment as a right of every person and mandates both the national and county governments to manage and conserve fisheries in different capacities. This is the position with which all other laws must conform. Kenya has also ratified the international and regional conventions and treaties including UNCLOS and related treaties, SDGs, HLP and AIMS. The provisions of these international and regional conventions have been domesticated under the Fisheries Management and Development Act which has set out the institutional framework for its implementation. This Act is supported by many other legal and institutional frameworks including NEMA, KWS, KMFRI, KCGS and line ministries. It is therefore clear that the necessary political good will, legal and institutional support is already in place. What requires to be done is the full implementation of the Act through development of the proposed Regulations.



## 6. PUBLIC PARTICIPATION AND CONSULTATIONS

Public Participation refers to the process by which citizens, as individuals, groups, or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives.<sup>7</sup>

It is a constitutional requirement that policy and law-making should be done in an open and transparent manner, with appropriate procedures for effective and timely input from professionals and persons affected by the policy instruments.

### 6.1 Legal Basis for Public Participation and Consultation

Participation of the people, inclusivity, transparency, and accountability are constitutional requirements whenever the State or public officer applies the Constitution, enacts any law, or makes or implements a public policy<sup>8</sup>. This requirement is premised on the sovereignty principle<sup>9</sup> which vests all sovereign power to the people of Kenya. This power entitles the people to unfettered access to the process of making public decisions through their involvement.

Transparency of public finances and performance is ensured through rules, mechanisms, and capacities for sharing information on government programs, budgets, expenditures, and results with citizens.<sup>10</sup> Participation mechanisms enable citizens to participate in setting budget priorities and monitor expenditures and assess service delivery performance. They also include feedback systems, which provide citizens with the opportunity to provide comments and grievances.<sup>11</sup> Accountability mechanisms include both direct and indirect relationships, where service providers are sanctioned if they fail to meet an established standard.<sup>12</sup>

The objects of devolution<sup>13</sup> give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development. The values and principles of public service<sup>14</sup> require the involvement of the people in the process of policymaking and include transparency and provision to the public of timely and accurate information.

Regarding the subsidiary legislation making process, the Statutory Instruments Act<sup>15</sup> requires that the regulatory making authority shall undertake public consultations before making statutory instruments (Regulations), and particularly, where the proposed Regulations are likely to have a direct or a substantial indirect effect on business or restrict competition.

The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to all relevant matters, including

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<sup>7</sup> Kenya Draft Policy on Public Participation, 2018 at pg. 6.

<sup>8</sup> Constitution of Kenya, 2010: Article 10.

<sup>9</sup> *Ibid*, Article 1.

<sup>10</sup> Constitution of Kenya, 2010: Articles 35, 201 and 132; County Governments Act, 2012: Sections 94, 95 and 96; Public Finance Management Act, 2012, Section 207.

<sup>11</sup> Constitution of Kenya, 2010: Articles 174, 201 and 232; County Governments Act, 2012: Sections 47, 91, 99 and 100; Public Finance Management Act, 2012: Sections 125, 128, 131 and 137; Urban Areas and Cities Act, 2011: Sections 21 and 22.

<sup>12</sup> Constitution of Kenya, 2010: Articles 174 and 201; County Governments Act, 2012: Section 89.

<sup>13</sup> Constitution of Kenya, 2010: Article 174(c).

<sup>14</sup> *Ibid*, Article 232 (1).

<sup>15</sup> No. 23 of 2013.

the extent to which the consultation: drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be lesser than fourteen days or be invited to participate in public hearings concerning the proposed instrument.

## **6.2 The Process of Public Participation and Consultations**

Pursuant to section 5 of the Statutory Instruments Act<sup>16</sup>, the Ministry of Agriculture, Livestock, Fisheries and Cooperatives identified specific stakeholders whom it engaged in a consultative process. These include the main professional and specialist institutions and individuals who will be directly or indirectly affected by the proposed statutory instrument.

### *6.2.1 Stakeholders Mapping*

The stakeholders identified for purposes of developing the proposed Regulations included:

- (a) National Assembly and the Senate.
- (b) Beach Management Units;
- (c) County Governments;
- (d) fish processors;
- (e) industrial fishers;
- (f) ornamental fishers;
- (g) artisanal fishers;
- (h) sport fishers;
- (i) subsistence fishers;
- (j) fish traders;
- (k) investors;
- (l) Non-Governmental Organizations;
- (m) Environmentalists; and
- (n) the public.

### *6.2.2 Public Consultation Approach and Methodology*

The Ministry adopted the following methodology for purposes of public participation and inclusivity:

- (a) The Draft Marine Fisheries (Access and Development) Regulations, 2021 and the Regulatory Impact Statement were posted onto the Ministry's website inviting representations generally and specifically from the identified stakeholders;
- (b) The stakeholders were notified of the Regulation-making process and invited to give submissions on the draft Regulations within a specified reasonable period;
- (c) A Gazette notice and a newspaper advert were published inviting all persons to submit their views; and
- (d) Physical and virtual meetings with select stakeholders were held to discuss the drafts.

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<sup>16</sup> Institutions from where there can be drawn knowledge of persons having expertise in fields relevant to the proposed statutory instrument and persons likely to be affected by the proposed statutory instrument.

Based on the above approach, a total of 15 meetings were held between the Ministry and key stakeholders. The Ministry also received written representations. The following is the full list of persons and institutions consulted in February 2022.

*Table 2: Meetings with Marine Fisheries Industry Stakeholders*

No	Targeted Stakeholders	Dates
1.	The National Assembly and Senate Oversight Committees	5 <sup>th</sup> October 2021
2.	Public Institutions, County Governments and BMUs	7 <sup>th</sup> February 2022.
3.	Members of County Assemblies – Kwale, Kilifi, Mombasa, Tana River, and Lamu Counties.	8 <sup>th</sup> – 11 <sup>th</sup> February 2022.
4.	BMUs from Mombasa, Kilifi, Tana River, and Lamu Counties.	9 <sup>th</sup> – 12 <sup>th</sup> February 2022.
5.	Industrial, Processors, Ornamental and Sport fishers.	13 <sup>th</sup> February 2022.
6.	Fish Traders, small scale processors, investors, and NGOs/Environmentalists.	13 <sup>th</sup> February 2022.
7.	Governors from the Coast Region.	14 <sup>th</sup> February 2022.

N/B: Attached to this Regulatory Impact Statement is a detailed matrix (Annexure 2) indicating representations received from the stakeholders and action taken in revising the Regulations.

### 6.2.3 Report on Stakeholder Consultative Process

A report on the stakeholder consultative sessions containing an analysis of comments and how they were considered and incorporated into the draft Regulations was prepared. The report also explains how the consultative process was conducted. The report is annexed to this report as a separate document as *Annexure 2*.

## **7. AN OVERVIEW OF THE PROPOSED MARINE FISHERIES (ACCESS AND DEVELOPMENT) REGULATIONS, 2022**

The proposed Regulations provide for the following salient features:

### **7.1 Assignment of fishing and access rights**

A fishing access right is a right granted to a person to enter into Kenya's marine waters to fish. The Regulations provide that an applicant for the right has to be registered as a fisher either by the County Executive Committee Member or the Director General either as a subsistence fisher, artisanal fisher, recreational fisher, ornamental fisher, semi-industrial fisher, industrial fisher, foreign industrial fisher, or aquarium fisher for purposes of fishing in Kenya's marine waters.

An 'access agreement or arrangement' is defined by the Fisheries Management and Development Act, 2016 as any agreement or arrangement entered pursuant to section 128 of the Act. Section 128 of the Act provides for fisheries access where the Cabinet Secretary may permit access by foreign fishing vessels to the fishery waters for fishing or fishing related activities.

To qualify for a fishing right, subsistence fishers, recreational fishers and artisanal fishers must be citizens of Kenya, be members of a beach management unit and have a registration certificate. Industrial and semi-industrial fishing rights shall be issued to Kenyan citizens or to companies incorporated in Kenya.

The duration of a fishing right shall be five years for artisanal fishers, ten years for semi-industrial fishers, ten years for industrial fishers, five years for ornamental fishers and ten years for fishing access rights.

### **7.2 Criteria for allocation of access rights**

To qualify for a fishing access right, a foreign industrial fisher shall be required to have no criminal record in fishing related offences; be a beneficial owner of a fishing vessel which is intended to be used for fishing in Kenya's marine fishery waters; and in the case of a company, be the beneficial owner of a company of at least fifty-one percent.

As a condition for grant of fishing access rights under this Part, a foreign industrial fisher shall demonstrate to the Cabinet Secretary that he or she has experience in fishing marine resources for the access right requested; provide a letter of commitment that he or she shall land and add value to the catch harvested onshore in Kenya's marine fishery waters; and demonstrate the ability to exercise a fishing access right by incorporating or intending to incorporate a company in Kenya; or enter a joint venture agreement with a locally based company.

### **7.3 Total allowable catch and fishing quota**

Total allowable catch means the maximum amount of a particular species of fish which can sustainably be harvested annually or in one fishing season from any fishing area, or from any fishery species or group of fishery species, or a combination of area and species and guided by scientific advice.

For purposes of sustainable fishing, the Cabinet Secretary shall set the total allowable catch upon recommendation by the Kenya Fisheries Council, upon taking into account best available scientific evidence of stock status of each commercial marine fishery species in the Kenya's

marine fishery waters; economic and socioeconomic impact of such commercial marine fishery species; performance of fishers and the fishing industry in each of the main commercial marine fisheries species; and catch levels considered optimal for break-even operations of fishers and commercial marine fishing industry.

A fishing quota means any proportion of a total allowable catch for a fishery species allocated to a right holder.

Every year beach management units, semi-industrial and industrial fishers shall apply for artisanal fishing quota and demonstrate how they intend to meet the targets. They shall submit quarterly reports outlining how they have met their landing targets and fishing conditions assigned in the quota.

While allocating fishing quotas, the Cabinet Secretary shall consider whether the fishing right holder achieved the landing target allocated in the previous year; whether the right holder has been paying applicable levies and fees in a timely manner; whether the right holder has promptly submitted all catch data; and whether he or she has complied with all fisheries management and conservation measures.

#### **7.4 Landing requirements**

All fish harvested in Kenya's marine fishery waters shall be landed at a designated fish landing station or fish landing port for value addition, trade in Kenya or export to the international markets. At the landing station the following shall take place:

- (a) the fish shall be recorded, weighed and species identified.
- (b) authorized officer shall inspect the fish and determine levies due.
- (c) the fish shall be kept or stored on ice at all times to ensure it remains fit for human consumption.
- (d) artisanal fishers shall pay two percent levy for every kilo of fish landed which levy shall be paid into the Fish Levy Trust Fund.

#### **7.5 Levies**

All fees, levies, and charges payable are provided in the Second Schedules of the Regulations. Two percent of the levy payable by artisanal fishers shall be paid into the Fish Levy Trust Fund. This levy shall be used for development and capacity building of artisanal fishers.

#### **7.6 Monitoring, control, and surveillance**

An operator of a fishing vessel or owner of fishing gear is required to display the registration number issued by the Director General on the vessel or the fishing gear as its identification mark. An owner or operator of a fishing vessel shall maintain in English language, a fishing logbook with numbered and consecutive pages.

No licence or authorization in respect of an industrial fishing vessel shall be issued unless the owner or operator of the vessel has installed on the vessel an automatic location communicator approved by the Director-General which is capable of transmitting automatic and continuous communication of the vessel's position, every one hour, or any other reasonable duration the Director-General may determine, to the Kenya Fishing Monitoring Centre.

## **7.7 Responsibilities of the national and county governments**

The two levels of government are assigned responsibilities as follows:

### **7.7.1 National government**

The Cabinet Secretary or the Director General, as the case maybe, shall:

- (a) issue registration certificates to semi-industrial fishers, industrial fishers, foreign industrial fishers, and aquarium fishers.
- (b) set and publish in the Gazette, a list of the annual total allowable catch for each commercial marine fishery species.
- (c) maintain a register of fishers which shall be available for inspection by any member of the public during working hours.
- (d) issue recreational fishing vessel licences to recreational fishers.
- (e) issue artisanal fishing rights to beach management units.
- (f) issue fishing access rights to foreigners.
- (g) authorize transfer of artisanal and industrial fishing rights.
- (h) suspend or terminate a fishing right.
- (i) ensure fishing rights are also allocated to special interest groups.
- (j) review fishing rights annually.
- (k) allocate annual fishing quota.
- (l) suspend or terminate a fishing quota.
- (m) re-distribute any fishing quota that was either, surrendered or forfeited.
- (n) designate landing stations.
- (o) appoint authorized officers to manage landing stations.
- (p) publish a report and submit to Parliament on all the landing targets indicating all the fish harvested at all designated landing ports.
- (q) approve or reject applications for transshipment.
- (r) authorize fishing in areas beyond national jurisdiction.
- (s) issue a fishing vessel registration certificate.
- (t) keep and maintain a register of all fishing vessels.
- (u) recommend a vessel to the Kenya Maritime Authority for registration as a Kenya fishing vessel.
- (v) review levies and landed values payable from time to time.

### **7.7.2 County Governments**

The County governments through the County Executive Committee Member responsible for Fisheries shall:

- (a) issue fisher registration certificates to subsistence fishers, artisanal fishers, recreational fishers, and ornamental fishers.
- (b) maintain a register of fishers which shall be available for inspection by any member of the public during working hours.
- (c) issue recreational fishing permits to recreational fishers.
- (d) suspend or terminate fishing permits issued by it.
- (e) review fishing rights annually.
- (f) designate landing stations.

## 8. CONSIDERATION OF ALTERNATIVES TO THE PROPOSED REGULATIONS

This Part evaluates the possible alternatives to addressing the identified problem. In this Part three options namely maintenance of the status quo, putting in place administrative measures and promulgating Regulations have been considered. Based on the evaluation of each option, the best form of government action is recommended. The evaluation of these options is in line with the Statutory Instruments Act, 2013 which requires a regulator to evaluate other options including non-regulatory ones.

### 8.1 The Alternatives

#### 8.1.1 Option One: The Status Quo

Maintaining the status quo means that no Regulations will be developed and therefore challenges facing the full implementation of the Fisheries Management and Development Act, 2019 will not be addressed. The Act contains provisions for a development-oriented fisheries management framework including provisions for a rights-based fishery, investments in Kenya, employment creation, and maximization of foreign exchange earnings by companies fishing in Kenya's EEZ.

However, it does not provide for the implementation mechanism for the same. This has resulted to various challenges including:

- (a) the licensing regime as a tool of fishery management in Kenya has resulted in loss of revenues for the country;
- (b) there is risk of overfishing;
- (c) lack of reliable data on the amount of fish which foreign vessels catch in the Kenyan waters;
- (d) weak fisheries organizations;
- (e) increased Illegal Unregulated and Unreported fishing;
- (f) low value addition and weak marketing systems; and
- (g) low value of fish and fisheries products.

The Act contemplates prescription of Regulations on fishing rights, fishing access, levies and sustainable management and conservation of marine fisheries, among others, to ensure its full implementation and operationalization.

In the event the status quo is maintained, the identified the intention of Parliament to have Regulations in place will not be achieved and the identified challenges will not be addressed. This will translate to continued loss of government revenues, inadequate capacity of the artisanal fishers, losses to the community, reduced food and nutrition security, loss of job, and increased unemployment.

*Table 3: Comparison of the proposed regulations with the status quo*

S/No.	Issue	Provision of Regulations	Status quo
1.	Access.	Introduces a rights-based approach to access to Kenya's marine waters. Fishing rights are issued to local fishers and fishing access rights are issued to foreign industrial fishers.	Licenses approach as a management tool to control access to Kenya's marine waters.

S/No.	Issue	Provision of Regulations	Status quo
2.	Total allowable catch and fishing quota.	Provides for total allowable catch and quotas which are allocated each year. These prevent overfishing and contribute to conservation of specific species.	Fishing is open and there are no restrictions as to total allowable catch.
3. .	Landing requirements.	Makes it mandatory that all fish from Kenya's Marine waters is landed in Kenya at a designated landing station.	Weak mechanisms are in place to ensure that fish obtained from Kenya's marine waters is landed at designated landing stations.
4.	Levies.	Provides levies for promoting development of artisanal fishers.	No levies for development of artisanal fishers.
5.	Monitoring, Control and Surveillance.	Provides monitoring, control, and surveillance measures to ensure owners of fishing vessels comply with the requirements of the Act.	There are in place weak mechanisms that have been inadequate in ensuring compliance with requirements of the Act.
6.	Illegal, Unregulated and Unreported fishing.	Provides modalities to prevent illegal, unregulated, and unreported fishing. This is achieved through landing requirements, application of total allowable catch and quota principles.	The methods put in place to prevent illegal fishing haven't been inadequate leading to instances of illegal fishing.
7.	Transshipment.	Prohibits transshipment unless authorized by the Director General in writing.	Even though transshipment is banned in the Fisheries Management and Control Act, 2016, mechanisms for enforcing landing of fish caught in the EEZ are inadequate leading to continued transshipments.
8. .	Authorization to fish beyond jurisdiction.	The Director General shall authorize vessels registered in Kenya to carry out fishing expeditions in waters beyond Kenya's EEZ. This is to prevent vessels flying Kenya's flag from engaging in activities that can be classified as illegal, unregulated, or unreported fishing.	Authorizations are issued to fish beyond Kenya's jurisdiction though the mechanisms for enforcing landing of such fish to Kenya are inadequate.

The proposed Regulations clear, consistent, comprehensible, and comprehensive enough to address the identified policy issue.

#### 8.1.2 Option Two: Application of Administrative Measures

The second option that may be used to implement the Act is through administrative measures. This usually takes the form of issuance of ministerial orders and circulars prescribing guidelines and administrative measures to address the identified challenges. The issuance of such measures is not only cheap but also time saving. However, the implementation of administrative measures is dependent the good will of the concerned public officers and may not be sustainable since they do not have the force of law. This presents a major risk in terms of enforcement and the possibility of not getting implemented at all. The non-binding nature of administrative measures suggests that it cannot be a reliable avenue to give full effect to the salient provisions contained in the Constitution and the Act of Parliament.

Sections 128 and 129 of the Act shifted fisheries management from the license-based regime to the rights-based system. The Act contemplated that the finer details on how this rights-based system was to function was to be provided through subsidiary legislation. The Act emphasizes



that no fishing or fishing related activities is allowed unless one is authorized. This obligates the Cabinet Secretary responsible for fisheries to develop Regulations to implement the provisions on fishing rights and fishing access rights.

Further, the Act introduces Total Allowable Catch (TAC) and Fishing Quotas under section 89(1)(ii) by emphasizing that authorization to fish shall only be granted after specifying the species targeted for fishing and expected quantity. Details of how this is to be implemented must be part of the law and cannot be effectively achieved through ad hoc administrative guidelines.

### *8.1.3 Option Three: Adopting the Proposed Regulations*

Article 94 of the Constitution contemplates circumstances under which Parliament may, through legislation, confer the power on any person or body to make subsidiary legislation. The Statutory Instruments Act, 2013 sets out the way subsidiary legislation may be developed. The Fisheries Management and Development Act, 2016 provides that the Cabinet Secretary may make regulations for the better carrying into effect of the provisions of the Act. The Act then sets out specific areas to be covered by the subsidiary legislation (see elsewhere in this report).

Regulation of fishing industry especially in the territorial waters is a sensitive considering the following factors:

- (a) as noted elsewhere in this report, Kenya has been losing revenue in terms of billions of shillings owing to poor regulatory framework;
- (b) proper regulatory framework has the potential to earn the country revenue, create jobs, promote foreign investment, and achieve food security;
- (c) granting of a right or concession to a person to exploit any natural resources of Kenya is a transaction ratifiable by Parliament under Article 71 of the Constitution and cannot therefore be done outside the law;
- (d) the tuna species is highly migratory species and Kenya's territorial waters lies in the Indian ocean tuna migratory belt. Kenya has not exploited this high-value natural resource.
- (e) fish is a depletable and renewable natural resource and therefore overfishing poses a great challenge.

Based on the above concerns and the evaluation of the first two options, developing Regulations is the most ideal option to address the challenges facing this industry.

## **8.2 Cost-Benefit Analysis**

Annexure 1 details the costs and benefits of the three options available in responding to the marine fisheries challenge in the country. As observed, the Proposed Regulations yield a net benefit of KShs. 95.3 billion annually. It is also clear that the Proposed Regulations lower the entry costs for all classes of fishers, but derive benefits from the actual business in terms of levies drawn from the fish landed.

Subsistence and artisanal fishers benefit greatly from the Proposed Regulations in that the increased revenue streams to the sector and from their business are also applied to strengthen their capacity and capability to fish better and further, thus enhancing their gains from the sector. Of great import is that, the Proposed Regulations put in place the enhance resource management and conservation measures, key to securing long term benefits to all stakeholders.

More importantly, these measures facilitate strengthening of existing businesses in sport fishing.

The analysis at Annexure 1 shows that the resource inflows would ensure that Kenya is able to build the required sector management framework including research, monitoring, control and surveillance infrastructure. This is a major departure from the Status Quo as it makes the marine fisheries sector a net positive contributor to the national development Agenda. It also, in achieving this, will significantly reduce pressure on the National Budget, while enhancing own revenue collections by county governments.

The Proposed Regulations, as analysed at Annexure 1, create the environment for a reduction in the cost of doing business for enterprises in marine fisheries. Further, they establish an open, transparent and predictable investment environment for domestic and foreign enterprises, a factor that is essential to the creation of the net 44,000 formal jobs from this intervention.

### **8.3 Conclusion: The Preferred option**

Based on the analysis in *Annexure 1*, compared to the status quo and the use of administrative measures, it is clear the third option (development and adoption of the proposed Regulations) has a larger net positive impact in developing marine fisheries in a way that solves the policy challenges identified. The Proposed Regulations are therefore the preferred option to be implemented..

## **9. COMPLIANCE AND IMPLEMENTATION**

As different aspects of the proposed Regulations are evaluated and analysed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect, and design responsive implementation strategies that make the best use of them.

The implementation and enforcement of the Marine Fisheries (Access and Development) Regulations will be undertaken through the existing legal and institutional framework at the national level, Director General of the Kenya Fisheries Service in consultation with the Cabinet Secretary responsible for matters relating to Fisheries and the county level the responsible County Executive Committee Member.

The costs, benefits and impacts of their implementation is contained in Annexure 1.

### **9.1 Conforming to legal requirements in developing the proposed Regulations**

Based on the above analysis, the following matters are apparent:

- (a) Regulatory-Making Authority and the legal mandate: Section 208 of the Fisheries Management Act, 2016 empowers the Cabinet Secretary to make regulations generally to give effect to the Act. The Cabinet Secretary therefore have the required legislative powers to propose the Regulations.
- (b) Requirements of the Statutory Instruments Act: Section 5 requires that a regulation-making authority to conduct public consultations and to drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that an RIA be prepared where a statutory instrument is likely to impose significant costs on the community. The RIA must contain certain key elements namely:
  - (i) a statement of the objectives of the proposed legislation and the reasons,
  - (ii) a statement explaining the effect of the proposed legislation,
  - (iii) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
  - (iv) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
  - (v) the reasons why the other means are not appropriate.

The public consultation and RIA structure requirements have been fully met.

- (c) Other existing legal frameworks: The proposed Regulations does not propose to have any new legislation to be enacted or any of the existing laws to be amended. It harmonizes with other laws making their implementation more effective.
- (d) The proposed Regulations as drafted are clear, consistent, comprehensive, and comprehensible enough to cover all matters.

## **9.2 Conclusion and Recommendation**

This Regulatory Impact Assessment concludes that the proposed the Marine Fisheries (Access and Development) Regulations are necessary to operationalize section 208 of the Fisheries Management and Development Act, 2016. The Regulations create a system for Parliament to oversight the exploitation of marine fisheries.

It is recommended that the proposed Regulations be adopted.

MAR RIA 18032022

## 10. ANNEXURES

### 10.1 Annexure 1: Cost Benefit and Impact Analysis

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Risks	Compliance and enforcement
<b>Option One:</b>  <b>Doing Nothing/ Maintaining Status Quo</b>	Maintaining the status quo means that no Regulations will be developed and therefore challenges facing the full implementation of the Fisheries Management and Development Act, 2019 will not be addressed.	Economic value loss: <b>About KShs 95.3 billion</b>  Average annual cost to Government (marine fisheries management and research): <b>KShs 4.4 billion</b> (average of the last 5 years)  Lost job opportunities: <b>44,000 jobs</b>  KShs 50 (foot fisher annual license fees)  KShs 200 fishing license + KShs 200 boat license per annum for artisanal fishers  KShs 200 fishing vessel license annually for aquarium / recreational; sport fishers, semi-industrial and Kenyan industrial fishers  Annual KShs 1,500 sport fishing license  KShs 5 million per fishing license annually for foreign industrial fishers	Annual earnings (value) from marine fisheries: <b>KShs 4.7 billion</b>  Average annual state revenue (resource rent capture) from marine fisheries: <b>KShs 127 million</b> (average of the last 5 years)  Total marine fisheries jobs: <b>16,000</b>  No additional funding required	<b>Impact on marine fishing industry:</b> Undeveloped marine fisheries and resource unsustainability  <b>Impact of revenue collection:</b> Continued loss of revenue  <b>Impact on Environment:</b> Inadequate enforcement polluting environment for fish  <b>Impact of food security:</b> Opportunity to increase fish consumption lost  <b>Impact of the economy:</b> Lost opportunity to spur fish related SMEs, lost jobs and high entry costs for businesses	Overfishing  Continued illegal and unregulated fishing practices  Depletion of endangered species  Transshipment at without authority  Continued lack of capacity for traditional fishermen  Food insecurity  Lack of proper mechanism to regulate marine fishing	Difficult to enforce the law without a mandatory landing requirement  Inability to collect levies and taxes translates to lack of resources to build capacity for traditional fishermen
<b>Option Two:</b>  <b>Application of Administrative Measures</b>	Issuance of ministerial orders and circulars prescribing guidelines and administrative measures to	Economic value loss: <b>About KShs 95.3 billion</b>  Average annual cost to Government (marine fisheries management and research):	Minimum costs as measures will be undertaken by existing offices  Quick to implement	<b>Impact on marine fishing industry:</b> Undeveloped marine fisheries and resource unsustainability	Possibility of consumer abuse through monopolistic tendencies	Difficult to enforce given the significant vested interests in the sector

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Risks	Compliance and enforcement
	address the identified challenges	<p><b>KShs 4.4 billion</b> (average of the last 5 years)</p> <p>Lost job opportunities: <b>44,000 jobs</b></p> <p>KShs 50 (foot fisher annual license fees)</p> <p>KShs 200 fishing license + KShs 200 boat license per annum for artisanal fishers</p> <p>KShs 200 fishing vessel license annually for aquarium / recreational; sport fishers, semi-industrial and Kenyan industrial fishers</p> <p>Annual KShs 1,500 sport fishing license</p> <p>KShs 5 million per fishing license annually for foreign industrial fishers</p>	<p>Annual earnings (value) from marine fisheries: <b>KShs 4.7 billion</b></p> <p>Average annual state revenue (resource rent capture) from marine fisheries: <b>KShs 127 million</b> (average of the last 5 years)</p> <p>Total marine fisheries jobs: <b>16,000</b></p> <p>No additional funding required</p>	<p><b>Impact of revenue collection:</b> Continued loss of revenue</p> <p><b>Impact on Environment:</b> Inadequate enforcement polluting environment for fish</p> <p><b>Impact of food security:</b> Opportunity to increase fish consumption lost</p> <p><b>Impact of the economy:</b> Lost opportunity to spur fish related SMEs, lost jobs and high entry costs for businesses</p> <p>No guarantee for full implementation of the Act</p> <p>Inadequate capacity to implement administrative measures</p>	Inability to regulate the amount of fish caught	
<b>Option 3: Development and Implementation of the proposed Regulations</b>	<p>Granting access rights, licensing, and registration of vessels.</p> <p>Mandatory landing, fishing quotas</p> <p>Capacity Building</p> <p>Enforcement</p>	<p>Marine fisheries management and research KShs <b>5 billion</b></p> <p><b>Subsistence Fishers</b> No registration fees for subsistence fishers</p> <p><b>Artisanal Fishers</b> KShs 200 boat fishing license per annum and levy at 2% of landed value</p> <p><b>Aquarium / recreational fishers</b> KShs 200 fisher registration one-off; KShs 200 fishing</p>	<p>Annual revenue: <b>KShs 100 billion</b></p> <p>Expected Jobs: <b>60,000</b></p> <p>Annual resource rent capture from marine fisheries (State revenue): <b>KShs 10 billion</b></p> <p>Free traditional access to marine fisheries</p> <p>No annual artisanal fishing fees.</p>	<p>Expanding international fish exports</p> <p>Limited number ensures continued food security over time</p> <p>Fishing rights and quota system to make marine artisanal fishers bankable</p> <p>Restriction on types and amounts of species to be extracted will lead to stocks sustainability,</p>	<p>Possibility of interrupting fish markets especially during the initial days</p> <p>Enforcement challenges</p> <p>Capacity building challenges</p> <p>Maintaining accurate data on marine fisheries</p>	<p>Completion of Liwatoni Fishing Hub</p> <p>Concerns about the total allowable catch for small scale fishermen</p> <p>Ensure Fish Levy Trust Fund is used to build capacity of the fishermen</p>

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Risks	Compliance and enforcement
		<p>vessel license annually and levy at 50% of landed value per piece</p> <p><b>Sport fishers</b> KShs 10,000 per annum sport fishing permit; Restriction on landings: 3 pieces per day and levy at 7% of landed value</p> <p><b>Semi Industrial fishers</b> <b>KShs 10,000</b> fishing right fee; <b>KShs 5,000</b> fishing vessel license per annum; <b>levy at 5%</b> of landed value and restriction of fishing species, amounts and distance from shore (<b>5 nm</b>)</p> <p><b>Kenyan Industrial fishers</b> <b>KShs 50,000</b> fishing right fee; <b>KShs 10,000</b> fishing vessel license per annum and <b>levy at 7%</b> of landed value</p> <p><b>Foreign Industrial Fishers</b> <b>KShs 100,000</b> fishing right fee; <b>KShs 20,000</b> fishing vessel license per annum and <b>levy at 12%</b> of landed value</p>	<p>Artisanal landings expected to reach 50,000 MT annually valued at about KShs 10 billion annually</p> <p><b>KShs 200 million</b> annual artisanal fishing levy applied to develop artisanal fishing capacity (revolving fund)</p> <p>Resource rent level of 7% to guarantee no loss of state revenue in sport fishing.</p> <p>20,000 MT Fish expected of fish to be caught by semi-industrial fishers, valued at <b>KShs 6 billion</b> annually.</p> <p>Expected semi -industrial fishing levies: <b>KShs 300 million</b> annually</p> <p><b>100,000 MT</b> fish expected to be landed by Kenyan industrial fishers annually, valued at about KShs <b>35 billion</b> annually</p> <p>Expected industrial fishers levy: <b>KShs 2.45 billion</b> annually</p> <p><b>170,000 MT</b> fish expected to be landed by Kenyan industrial fishers annually, valued at about <b>KShs 60 billion</b> annually</p> <p>Expected foreign industrial fishers levy: <b>KShs 7.2 billion</b> annually</p>	<p>hence long term business sustainability</p> <p>50% resource rent on landed value will ensure fair share of aquarium fish value with the State. Enhanced sport fishing discipline through the 3 pieces per landing restriction.</p>	Ensuring sustainability	

**10.2 Annexure 2: Report on Public Participation for the Development of Marine Fisheries (Access and Development) Regulations 2022 and Consultations with Parliamentary Oversight Committees**

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
1	The National Assembly Oversight Committees 5/10/2021	<b>PART VIII-FEES AND LEVIES</b> 1. The members raised concerns about the tax burden and noted that any additional levies on fisheries would hurt the fishers hence the proposed levies should benefit the fisher folks.	Noted. The 2% levies for artisanal fishers shall be ploughed back for purchasing equipment to empower fisher venture into the Deep Sea.	The Act provides for establishment of a Fish Levy Trust Fund as the institution for collecting the levies. The fund has been established
		2. The draft regulations should be subjected to pre-publication scrutiny by members of Parliamentary oversight committees	Pre-publication scrutiny was added as one of the activities in the roadmap to public consultations. Subsequently, the draft regulations were presented to the Senate Committee on Delegated Legislations and their inputs incorporated in the draft regulations. The members of the Delegated Legislations committee of the National Assembly were sensitized during the breakfast meeting	The proposal was in accordance to the Statutory Instruments Act 2013
<b>COAST PARLIAMNETARY GROUP</b>				
2	Chair Coast Parliamentary Group	3. Despite the importance of fishing as an economic activity, there has been minimal investment in the sector by both public and private sector	The process for making regulations is so elaborate that it ensures that there are no overlaps. In the loop we have AGs office to do quality control,	



S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>4. Lack of proper equipment - most fishermen are subsistence or artisanal fishers</p> <p>5. No investment by Government, even during disasters, no help comes easily, including from the Navy. Fishers drown easily</p> <p>6. Emerging trend of partnering with foreign vessels. Kenya crew of Chinese vessels reported poor working conditions last week.</p> <p>7. Regulations should be facilitative and not punitive. At times Government makes regulations that take so much from the people, but give back too little</p> <p>8. Regulations should be able to empower our people and assist in their participation in our rich fisheries resources.</p>	<p>To be addressed administratively</p> <p>Regulations are developmental and are geared towards developing the sector</p>	
3	Hon. Zuleikha Hassan- Women Rep Kwale	<p>9. Regulations are timely as fisheries for the common man (Artisanal Fisheries) is basically being killed, going by the view on the ground.</p> <p>10. It is a good that the different categories of fisheries; subsistence and artisanal are separated for the administration of the regulations.</p> <p>11. Vanga fisherfolks want the gateway to be expanded to ease access to the oceans</p>	<p>Noted</p> <p>Noted</p>	<p>The regulations aim to build capacity of artisanal fishers</p> <p>Mangroves are under the mandate of KFS.</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>12.The 2-inch limit for nets to be increased or provide nets to fishermen since people are poor</p> <p>13.Increase security along the coastline</p> <p>14.Shed are required at several landing sites, while Bodo and Ramisi BMUs have asked for cold storage</p> <p>15.Training of artisanal fishermen is required urgently as many lack the skills to fish</p> <p>16.Cutting of mangroves has been banned, however Lamu has been allowed. Kwale should also be allowed to cut mangroves</p> <p>17.National Government to seek ways of better relationship with Tanzania, Government doesn't help when people are arrested in Tanzania</p> <p>18.Coastguard, KWS are harassing the fisherfolk, arrests, corruption and all manner of intimidation which is a big hindrance to the daily livelihood activities of these fisherfolk.</p> <p>19.There is shrinkage of fishing areas due to conservation areas. Fishermen lament of discrimination in accessing conservation areas, as some people are allowed to go and fish in these areas while others are prevented from access.</p>	<p>A management plan has been developed with recommended sizes that take care of fishing nets, fishing grounds for sustainable harvest of the resources.</p> <p>Fishing nets: the illegal sizes have been prescribed by the law</p> <p>Noted</p> <p>Noted</p> <p>Regarding cross-border harassment, there should be some mutual/bilateral consultations with neighbouring countries to come to a common understanding on treatment of fishermen from the respective countries</p> <p>Noted</p> <p>Noted</p>	<p>Capacity building for fishers is ongoing. The target is to train 1,000 fishers - (a Presidential Directive)</p> <p>Cutting of mangroves is allowed in line with the National Mangroves Ecosystem Management Plan</p> <p>A foreign policy matter and will be done administratively</p> <p>To be handled administratively</p> <p>There are enough fishing areas. There are only six MPAs and reserves.</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>20.To safeguard the safety of the fishermen rescue boats are needed</p> <p>21.Discriminate compensation with regard to the dredging being done by KPA due to expansion of the port: Tiwi and Matuga fishermen have been not compensated yet</p> <p>22.Kinangop BMU has registered a historical land injustice with the National Lands Commission. A Private developer has fenced off landing site and conservation area: public officers are not helping.</p>	<p>Noted</p> <p>Noted</p> <p>Noted</p>	<p>The Regulations aims to plough back 2% of artisanal levies part of which will be used to buy motorized rescue boats by the BMUs</p> <p>To be handled administratively</p> <p>Grabbed landing sites: Being followed up by the NLC</p>
4	Hon. Andrew Mwandime, MP Voi	<p>23.3 -5 kgs for subsistence fishers is too little. This amount should be increased to 10 Kgs.</p> <p>24.Taita Taveta County should be included in the Blue Economy interventions</p>	<p>The proposed 3-5 kg will be increased to 5 kg</p> <p>Noted</p>	<p>Amount of fish allocated for subsistence fisher is not caste on stone, it can be reviewed upwards based on views from the public.</p> <p><b>The draft Regulations target marine fisheries</b></p>
5	Hon. Benjamin Tayari, MP	<p>25.10-15Kg of fish should be ideal for the subsistence fishers</p> <p>26.Emphasis has been put on industrial fishers. Underscore the need to safeguard and protect small scale fishermen</p>	<p>Noted</p> <p>Noted</p>	<p>Addressed above</p> <p>The Draft regulations support the development of both small-scale and industrial fishers</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>27.Regarding big GOK development projects such as Port Development, SGR, infrastructure, compensation should be put in place for the fishermen and others community members affected</p> <p>28.Coastal people should be priorities especially from the blue economy interventions</p> <p>29.Coastal people need to be empowered to participate more in blue economy</p>	<p>Compensation to affected fishers has been done</p> <p>Coastal leaders to be in the forefront of investment in the Fisheries Sector - To make significant investment in order to benefit in good returns in this sector.</p>	<p>Implementation of the draft regulations will not displace fishers</p> <p>The Draft regulations will create enabling environment for investment in the coastal region</p>
6	Hon. Juma Boy, Senator Kwale	<p>30.Small scale fishers are constantly arrested by Coast guard, KWS, KMA, their nets and boats are confiscated</p> <p>31.Need to ensure that the finances raised help fishermen</p> <p>32.There is no rescue capacity by national government level, Security and safety of our fishermen should be taken care of.</p> <p>33.Fishing nets should be standardized</p> <p>34.VMS in Liwatoni is not working, so much of our fish is being caught and exported without our knowledge</p>	<p>Noted</p> <p>The Regulations aims to plough back 2% of artisanal levies part of which to be used in buying motorized rescue boats by the BMUs</p> <p>The Regulations have outlined the kind of fishing gear to be used for each type of fishery</p> <p>VMS in Liwatoni has been reinstalled and is now fully operational</p>	<p>To be handled administratively</p> <p>Provided in the draft regulations</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
7	Hon. Agnes Zani, Senator	<p>35.How will the Marine Fisheries Access Rights Regulations be merged with the existing Regulations required to operationalize the Fisheries ACT</p> <p>36.How do we bear in mind the cultural and traditional values of the people these regulations will impact</p> <p>37.What structure is there to benefit the community from the levies</p>	<p>The regulations will be harmonized with other existing fisheries regulations</p> <p>This has been addressed by the Regulatory Impact Assessment</p> <p>2% artisanal levies will be ploughed back to develop capacity of artisanal fishers</p>	The Act (sec.29.2) provides for protection of the traditional fishing rights
8	Hon. Mishi Mboko, MP Likoni	<p>38.Likoni fishers have not been compensated</p> <p>39.Grabbing of Fishing landing sites by private developers, example the English Point</p> <p>40.How do we prevent pollution of our waters?</p> <p>41.As far as industrial fishing is concerned, how are we empowering the subsistence and artisanal fishermen in order to participate in our fishery wealth</p> <p>42.Harassment of the traditional fishermen by government institutions</p> <p>43.Government to support the fishermen with equipment and sensitize traditional fishermen to empower them</p>	<p><b>Noted</b></p> <p>Implementation of the Presidential Directive to reclaim all grabbed public land is ongoing</p> <p>The Act provide for prevention of pollution – Sec.49.1; 118.6, 122. (j)</p> <p>The proposed 2 % artisanal levies will be ploughed back to develop capacity of the artisanal fishers.</p> <p>Noted</p> <p>Some support to fishers is already being given under the Blue Economy programme.</p>	<p><b>Addressed above</b></p> <p>Grabbed landing sites: Being followed up by the NLC</p> <p>Including other agencies such as NEMA, KMFRI, KMA</p> <p>To be handled administratively</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>44.Completion of Liwatoni fish hub should be fast tracked in order to start seeing the compounded benefits of our fisheries along the value chain.</p> <p>45.Fish levy Trust Fund to finance fishing activities to enhance the capacity of the fishermen</p> <p>46.IUU fishing is a big problem, the regulation should help in curbing it.</p>	<p>The Draft regulations also propose to plough back 2% levies for the development of the artisanal fishing</p> <p>H.E. has appointed Chair Kenya Fishing Industries (Liwatoni), therefore more focused attention to fast tract completion.</p> <p>Provided in the Fish levy trust fund Regulations and these draft regulations</p> <p>The Act has sections for combatting IUU Fishing</p>	<p>Kenya Fishing industry Corporation is established under the State Corporations Act</p> <p>The proposed regulations are anchored in the Act</p>
9	Hon. Faki, Senator	<p>47.Amount of fish allowed for subsistence fishermen of 3 -5 Kg is too little, they should be allowed more.</p> <p>48.Trans-shipment should not be allowed, it negates commercialization</p> <p>49.Big game fishing is not covered, while this is a valuable resource for tourist attraction</p> <p>50.Regulations also do not talk about equipment and types of nets for fishing - these need to be catered for</p>	<p>Noted</p> <p>Transshipment if allowed will export our jobs. We need to retain our raw materials here and create value, wealth and jobs here at home</p> <p>Big Game Fishing is catered for under recreational fishing</p> <p>Noted</p>	<p>Addressed above</p> <p>The Act prohibits Trans-shipment</p> <p>Recreational fishing regulations are part of the draft regulations</p> <p>The types of fishing nets are covered under part</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>51.Change reference of ornamental to exotic fishing</p> <p>52.Define BMU's in the Regulations</p> <p>53.No mention of organizing the fishermen into Sacco's to enable them secure finances, training and subsidies for gov't support in terms of subsidized equipment's</p>	<p>Noted</p> <p>BMU is defined in the BMU regulations</p> <p>The ultimate goal is to organize the BMUs into Sacco's Capacity building for 1,000 fishers - (a Presidential Directive) is on going</p>	<p>Sec. 40, 42, 43, and 126 of the Act</p> <p>Ornamental fishing is not exotic fishing</p> <p>This is also a function of the National government</p>
10	Senator Justice(Rtd) Madzayo	<p>54.Who allows foreign fishing vessels in our territorial sea without licenses, doing IUU fishing</p> <p>55.There is illicit business going on in the waters. Vessels are exchanging suspect cargo in our EEZ, how can this be addressed?</p> <p>56.How is ornamental fishing regulated? Is it free for all?</p>	<p>No foreign trawlers are allowed to fish in the territorial waters without license</p> <p>However, only licensed prawn is allowed under The Prawn Management plan to operate between 3-5 nm.</p> <p>Transshipment if allowed will export our jobs. We need to retain our raw materials here and create value, wealth and jobs here at home</p> <p>Ornamental fishing has a punitive levy of 50 % landed value in order to discourage wanton harvesting.</p>	<p>The Draft Regulations have proposed beyond 5 nm for Prawn trawlers</p> <p>The Act prohibits Transshipment.</p> <p>Most ornamental fish are endangered, and it is very difficult to know the true value of ornamental fish.</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
<b>The Senate Committee on Delegated Legislation</b>				
	The Senate Delegated Legislative Committee	57.Put measures in place to ensure fishing activities do not compromise environment conservation	Only vetted and authorized fishers will be permitted to fish based on the best available scientific information on the fish stock biomass and Total Allowable Catch (TAC).  The regulations provide for fishing rights, TAC, fishing quotas and authorization	The Act also provides for setting amount to be caught Sec 40(1)(e)
<b>11</b>	<b>Hon. Faki – Senator, Mombasa County</b>	58.The chair wondered why the fisheries head office should be in Nairobi yet much of the Blue Economy activities are along the Coast. 59.Regulations are meant to facilitate implementation of departmental activities but it looks like these regulations are used to raise funds for the ministries 60.Safety at the sea and rescue operations are not efficient 61.Constant harassment of the fisher folk yet they need to be protected and empowered 62.Intergovernmental relations need to be enhanced to support joint fishing initiatives 63.Fish stocks are diminishing resulting into heavy reliance on imported Chinese		



S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		64.What is the role of County Governments in the fishing industry?	County Govts implement devolved fisheries functions and will be involved in the implementation of the regulations	Schedule 4 of the Constitutions assigned the fisheries functions
		65.The proposed levies should be collected by the County governments.	The Act has established a Fish Levy Trust Fund to collect the levies. However, 2 % artisanal levies will be ploughed back to build capacity of the artisanal fishers	The Act has established the FLTF
12	Hon. Faria, Senator	66.Rates for industrial fishing: Local fishers should get ½ of what is charged on foreign fishers. (proposed levies).  67.Increase in the proposed levy to 15% for foreign  68.Fishers to avoid capital flow and also to protect local operators.  69.Any issues addressed by the committee to be raised so that the committee approves the regulation urgently.  70.If the right procedures are not followed, it will be returned back for procedural undertaking and this is costly	Levies for artisanal fishers are managed by the BMUs for fisheries development locally.  Noted  Foreign industrial fishers are obliged to land 30% of the catch to support; processing, employment creation and food security. The issues raised were considered  The public consultations process adhered to the requirements of the Constitution and the statutory Instruments Act 2013	Provided in the Act       Public consultation is a constitutional requirement

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
13	Hon. Poghiso, Senator West Pokot	<p>71. Inquired about the Security in Kenya waters</p> <p>72. Adopt use of more technologies to improve surveillance</p> <p>73. Capacity to manage accurate information and data relating to fisheries.</p> <p>74. Who will be the manager of the Fish Levy Fund? What is the criteria for accessing the funds?</p>	<p>Security agencies are proactively involved in securing marine resources</p> <p>There is a functional MCS at the coast to monitor vessel operations</p> <p>There is an MoU with the Kenya Navy to protect Kenya marine waters. The MoU is being developed to involve multi agency operations to enhance security at sea. This has to be augmented with regular maritime patrols and VMS surveillance / satellite operations.</p> <p>Stock assessment is conducted through a scientific process by KEMFRI. This should be continuous; however, it is limited by resource availability. The assessment report informs policy decisions</p> <p>The Act provides for a Fish Levy Trust Fund to be used for funding management, development, capacity building and urgent interventions in fisheries. The Act also has provision for Fisheries Research Development</p>	The Act provides for establishment of an Inter-agency MOU on MCS

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		75.Stressed the need for working jointly as a government since regulation making process and requires a lot of consultation to avoid rejection.	<p>Fund – Meant for research funding The 2% levies charged on artisanal fishers will be ploughed back to support artisanal fishers</p> <p>Stakeholders mapping was done and public involved in the process</p>	Public and stakeholders' involvement in law making process is a Constitutional requirement
<b>CONSULTATIONS WITH PUBLIC INSTITUTIONS WITH MANDATE TO IMPLEMENT THE REGULATIONS</b>				
<b>14</b>	Ms. Tendai Mtana, CECM for Agriculture Mombasa County	Reg. 7—There is need to expand the jurisdiction of the County Government to oversee semi-industrial and industrial fishing.	Noted.	The categories mentioned in Reg. 8 operate outside the jurisdiction of the Counties.
<b>15</b>	Ms. Mwanajuma Hiribae, CECM for Agriculture, Tana River County	<p>76.Reg. 8—Include the CEC in application process for a fisher certificate in the spirit of devolution.</p> <p>77.Reg. 18— there is need to insert the duration of approval within which the Director-General shall issue the right.</p> <p>78.Reg. 40— clarify the inclusion of a licence in the review of a quota.</p> <p>79.Reg. 44(2)— include domestic or home use.</p>	<p>Reviewed.</p> <p>The application shall be considered within five days from the date of receipt.</p> <p>Delete licence and right to align the review of rights and quotas to the functional assignment of the Council under the Act.</p> <p>Inserted.</p>	<p>1. They shall be part of the multi-agency committee.</p> <p>2. Enhance efficiency.</p> <p>3. Statutory harmony.</p> <p>Align the provision to government policy “eat fish campaign”.</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
16	Ms. Fahima Asaplat, CECM for Agriculture Lamu County	80.Reg. 26(a)—provide for what happens to by catch. 81.Reg. 56(2)—what is the reporting format for the landings. 82.Reg. 64(1)—can we have a designated places for anchoring FADS. 83.Reg. 73—are Kenyans allowed to fish turtles? 84.Can we establish a turtle rescue center?	<ul style="list-style-type: none"> <li>To insert provisions for by catch and discard under Part IX.</li> <li>Noted.</li> <li>Noted.</li> <li>Reviewed to remove ambiguity.</li> </ul>	<ol style="list-style-type: none"> <li>Statutory harmony.</li> <li>Too prescriptive.</li> <li>The Act has already provided for anchoring of FADS.</li> </ol> Align the provisions with the Act.
17	Kwale Director of Fisheries.	85.Transshipment—what about the fishermen who hike lifts on different boats with their catch?	<p>Noted.</p> <p>Provided the fish is finally landed at a designated fish landing station in Kenya</p>	<p>Landing of fish at a designated fish landing station is a legal obligation</p> <p>Provided for in the Act and the Regulations.</p>
18	Levi KEMFRI	86.Do we have enough data for information on TAC?	Noted.	KEMFRI undertaking the process of collecting data.
19	Tsinganyi Dadley, KWS Warden	87.The Regulations do not recognise the role played by KWS especially on marine protected areas.	Noted.	Marine Protected Areas are under the purview of the Act. Harmonisation with Wildlife Conservation Act to be considered.
20	Mr. Somu, Lamu BMU networks	88.Trans-shipment clause should be removed as it is unfair.  89.Levies are paid to many organisations	<p>Noted.</p> <p>Noted.</p>	<p>Conditions for transshipment already provided for in the Act.</p>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
				The Regulations do not provide for payment of the levies to many organisations.
21	Mr. Mtengo, Kenya Fisheries Water Bodies.	90.The Regulations should provide how the levies trickle down to the fishers.  91.Provide for the protection of logbooks.  92.Logbooks should also be Kiswahili.	Noted.  Noted.  Noted. To be considered once the regulations are gazetted	Already provided for in the Regulations.  Administrative.  This will be implemented once the Regulations are operational.
22	Kalole, Chairman Tana River Bmus.	93.Provide for regulation of trawlers.  94.Provide for by-catch	Noted.  Noted.	Already provided for in Regulations of the repealed Act. Inserted the provisions.
23	Dr. Beatrice Akungu, Acting CEO FLTF	95.What kitty will all the other fees go to?  96.Percentages not indicated at page 76	Noted.  Noted.	Provided for in the Regulations. The percentages have been indicated.
24	Mwangi County director of fisheries, Kilifi County	97.Part 8—owners of aquarium employ ornamental fishers. 98.Registration in the different levels of government. 99.A lot of application forms for fishers.  100. Reg. 28 make the period uniform.	Deleted.  Noted.  Noted. Forms to be revised  Noted. Noted.	1. To align the Regulations with the Act. 2. The Act has recognised the different levels of government and the need to involve counties in fisheries management.

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		101. Reg 53 how long that retention can be exercised		3. The period cannot be uniform where different rights are involved. Already provided for in the Regulations.
25	Ms. Tendai Mtana, CECM for Agriculture Mombasa County	102. provide for the functions of the county government under regulations 18  103. Reg 34: what about common fishing grounds?	Noted.	Already provided for in the Regulations.  This shall be provided for in the BMU Regulations.
<b>KILIFI MEMBERS OF THE COUNTY ASSEMBLY</b>				
26	Hon. George Baya Mramba	104. The size of the fish should not be less than 300g.  105. Provide for a limit for fishers registered to control the congestion	Noted.  Noted.	1. To be considered by the CS when Gazetting.  2. BMU Regulations.
27	Hon. Maitha Masha – Jaribuni Ward	106. What is the duration of fishing rights?  107. Reduce fishing rights to 3 years.  108. Reg. 37 the CS should have county representatives for processing of applications	Noted.  Noted.  Noted.	1. BMUs shall address this by reserving some rights for new members.  2. The period of five years is sufficient. County governments has been included in this application process.

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28	Hon Elizabeth Jave	109. Increase the size of subsistence fisher should be allowed to land.  110. Let the BMU have a continuous registration of fishers instead waiting for five years	Noted.  Noted.	1. To be considered by the CS when Gazetting. BMU Regulations.
29	Hon. Hadad Faisal Almas	111. Increase the limit for subsistence fishing limit from 5 kgs to 30 kgs. 112. Open the registration so that it's not limited to the period of five years.	Noted. Noted.	1. To be considered by the CS when Gazetting. To be considered under BMU Regulations.
30	Hon. Christopher Mwambire	113. Provide for the serialization of the licences and permits	Noted.	Administrative.
31	Hon Mwathethe Kadenge	114. Non-Kenyans should not be given rights as artisanal fishers	Noted.	Already provided for in the Regulations.
<b>TANA RIVER MEMBERS OF THE COUNTY ASSEMBLY</b>				
32	Hon Manase Guyo	115. Reduce the levy charges to subsistence fishers to 2 percent or below	Noted.	The levies are sufficient.
33	Dumal Osman	116. Subsistence fisher should be allowed 10 pieces of fish	Noted.	To be Gazetted in accordance with the Act.
34	Hon. Yusuf Sigriso	117. Reg. 13 Increase the fine from ten thousand to fifty thousand. 118. Provide for security for fishers when fishing.	Noted. Noted. Inserted communities.	1. The fine proposed is reasonable. 2. Coast Guard was established for security.

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>119. Reg 3(b) provide for communities also.</p> <p>120. Reg 45 provide for counties also in the spirit of devolution.</p> <p>121. Reg 53(2) consider increasing the fine</p>	<p>Noted.</p> <p>Noted.</p>	<p>3. To align the Regulations to the Act.</p> <p>4. Already provided for in the Regulations. The fine is reasonable.</p>
35	Hon. Ismael Kodobo	<p>122. Reduce the levy from 2% to 1%.</p> <p>123. Resources collected by the National Government in the 10 plus nautical miles be shared with the counties</p>	<p>Noted.</p> <p>Noted.</p>	<p>1. The levies are reasonable. Revenue is collected by the National Government.</p>
<b>MEMBERS OF LAMU COUNTY ASSEMBLY</b>				
36	Komu ADF Lamu	<p>124. Provide for what happens when there is an increase of migratory fish in a season and TAC is exceeded before the allocated time.</p> <p>125. Provide for capacity building of BMUs to implement these Regulations.</p> <p>126. Provides for the development of the fisheries investment policy.</p> <p>127. Provide for fishing fleet.</p> <p>128. Provide for stock assessment informing each fish species.</p> <p>129. Provide for sharing of proceeds from the industrial fishers to counties.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>	<p>1. Kenyan fishers shall catch migratory species without restrictions.</p> <p>2. To be handled in BMU regulations.</p> <p>3. It is in the policy.</p> <p>4. It's the outcome of the success of the development of these regulations.</p> <p>5. This is the function of KMFRI in these regulations. It's a national revenue sharing resource.</p>



S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
37	Hon. Mbarak Azhar Ali, Shella Ward MCA	130. Is there any revenue for the Counties. 131. Regulate the trawlers since they have taken everything. 132. Explain this TAC. 133. Do the Regulations provide for devolution of fisheries as per the Constitution?	Noted. Noted. Explained in detail. Noted.	1. Revenue is collected by the national government. 2. Trawlers have been provided for. 3. In line with constitutional requirements. The Regulations have recognized the role of counties as provided for in the Act.
38	Hon. Njuguna Paul Kimani, Mkunumbi Ward MCA	134. What have you done about induction of BMU. 135. Do the regulations provide for the succession management in BMUs? 136. Can old fisheries officers be contracted to collect data due to their experience?	Noted. Noted. Noted.	1. This shall be provided for in the BMU Regulations. 2. To be provided for in the BMU Regulations  Administrative.
39	Hon. Shee Yahya Ahmed, Nkomani Ward MCA	137. The issue of Lamu Port- where compensation has been done, where do fishers go? 138. Explain well the levies	Noted. Explained in detail.	1. The Regulations do provide compensation for displaced fishers. In line with the Constitutional requirements.
40	Hon. Aboud Sheikh Abdalla, Kiunga, Ward MCA	139. Devolution is watered down in the Regulations. 140. The issue of fishing gears especially on traditional methods of fishing vs law.	Explained in detail the benefits to the Counties and their roles. Noted. Noted.	1. In line with the Constitutional requirements.

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		141. The issue of LAPPSET and how fishing grounds will be taken away. 142. Provide for BMUs to pay for poor fishers	Noted.	2. This is comprehensively provided for in the Act. 3. The issue is beyond the purview of the Regulations. 4. To be provided for in the BMU Regulations.
41	Acting clerk of the County Assembly	143. Reduce the period that BMU officials serve in the office	Noted.	To be provided for in the BMU Regulations.
42	Majority leader of the County Assembly	144. Empower the BMUs to be managed liked CDF and provide for a Coordinator. 145. Zero rate fuel for fishing boats	Noted. Noted.	1. To be provided for in the BMU Regulations. 2. Zero rating of the fishing fuel is already in force.
<b>LAMU COUNTY BEACH MANAGEMENT UNITS</b>				
43	Somu, Chairperson Lamu BMUs	146. Include locals in the observer programme. 147. Provide a list of the commercial species. 148. Provide a list of protected species	Noted. Noted. Noted.	1. To be considered under the BMU Regulations. 2. The list of commercial species is published periodically by the Cabinet Secretary by notice in the Gazette. 3. The list of protected species is published periodically by the Cabinet secretary.

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
44	Director of fisheries Lamu County.	149. Provide for licences for fish traders/mongers to enable them transport their fish products country wide. 150. Provide that all fishermen are free to fish anywhere as long as they have rights 151. Provide that the fishing be issued as documents that fishers can use across all counties.	Noted. Noted. Noted.	1. It's already provided for in the Act. 2. Provided for in the BMU regulations. 3. Provided for in the BMU regulations and the logbook.
45	Chief Ruhiha Shee	152. Provide for a technical person to assist BMUs in the management of their offices just like CDF. 153. Explain the levies well to the BMUs because they will be in my office asking questions.	Noted. Explained in detail.	1. Administrative. 2. As part of public participation policy, all issues shall be addressed.
46	Lamu Marine Conservation Trust Organisation.	154. Reg. 71 part B provide for the list of all endangered species for protection. 155. Provide for community sensitization on endangered species such as white spot guitar ray fish	Noted. Noted.	1. To be harmonised with the CITES list as Kenya is a signatory. 2. To be harmonised with the CITES list as Kenya is a signatory.
<b>MOMBASA COUNTY BMEACH MANAGEMENT UNITS</b>				
47	<b>Juma Ali KIDONGO BMU</b>	156. Fees levies for artisanal and subsistence fishers to remain the same.  157. The price of fish to be increased in page 97.	1. Noted 2. noted.	Not relevant to the Regulations  The prices on page 97 are annual average prices and are subject to change

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48	<b>MWANGALA BMU</b>	158. This law should provide for compensation where government capital projects interfere with fishing areas. At the moment where the By pass is there are no fish to be caught. 159. This law should introduce fishing port certificates.	1. Noted. 2. noted.	1. compensation is done through another mechanism. 2. The fishing port is a security area.
49	<b>TIMBWANI BMU</b>	160. Fishing vessels licenses fees proposed is too high. Reduce for artisanal fishing vessel licence to pay Ksh.300.  161. Fishing rights should not be limited to one species.	1. Noted. 2. Noted A sub-Regulation to provide that an artisanal fisher can apply for multiple fishing rights for different species.	1. The licence fees are reasonable. 2. Noted A sub-Regulation to provide that an artisanal fisher can apply for multiple fishing rights for different species.
50	<b>BAMBURI BMU GROUP</b>	162. Part 1 preliminary – interpretation 163. Levies by artisanal fishing Where will the money be going to support BMU member;  164. The duration of fishing rights is limited up to twenty years' fisherman has to be renewal in terms of fishing duration;  165. Boat registration procedures are too expensive;  166. Regulation 64 the 2% per kg -lack of accountability measures on utilization of the two percent, this will affect BMU revenue collection.	1. Noted. 2. Noted. 3. Noted. 4. Noted. 5. Noted. 6. Noted. Noted.	1. W 2. It will be collected by the Fish Levy Trust Fund for the purposes of developing the BMUs. 3. The period of fishing rights for Artisanal fishers is five years and for industrial it is 20 years to avoid monopoly of natural resources. 4. The current fees have been retained for

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		<p>167. Regulation 54 fishing without license;</p> <p>168. Difference between Aquarium fish an ornamental;</p> <p>169. Part II -administration of fishing rights;</p> <p>170. This law should address Migrant fishers are common in Kenya.</p>		<p>artisanal except for industrial fishers.</p> <p>5. The levy shall be used to develop fishing capacity of the artisanal fishers in terms of fishing vessels, fishing fuel and fishing gear in a BMU. The details to be provided for in the BMU and FLTF Regulations.</p> <p>6. The Regulation seek to regulate both the aquarium and ornamental fishers in a similar manner.</p> <p>7. Migrant fishers have no access rights to fish.</p>
51	<b>LIKONI BM : HAMISI MWAMOWE</b>	<p>171. Regulation 31-33-By foreign vessel catch to brought the landing (BMU's)</p> <p>172. Regulation 12-13 Increase kilo from 5kg to 10 kg subsistence fisher for extended families;</p> <p>173. Recommendation on artisanal fisher application to list mixed fish pelagic and demersal;</p>	<p>1. Noted.</p> <p>2. Noted.</p> <p>Noted.</p>	<p>1. Not feasible.</p> <p>2. Increasing the daily baggage shall lead to commercialization of subsistence fishing.</p> <p>3. Refer above</p>

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		174. Licenses fisher and boat (Vessel) to remain the same.		
52	<b>MSHOMORONI BMUS</b>	175. Part – Fess and Levies 176. fishing vessels licences fees be reduced from 5,000 to 200.  177. The prescribed fees for lobsters, prawns and crab to be deleted and merged.		
53	<b>SHIKAADABU BMU</b>	178. The Bag limit proposed for subsistence fishers is unfair. Does it mean if he gets 5kg tomorrow the fisher cannot fish the next day?  179. Kama mgeni akiwekeza katika Bandari wavuvi waangaliwe watafidiwa vipi?  180. Bandari tupimiwe	.1. noted.	
54	<b>NGARE BMU</b>	181. improve Fees and licence. Page 95 to 96.  182. It's too early to give comments. It needs more time.	Noted	The forms will be improved
55	<b>CHARITY CHAN BAYA/JOMVU BMU</b>	183. Lack of ownership – Land site 184. The structure of BMU be improved and more training are needed to improve and have ownership of the constitution.	Noted.	1. Not part of the Regulations.

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		<p>185. Establishment of Jomvu BMU and improved title deeds ownership to Jomvu BMU.</p> <p>186. Fishing vessel licence need to remain Ksh.200.00 as previous, not Ksh.5000.00. Movement of traders not to be charged in every county but be charged only once.</p>		
56	<b>CHINDORO MWINGO - MKUPE BMU</b>	<p>187. Landing site (lack of ownership)</p> <p>188. Title Deed – Improved (BMU Mkupe)</p> <p>189. Fishing vessels @200/= not 5000/=</p> <p>190. Traders licence to be valid to all counties</p>		
57	<b>OLD TOWN BMU</b>	<p>191. Introduction of mix species fishing rights</p> <p>192. Artisanal licence and registration are two high.</p> <p>193. 2% levy at every kilo is to high and the logbook</p> <p>194. To be allowed to fish any fish.</p> <p>195. Requesting for 1inch to be re-pro to be implemented.</p>		
58	<b>MARINA BEACH MANAGEMENT UNIT</b>	<p>196. From No 16-19</p> <p>197. From page 95-96 (fees)</p> <p>198. An artisanal fisher to have a right to fish any species of fish</p> <p>199. For an artisanal fisher, fishing vessel license fees should be reduced</p>	Noted	Forms will be revised

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>200. An artisanal fisher to have a right to fish any species of fish</p> <p>201. For an artisanal fisher fishing vessel licence fees should be reduced.</p> <p>202. All BMUs executive committee members should be considered as one of the County Government Staff Member.</p>		
<b>KWALE BEACH MANAGEMENT UNITS</b>				
59	<b>CHALE JEZA BMU SULEIMAN RONGA DZILALA ID/NO. 21874030</b>	<p>Fishing quantity:</p> <p>203. The fishing quantity should focus on seasons of fishing e.g. kazkaz and kusi</p>	Noted.	This information is to be published periodically by the CS.
60	<b>WASINI BEACH MANAGEMENT UNIT HASSAN BAKARI HASSAN ID NO. 23466692</b>	<p>204. Authorization to fish on areas beyond National jurisdiction- Fishermen to be allowed to do fishing in neighbouring county</p> <p>205. Conservation and management of marine species – prohibited fishing gears- Ring nets to be allowed because it's our economic activities in our area and also gives a lot of money for mama karangas in Sardine processing</p> <p>206. Ring net to be free and fishing gear for Kenyan</p>	Noted.	<p>This is an implementation issue of the 1970 agreement.</p> <p>This is provided in the draft management plan.</p>
61	<b>WASINI BEACH MANAGEMENT UNIT MUHIDINI MUSA ID/NO. 13630908</b>	<p>207. Part 9- What about fish Aquarium Fishers— legal: Aquarium fisher also among illegal fishers</p>	Noted.	Licensed aquarium fishers are not illegal.



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62	<b>HUSSEIN ALI MWACHARO – CHAIRMAN ID/NO. 13629395</b>	208. Part (VII) Registration and Licensing of Fishing Vessels: nataka kiendelelee ili kuleta manufaa kwa Bandari 209. Part (III) Fishing Access Rights: pia kwa maoni yangu nataka iboreshoo	Noted.	
63	<b>SADAT ALI MWAROGO I FUNZI BMU ID/NO. 13629121</b>	210. Under subsistence fisher: A subsistence fisher shouldn't be given a limit of kilogram to bring to the landing site, due to change of weather, due to society of fish and seasons	Noted.	Provided for above
64		211. About artisanal fishers:  212. we shouldn't propose for catch a limit too instead we need to rely on data for respective landing sites (BMUs) of which they could improve the needful catch to the government.		There is
65	<b>MWAFITINA JUMA BAKARI – NYARI/KIRADINI BMU ID/NO. 13628114</b>	213. Regulations 12: A trap can catch more than 20 kg of fish what can I do will the other kg? 214. Let the fisher fish what he can because the other day can miss at all		

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66	<b>HAMISI MWALAGO DARAGO ID/NO. 27405086</b>	215. For Fishers, you must use a media like radio, tv to publish the law of fishing so that every citizen should now and understand well 216. Breeding season fishing must be done by limit due to safe and high breeding of fish in our vessel 217. On subsistence fisher: it will be good to me if they can allowed to fish 50 kg because some they use it they can catch 1 kg 10, 20 kg per day and they can use to fish for one to five fishing traps	Noted.  Noted.  Noted.	The Regulations were publicized widely in all media.
67	<b>GAZI BMU JUMA SAID MKUU ID/8413355</b>	218. Q. Mtumo huu wa (quota) ushatumika wapi kabla ya Kenya? 219. Kuwe na kiwango cha juu cha uvivi biashara (Artisanal fishing)	Noted.  Noted.	South Africa, Australia, Namibia Provided for by the quota.
68	<b>MTENGO OMARI ID/NO. 11139913</b>	220. Trans-shipment by Artisanal fishers: 221. Allow transshipment when an emergency is raised even if there is no an authorized officer 222. We need registration fees to be harmonized in seeing that payments are done by only one institution	Noted.  Noted.	Already taken care of in  Shall be considered for operational improvement.
69	<b>MWARIRAA MOHAMED MWARIRAA ID/NO. 847039</b>	223. Regulation 13 Conditions for subsistence fishing 224. Not keeping units to amount of fish to be harvested	Noted.	
		225. Section 13 (1)	Noted.	For gears, its already provided for.

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>226. To indicate the vessels to use and gears and distance to cover</p> <p>227. Part VIII – fees Levies (62 and 63) I would like all levies i.e. BMUs levy, Fish levy, KMA Fisheries to be harmonies so to be one</p> <p>A.O.B -The meeting is good but the time was so little to cover all the issues</p>		For vessels, it's not possible
70	<b>RASHID OMARI BAGU MWAKAMBA BMU ID/NO. 11244832</b>	<p>228. Qualification of subsistence fishers.</p> <p>229. My consensus is about (12) c that he or she can have an indication in hi certificate shows that is in the position so that it can interfere with other fishers</p> <p>230. A bout member catch it is 15 kgs should be given chance to start themselves or herself in case of increasing the kgs by that day of catch to the landing site or BMU chair</p> <p>231. A fisherman or processor should be given a chance to state himself before any low action taken from him in any chance the law was broken so that they can have chance to defend on that</p> <p>232. Lesseni na viwango vingapi</p> <p>233. Naomba elimu Zaidi na mfumo hui mfano wake ulifaulu wapi ili tuwajulizie nasi</p>	<p>Noted.</p> <p>Noted.</p>	<p>Already provided for in Fair Administrative Actions Act.</p> <p>Registration fishing vessels</p> <p>above</p>

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<b>TANA RIVER BMUs</b>				
71	<b>TANA RIVER BMUs</b>	234. Subsistence fisher to be limited 10kgs is very low. Awekewe angalau kilo 50kg ama zaidi	The CS shall publish the daily bag.	Ali
		Subsistence fisher – kwanza awareness kuhamasisha nyombo vyao eg. Boat mahali panapo hitajika kwa sababu ya umasikini wa huyo mvuvi asiwekewe sheia ya kubanwa Zaidi ili aboreshe uchumi.		
		235. Uvuvi wa trawler umezidi mkono kwa sababu unaharibu mazingira ya samaki kuzaa au nyumba za samaki na pia kuna “kasa” na samaki wadogo kwa kizazi cha kaadaye kwa hayo iwekewe sharia za kuepesha uharibifu huo.  Subsistence fisher, kwanza wajulishwe kwa mkutano na pia waegeshe nyombo vyao mahali panapohitajika na pia aswekewe sharia Zaidi ya kumubana ili mvuvi huyo kwa hali yake ya umasikini aweze kuboresha maisha na uchumi kwa ujumla.		
		Twapendekeza wakati BMU kunapofanyika patrol tuwe na ofisa wa BMU na watu.	Noted.	Already provided for in the MCS inter agency unit.
		Mvuvi asiekewe kiwango cha kilo mana hua hana hakika kama atafikish kiwango.		
		Twaomba askari wa marine na kua patrol wawezeshe kukata huo ushuru wa BMU.	Noted.	
		Naona kama mvuvi ataumia kulingana na hizi sharia ziligoekwa ni kama mvuvi ana	Noted.	

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		fancy kazi ya kutoa sensi tu BMU amkutie ofisa amkatie naona hapo mumuachie BMU aokote peke yake		
		Ingingine kumpangia hesabu za kilo hiyo muitoe kwasababu ukipata kilo moja kama mimi naona kuwapimia samaki wavuvi hapo sisawa	Noted.	
		236. Ikiwezekana wajiriwe renja wa BMU		It's not within the purview of the Regulations.
		237. Mvuvi wa miguu na yule wa chombo wote wapate leseni kama kawaida	Noted.	Foot fishers don't pay for fishing vessel licence fee.
		238. Kulingana na mimi, mvuvi awe na faidika kulingana na sharia ya fisheries na asiwe akichanganywa mara kwa mara		
		239. Mambo ya mvuvi kitoweo ningumu kuvua kilo 10 kg nikidogo san twataka iongezwa angalau 50 kg	Noted.	Addressed above.
		240. Kwanza kuwe na mawasiliano kwa wavuvi wote waliopo eneo na huo uvuvi 241.		
		242. Uvuvi wa troha ni mbaya una vunja maeneo ya kasa na samaki wadogo wadogo twataka iwekewe mikakati ya nyavu ziwe na matundu makubwa  243. Jee huyo mvuvi wa kitewe kama amevua said ya kilo kumi na akaaza itakuaje yani atachukuliwa hatua au atahachiliwa	Noted.  Noted.  Noted.	

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		<p>244. Upande wa data naona inachangamoto sababu nawa to hesabu kwa ukamilifu juu kila chombo kina tajiri wake napia hua hawasemi ukweli ikiwa ni kila sio wanasema ni 40 inatakikana kue na kituo kimoja ina ipatujaba kamili.</p> <p>245. Inatociwa wavuvi wahamasiswe wavuvi waengeshe vyombo vyao mahali panapo stahili</p> <p>246. Uvuvi wa trawler umezidi mvuvi wharibifu nikwama una chukua samaki wadogo wadogo uharibivu wa nyumba za kazi na kuokota mpaka Kamba wadogo kwano trola ipangiwe sheria</p>	Noted.	Mechanisms shall be put in place.
		<p>247. Levy payable by artisanal fishers in regulation 17 shall be collected by authorized officer and paid into the fish levy Trust Fund</p> <p>248. The BMU's to be authorized to collect the levies na BMU zipewe nguvu za kufanya kazi</p>	Noted	<p>Revenue</p> <p>BMUs are legally empowered to perform their functions</p>
		<p>249. The trawlers should be having a fisheries officers and a community member from the area where they are doing/fishing.</p> <p>250. Part I -12. Subsistence fishers – to be catching not more than 10kgs</p> <p>251. Apewe ruhusa ya kuvua kwa uchache kilo 50 kwa siku.</p> <p>252. Part VIII . FEES AND LEVIES</p>		

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		<p>253. (1) Wavuvi wahamasishwe kuhusu ulipaji wa ushuru.</p> <p>254. (2) Boti ama vyombo vya uvuvi na wavuvi walazimishwe kuegesha boti zao kwa bandari husika.</p> <p>255. 73 (1) A person who is not a Kenyan citizen should not be engaged in fishing of marine turtles. Question; Je ukiwa mkenya unaruhusiwa?</p> <p>256. Kujengwe turtle rescue center.</p> <p>257. 84. Fishing Logbook. Hii ni muhimu sana. Lakini mkumbuke hii ni karatasi inaweza kutota ikaharibika.</p> <p>258. Wavuvi wote ni member wa BMUs sasa ni bora wavuvi wote wapeane photo copy za Logbook zao kwa ofisi za BMUs zao.</p>		
		259. Mvuvi Kitoweo anatakiwa avue Zaidi, hiyo kilo		Addressed above.
		260. Kwanza kuwe na mawasiliano kwa wavuvi wote waliopo eneo na huo uvuvi		
		261. Mvuvi wa kitowe angalau kilo 50 angalau atapata mahitaji yake		
		262. Data zatakika kuhamasisha wavuvi ili vyombo viengeshe sharia ambayo yahitajika	Noted.	The concerns shall be addressed through the proposed

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		<p>263. Naomba BMU's zipewe ama ziboreshe na rengers ili data's sitapatikana na urahisi</p> <p>264. Trawlers sisivue kusababu sina tuharibia samaki ile sehemu ya makaazi yao</p> <p>265. Hakufaidiki wale wakaazi wa eneo</p>		infrastructure development in Kipini Beach.
		266. It will be better to have weighing (mizani) ya gari la samaki ili kupima kiwango cha tan per year kwasababu wavuvi wanafadiana samaki wakudoa ama kipima data	Noted.	To be considered by the department of fisheries during implementation.
		<p>267. Training of the fisherman</p> <p>268. To know what levy is.</p> <p>269. Kunyanyaswa kwa wavuvi kupitia Mombasa (unyonge dhulma</p>	Noted.	
<b>AFRACA</b>				
72	ART II: Administration of a Fishing Right Sec C- Artisanal fisher Regulation 19 on: Levies by Artisanal fishers Remittance of two percent (2%) levy for every kilo to be reduced to one percent (1%).	<p>270. ART II: Administration of a Fishing Right Sec C- Artisanal fisher Regulation 19 on: Levies by Artisanal fishers Remittance of two percent (2%) levy for every kilo to be reduced to one percent (1%).</p> <p>271. This is necessary to cushion the fishers who are subject to other incidental costs such as hiring of fishing vessels and gears.</p>	Noted.	The fisheries community is okay with the levy



S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
73	Sec D: Semi– industrial fisher Regulation 22 on: Qualifications for a semi-industrial right Semi – industrial fishing rights may be issued to:- - Citizen of Kenya - Company incorporated in Kenya - Cooperative society registered in Kenya	<p>272. Sec D: Semi– industrial fisher Regulation 22 on: Qualifications for a semi-industrial right Semi – industrial fishing rights may be issued to:- - Citizen of Kenya - Company incorporated in Kenya - Cooperative society registered in Kenya</p> <p>273. It is strongly recommended that semi – industrial fishing rights be issued to:- - Body corporates namely, companies and cooperative societies that have appropriate structures and legal framework necessary to deal with third parties and mitigate inherent risks.</p>	Saccos are only limited to artisanal fishers. Semi-industrial rights are limited to companies.	
74	Sec E: industrial fisher Regulation 25 on: Qualifications of an industrial fishing right. An industrial fishing right may be issued to: - A citizen of Kenya - Company incorporated in Kenya - Cooperative society registered in Kenya	<p>274. Sec E: industrial fisher Regulation 25 on: Qualifications of an industrial fishing right. An industrial fishing right may be issued to: - A citizen of Kenya - Company incorporated in Kenya - Cooperative society registered in Kenya.</p> <p>275. The proposal in the Regulations to the Cabinet Secretary creates more bureaucracy. The process of approval should end with the Director General, given the fact that the Fisheries Council is well constituted to include the views of the Cabinet Secretary. The Director General, however, should provide periodic reports on the same to the Cabinet who may also have the power to hear appeals if any.</p>	The CS is responsible to the Cabinet and the Parliament for the issuance of fishing rights.	

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75	Sec E: industrial fisher Regulation 26: Application for industrial fishing right Application for industrial fishing right be made to the Director General.	<p>276. Sec E: industrial fisher Regulation 26: Application for industrial fishing right Application for industrial fishing right be made to the Director General.</p> <p>277. AFRACA is cognizant of the fact that the Regulations are anchored on the Principal Act namely; the Fishers Management and Development Act, 2016 which does not capture all aspects that relate to the development of marine fisheries.</p> <p>278. The additional recommendations outlined below addresses some of the missing links and attempts to respond to the issue "What mechanisms must be in place to help artisanal fishers to promote their transition to semi-industrial fishers?"</p>	The application is made to the CS through the DG	
76	<b>Local Ocean Conservation (LOC)</b>	<p>279. An artisanal fisher who wishes to engage in artisanal fishing, in Kenya's marine fishery waters shall be– a citizen of Kenya; a registered member of a Beach Management Unit; and in possession of a valid fisher registration certificate;</p> <p><i>Comment:</i></p> <p>280. Suggestion for additional qualifications – signed agreement of compliance with marine fisheries access and development regulations 2021</p>	Noted.	This is overregulation

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		281. Application for an artisanal fishing right.		
		<p>282. there is a lack of community awareness about and enforcement of such rules such as those concerning conservation management, levies and quotas.</p> <p>Eg. Levies: 283. Not enough 'authorised' officers on the ground – meaning this is poorly implemented or monitored. 284. Lack of awareness about levies, people don't know about the levy and/or when to pay it and where to pay it to. Why they are paying it and where it is going.</p>	Noted.	To be implemented once the Regulations are published.
		<p>Quota: 285. Similar to levies, people are unaware of what existing quotas are. Who is measuring and recording on the ground? Who is this then reported to and monitored by?</p> <p>286. Furthermore, these rules seem to be rarely enforced on the ground – this requires a different discussion on how to communicate these new regulations to the community/fishermen groups in Watamu/Mida.</p>	Noted.	This is an implementation issue.

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		<p>287. (68) Trawl Nets Comment: 3 nautical miles is too close for a trawl net. Five nautical miles by Kenyan Law?</p> <p>288. Such legislation risks creating conflict between artisanal and prawn trawl fishermen</p> <p>289. No mention of; Use of Turtle Excluder Devices (TEDs) by trawl fishers.</p> <p>290. Having an observer or a fisheries officer on board (ie. Spot check) to ensure that the TEDs are being used effectively.</p>	<p>Noted. Noted.</p>	<ol style="list-style-type: none"> <li>1. The Regulations have provided for five nautical miles.</li> <li>2. To be considered under the Trawl provision in the Regulations.</li> <li>3. The observer programme shall be provided for in separate Regulations.</li> </ol>
		<p>291. R.74 Marine Turtles Comment: 3 nautical miles is too close for a trawl net. Five nautical miles by Kenyan Law?</p> <p>292. Such legislation risks creating conflict between artisanal and prawn trawl fishermen</p> <p>293. The section on Marine Turtles makes absolutely no mention of TCGs (Turtle Conservation Groups) operating along the Kenyan coast (LOC, DTW, LAMCOT)</p> <p>294. No mention of TEDs (Turtle Extractor Devices) which by law should be fitted to purse seine nets.</p>		<ol style="list-style-type: none"> <li>1. The government is ready to work with supportive partners in the conservation of turtles.</li> <li>2. In addition, BMU Regulations should provide for sensitization of its members on conservation of turtles.</li> <li>3. The issues raised shall be addressed in separate guidelines not in the Regulations.</li> </ol>

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		<p>295. All points, make it the sole responsibility of local fishermen to handle entangled or injured marine turtles</p> <p>296. This makes an ambitious assumption that all fishermen have the resources and knowledge necessary to know how to safely and successfully de-hook or resuscitate a turtle without specialised training.</p> <p>297. Hooks can be deeply imbedded in the turtle's flesh and can be complicated to remove without severely injuring the turtle – professional assistance/guidance is necessary.</p> <p>298. What about the role of turtle conservationist/ expert activity operating such as LOC's bycatch and release program, tagging system for research and Turtle Rehabilitation Centre?</p> <p>299. This advice suggests marine turtles should be released immediately and does not advise fishermen to collaborate with marine turtle conservationists (such as LOC), who have built a long-standing relationship and system with local fishermen concerning marine turtle entanglement or injury.</p> <p>300. Fishermen are here advised to respect guidelines provided by the Director-General. Do such guidelines then give</p>		

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		mention to the activity and partnership that should be made between local registered marine and turtle conservation projects?		
78	SEA-COLOGY	301. Pending consideration.		
		302. Specifying the name of the rescue centre is administrative.	Noted.	Already addressed above.
		303. We stick to our national laws on identification marks	Noted.	This has been addressed above.
		304. This is more administrative.	Noted.	Administrative.
		305. The penalties provided are sufficient.	Noted.	The republic has historical data to inform setting of TAC and the Act also provides for the setting of TAC The Constitution also provides for sustainable exploitation of natural resources including fisheries.
			Insert an objective on food security and protection of traditional/cultural fishing rights.	To align the Regulations to the Act and the Constitution.
		306. 6 Reg. on Levies	Noted	The 2% artisanal levies will be ploughed back to develop the artisanal fishing capacity
			Noted	As addressed above
		307. 8 and 9	Noted	All countries that run responsible fisheries

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				management and conservation measures use TAC and right gears e.g. European union, Australia. Section 40(1) comprehensively provides for setting amount of fish to be caught (TAC)
		308. Designated fishery of national interests lacking in the regulations	Noted	This is a matter that the CS is mandated to designate through a gazette notice from time to time as provided for in the Act
		309. Reg. 63 The aspect of development is not adequately addressed by the regulations	Noted	Development is used two contexts- resource development and socio-economic development. Resource development is adequately addressed by the fisheries conservation and management measures. Socio-economic development is addressed by the regulations on ploughing back levies, landing obligation which will increase availability of raw material for SMEs development

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		310. Reg. on Recreational and Sport Fishing	Definition to be provided that distinguishes the two	Sport fishing besides being done for leisure, is competitively done while recreational is done solely for leisure
		311. Currently some levies are being paid to the counties while others are paid to BMUs. There is need for harmonization	Noted	The fisheries-based fees paid to the counties and national governments are based on the devolved and national functions respectively.
		312. Corals are currently cultured hence the regulations that prohibit harvesting of corals is not necessary	Noted	Fish as defined in the Act include corals. Harvesting and use of coral should be managed through a management plan. Sect 39(9) on management plan
		313. Restricted species	Noted	Sec. 42 provides for prohibitions on fishing gears, methods and sizes of species of fish to be caught
		314. No regulations to protect fishing of aggregating species during spawning	Noted	The Act provides for protection of the fish spawning grounds and imposition of Closed Season for Fishing different species.



S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
		315. The forms should be translated into Kiswahili	Noted	The entire regulations will be translated into Kiswahili for ease of understanding to all stakeholders.
79	ICZM	316. Reg. Fishing Rights	Noted	Has been addressed above
		317. Reg. 7 and 19	Noted	Payment per kg
		318. Reg on restricted species	Noted	Prohibited in the Act
		319. Conditions for issuance of fishing rights	Noted	Previous compliance to international or regional fisheries management measures is a requirement as a due diligence measure
81	EEZ Fishers ( <i>PWEZA Fisheries LTD, Diamond Seafood Kenya, East Africa Deep Sea Fishing and Ittica Limited</i> )	320. Fishing Quotas	Noted	IOTC fishing quotas are not applicable. The proposed quotas are different from the stated historical quotas.
		321. Regulations 27. Transfer of fishing right to a third party will promote rent seeking in the industry	Considered. A fishing right holder cannot transfer right to a 3 <sup>rd</sup> party but surrender back fishing right to the CS.	The right belongs to the Government and should be surrendered back in case a right holder cannot execute it
		322. Fuel Bunkering has been	Noted	Fuel bunkering has been removed in Kenya
		323. Fishing logbook for artisanal fishers	Noted	KeFS and KMFRI are developing the logbook

S. No.	Participant/ Institution/ Organization's Name and Date	Regulations, Issues, comments and Recommendations	Response and Action Taken	Reasons for Action Taken
82	Nairobi Metropolitan Development- Ann Mugo	324. Development' as used in the Draft Regulations " has not been defined in the proposed draft	Noted	Has been addressed above
		325. The Regulations tend to lock out the subsistent fishers from venturing the EEZ	Noted	Subsistence Fishers fish for home consumption. Any Kenyan who wishes to engage in commercial fishing are free to register as an artisanal or any other categories as proposed.
		326. The proposed draft also lacks congruence with important regional fishery agreements.	Noted	The Regulations are aligned to the UNCLOS, FAO Code of Conduct, PSMA, UNFSA etc.
		327. Pollution Control in the marine waters from Sub Section 49 of the Fisheries Management and Development Act has not been captured in the proposed draft Marine Fisheries Regulations	Noted	No need of introducing pollution in the Draft Regulation if pollution is adequately addressed in Act
<b>Coastal Oceans Research Development Indian Ocean (CORDIO)</b>				
83.	CORDIO	328. Regulation 14 (b) subsistent fishers fish where fish is available so cannot be re	Remove 14 (b)	It is not practical to implement

### 10.3 Annexure 3: Stakeholder Attendance Registers



**REPUBLIC OF KENYA**

**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES, STATE DEPARTMENT FOR FISHERIES,  
AQUACULTURE AND THE BLUE ECONOMY**

**PUBLIC PARTICIPATION FOR MARINE FISHERIES (ACCESS AND DEVELOPMENT) REGULATIONS, 2022**

**Venue: .....NYALI SUN AFRICA HOTEL .....**

**Date: ...10<sup>TH</sup> FEBRUARY, 2022 .....**

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25.	Driver (for DCC)			
26.	Driver (for Chiefs)			



**REPUBLIC OF KENYA**

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**PUBLIC PARTICIPATION FOR MARINE FISHERIES (ACCESS AND DEVELOPMENT) REGULATIONS 2022**

**Venue...NYALI BEACH SUN AFRICA HOTEL.....**

**Date.....7<sup>TH</sup> February, 2022.....**

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**REPUBLIC OF KENYA**

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AQUACULTURE AND THE BLUE ECONOMY**

**PUBLIC PARTICIPATION FOR MARINE FISHERIES (ACCESS AND DEVELOPMENT) REGULATIONS, 2022**

**Venue: NORTH COAST BEACH HOTEL**

**Date: 8<sup>TH</sup> DAY OF FEBRUARY, 2022**

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**PUBLIC PARTICIPATION FOR MARINE FISHERIES (ACCESS AND DEVELOPMENT) REGULATIONS, 2022**

**Venue: SHERATTON HOTEL, MOMBASA**

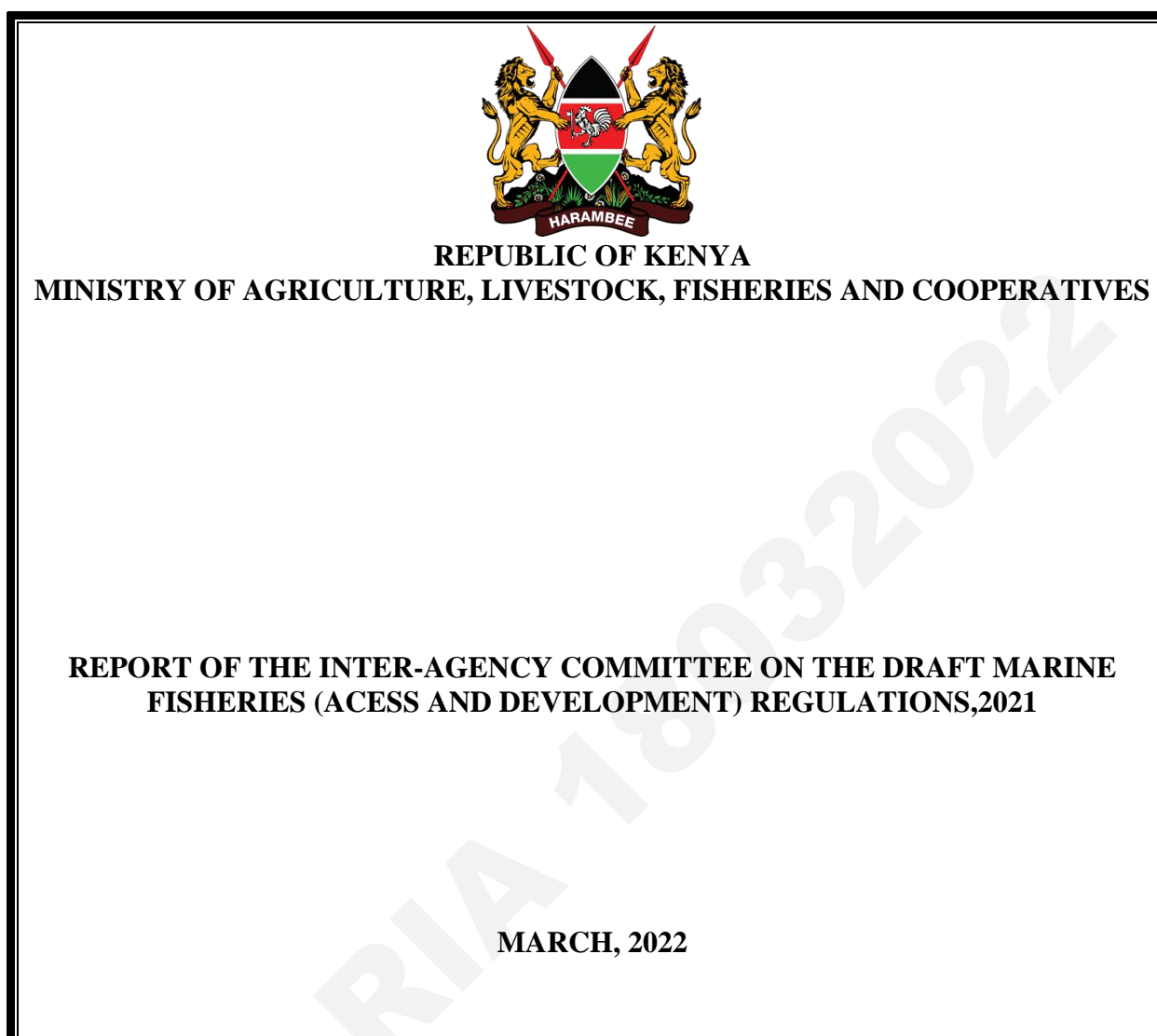
**Date: 9<sup>TH</sup> DAY OF FEBRUARY, 2022**

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59.	Mwanatumu Salim	Mshomoroni BMU	Chairman	0716461005
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#### **10.4 Annexure 4: Report on Stakeholder Consultations.**



#### **1.0 INTRODUCTION**

The Inter-Agency Committee (Committee) on the draft Marine Fisheries (Access and Development) Regulations, 2022 was established in 23<sup>rd</sup> November, 2021. The Committee was to review and complete drafting the Marine Fisheries (Access and Development) Regulations, 2022. The committee was also to spearhead the public participation process. The terms of reference of the Committee included:

- a) To prepare a program for national wide public participation on the draft Marine Fisheries (Access and Development) Regulations, 2022;
- b) To undertake stakeholders mapping;
- c) To coordinate effective public participation on the draft Regulations;
- d) To ensure proper documentation of the public participation process, including adherence to all the legal processes in terms of the Constitution, Statutory Instruments Act, 2013 and other applicable laws;
- e) To incorporate comments on the draft regulations as appropriate and in accordance with the law;

## Committee Membership

The Committee comprises of the following members:

S.NO	NAME	INSTITUTION	RESPONSIBILITY
1	Ms. Juster Nkoroi	TOBEO	Chairperson
2	Daniel Mungai	DG – KeFS	Coordinator
3	Mr.Kassim Farah	SDFA&BE	Vice-Chairperson
4	Mr Rodrick Kundu	SDFA&BE	Member
5	Ann Gathecha	TOBEO	Member
6	Stanley Chai	TOBEO	Member
7	Mr Jared Agano	KeFS	Member and Head of Secretariat
8	Dr Stephen Mbithi	TOBEO	Member
9	Mr Leonard Cheruiyot Bett	SDFA&BE	Member and Secretariat
10	Mr Benedict Kiilu	KeFS	Member
11	Dr Nina Wambiji	KMFRI	Member
12	Mr John Wanyoike	Coast Guard	Member
13	Annette Omwoyo	Kenya Law Reform	Member
14	Mr Paul Wekesa	AG Office	Member
15	Martha Senkela	TOBEO	Secretariat
16	Annah Nunda	KeFS	Secretariat

## 2.0 BACKGROUND TO THE MAKING OF THE REGULATIONS

Fisheries is a renewable natural resource, which in line with Article 71 of the Constitution of Kenya, should contribute to Kenya's National development. This development should be measured as jobs created for Kenyans, increase in value of fisheries products traded within and outside Kenya, and maximization of State revenue (resource rent) from our fisheries.

It is worth noting that the Kenya Fisheries Management and Development Act 2016 contains provisions for a development-oriented fisheries management framework. This includes provisions for rights-based fisheries, investments in Kenya, employment creation, and maximization of foreign exchange earnings by companies fishing in Kenya's EEZ.

Under this premise, the Ministry of Agriculture, Livestock, Fisheries and Cooperatives developed the proposed Marine Fisheries (Access and Development) Regulations to operationalize section 208 of the Fisheries Management and Development Act, 2016. This Regulation seeks to promote growth and development in the fisheries sector for purposes of eradicating poverty alleviation of rural populations.

The proposed Marine Fisheries (Access and Development) Regulations have been drafted in a manner that seeks to ensure that fish contributes to industrialization through processing, transshipment at sea of fish caught in Kenya's EEZ is prohibited, and all catch shall be landed onshore for value addition. Monitoring control and surveillance (MCS) activities have been strengthened and Vessel Monitoring Systems (VMS).

The draft Regulations define access to marine fisheries resources, maximize economic benefits for Kenya from its Exclusive Economic Zone (EEZ) fisheries, provide for the conservation and management measures and create a mechanism for economic empowerment of artisanal fishers to effectively participate in marine fishing.

### 3.0 STAKEHOLDERS ENGAGEMENT

The objects of devolution<sup>17</sup> give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development. The values and principles of public service<sup>18</sup> require the involvement of the people in the process of policymaking and include transparency and provision to the public of timely and accurate information.

Stakeholders in a process are actors (persons or organizations) with a vested interest in the Regulation being promoted. The Committee considered at length practices for developing constructive engagements with stakeholders and set of commitments for how engagement should be conducted. The Committee identified the following categories of stakeholders, or “interested parties” national political (legislators, governors), public Ministries, departments and agencies (MDAs), commercial/private for-profit, non-profit (nongovernmental organizations (NGOs), foundations), civil society, and fisherfolk.

#### Methodology

The Committee held a preparatory workshop to prepare and design the tools to be used in the stakeholder meetings and online engagements. Thereafter, the committee held other meetings with all stakeholders. After finalizing the stakeholder engagements, the committee held meetings to consider the feedback and incorporate comments. The stakeholder engagements were conducted in accordance with the Constitution and the Statutory Instruments Act 2013.

The stakeholders and the public at large were notified through a Gazette Notice of the intent to undertake public consultations and also to submit their comments and views about the Draft Marine Fisheries (Access and Development) Regulations 2022.

Fourteen days after the public notice, the committee undertook the following steps in preparation for public participation:

1. Planning the process
2. Selecting tools and preparing materials
3. Identifying key stakeholders
4. Adapting the tools in stakeholder workshops
5. Collecting and recording the information
6. Filling in the stakeholder table
7. Analyzing the stakeholder table
8. Using the information to make decisions

### 4.0 STAKEHOLDERS MAPPING

Identification of the stakeholders was extremely important to the public participation exercise. The Committee categorized the stakeholders in terms of their involvement in the fisheries sector. The Following categories of stakeholders were mapped for inclusion in the consultative process:

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<sup>17</sup> Constitution of Kenya, 2010: Article 174(c).

<sup>18</sup> *Ibid*, Article 232 (1).

Relevant Public Institutions	BMUs	Local semi and industrial fishing companies	Coastal Houses	Media
1) Ministry of Interior and Coordination of National Government 2) County Government 3) Kenya Coast Guard Service 4) Kenya Wildlife Service 5) Kenya Forest Service 6) The National Treasury 7) Kenya Revenue Authority 8) Kenya Maritime Authority 9) Kenya Port Authority 10) National Environment Management Authority 11) Kenya Navy 12) Kenya Marine and Fisheries Research Institute 13) Kenya Fisheries Service 14) Kenya Fish Marketing Authority 15) Fish Levy Trust Fund 16) Kenya Fishing Industry Corporation 17) Immigration 18) Office of the Director of Public Prosecution 19) Registrar of the Courts  <b>Universities</b>  UoN UoE JKUAT KU Maseno Masai Mara TUM Pwani Karatina Bandari Academy Marine School	Subsistence fishers, Artisanal fishers, 'Mama Karanga' Fishing gears and Boat makers  <b>SPORT FISHERS:</b>  <ul style="list-style-type: none"> <li>Manda Beach</li> <li>Malindi</li> <li>Watamu</li> <li>Kilifi</li> <li>Mtwapa</li> <li>Tudor</li> <li>Diani</li> <li>Shimoni</li> <li>Lamu – Kiwayu and Pate</li> <li>Captain Andy</li> </ul> <b>AQUARIUM FISHERS:</b>  1. Africa Aquatic Exports Ltd Kikambala Kilifi 2. Agri-Marine and Organics Company Ltd Mtwapa Kilifi 3. Aquatic Marine Life Ltd Nyali Mombasa 4. Aquatic Sealife Mtwapa Kilifi 5. Coral Farm Ltd Nyali Mombasa 6. Exotic Marine Ltd Mtwapa Kilifi 7. Kijipwa Sea Life Ltd Kikambala Kilifi 8. Kipepeo Marine Aquarium Kikambala Kilifi 9. Kenya Tropical Sealife Ltd Majengo – Kanamai Kilifi 11. Ndune (K) Ltd Kikambala Kilifi 12. New Century Marine Trading (EA) Ltd Kikambala Kilifi 13. Sonyicargo Masters Likoni Mombasa 14. Tsavo Aquarium (K) Ltd Kanamai Kilifi 15. Zen Marine Life Ltd 16. Tropical Sea	<ul style="list-style-type: none"> <li>East Africa Deep Fishing Ltd</li> <li>Pweza Fishing Operations Management Ltd</li> <li>Sandiego Holdings Ltd</li> <li>The Neferset Corporation Limited</li> <li>East Africa Sea Food Limited</li> <li>Ittica Ltd</li> <li>Diamond Seafood (K) Ltd</li> <li>Nova Star fishing company Limited</li> </ul> <b>FISH PROCESSORS</b> <ul style="list-style-type: none"> <li>Sea Harvest (K) Ltd Frozen Octopus and Marine Fin Fish</li> <li>Transafrica Fisheries Ltd Frozen Octopus and Marine Fin Fish</li> <li>Crustacean Processors Frozen Octopus and Lobsters</li> <li>Diamond Seafood (K) Ltd Frozen Octopus and Marine Fin Fish</li> <li>Brinkley Ltd Frozen Octopus and Marine Fin Fish</li> <li>Huawen Food (Kenya) EPZ Ltd</li> </ul> <b>SMALL SCALE PROCESSORS</b>  <ul style="list-style-type: none"> <li>Aden International Marine Biotechnology Ltd</li> <li>Chongchao Enterprises</li> <li>Delush Galaxy Ocean Ltd</li> <li>Indian Ocean Marine Aquarium</li> <li>FMCI Kenya Ltd</li> <li>Eternal East Africa Traders Ltd</li> <li>Naushad Trading Company Ltd</li> <li>Taytayley Co, Ltd</li> <li>Yusra Fish Trading Co. Ltd</li> </ul>	<b>Radio</b> Pilipili FM Radio Kaya Pwani FM Radio Msenangu Baraka FM Radio Raahma Free FM Anguo FM Mwanedo Sheki FM TV 47 Citizen KTN NTV KBC K24 Standard Nation The Star People <b>NGOs</b> WWF TNC CORDIO WCS LOT WTO Blue Ventures EAWS Seacology COMRED WIOMSA CANCO MKOKO PAMOJA Arocha Kenya  <b>Civil Society:</b>  Muhuri Opinion Sheik, NCCK, Catholic  <b>Development partners</b> FAO JICA UNDP WB GEF EU NORAD KOICA	Leaders

## **5.0 PUBLIC PARTICIPATION**

Prior to conducting public consultations, the Zero Draft Regulations were presented to:

- a) Parliamentary Oversight Committees
- b) Coast Parliamentary Group
- c) The Senate Committee on Delegated Legislations

The leaders gave important comments and provided guidance on the legislations making process. The inputs were incorporated in the Draft Regulations.

The identified stakeholders were sent letters of invitations specifying the venue and time of the meeting. The letters also informed them the Government would meet the cost of their participation.

The stakeholder meetings were scheduled at such a time and place most convenient for the stakeholders. All attempts were made to secure meetings with the person indicated and not his or her representative. This included rescheduling of some appointments where the stakeholders were unable to attend but requested for re-scheduling.

### **Consultative Approach adopted by the Committee.**

The Committee agreed to the following six commitments in conducting the stakeholder engagement:

- a) Encouraging active involvement of stakeholders
- b) Ensuring stakeholders have the opportunity to have a say
- c) Explaining at the outset what elements of the project can be influenced, when and in what way
- d) Understanding and responding to stakeholder needs and concerns with considered and timely responses
- e) Evaluating and improving engagement with stakeholders on an ongoing basis

The Committee encouraged all stakeholders to review the draft Regulations taking into account the following:

1. Fundamental approach method of reviewing the Regulations. This involved examining and evaluating each clause;
2. Seeking to understand the regulations through the use of questions and clarifications;
3. Identification of any issues in the Regulations and giving feedback using the template developed (Annex 1); and
4. Understanding how the Regulation has provided for community gains / community benefits.

### **Legal Considerations to Public Participation**

The Committee considered the legal threshold of public participation and received a presentation on the legal threshold from legal sub-committee comprising of members from the Kenya Law Reform Commission, Office of the Attorney General and Department of Justice and The In -House State Counsel from the Ministry who did a power point presentation. The sub-committee highlighted that the legal threshold considerations are



founded in the case of the *Republic v County Government of Kiambu Ex parte Robert Gakuru & another [2016] eKLR*. The counsels presented the decision of the Court urging the Committee to be guided by the precedent. The sub-committee advised the committee to take cognizance of the decision of the Court which held the following with regards to public participation: -

- 1) That public participation ought not to be equated with mere consultation.
- 2) That the yardstick for public participation is that **a reasonable opportunity has been given to the members of the public and all interested parties to know about the issue and to have an adequate say**. What amounts to a reasonable opportunity depends on the circumstances of each case.
- 3) A government agency ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous
- 4) That as long as the mechanism with which the public participation was carried out is ok then the court would find it very difficult to invalidate legislation.

### **Incorporation of Views on Public Participation**

The Committee considered each and every comment from the participants. The comments included online and written submissions sent to the Cabinet Secretary after the public participation was concluded. The committee prepared a stakeholder table noting their action taken which is annexed to this report.

## **6.0 FREQUENTLY ASKED QUESTIONS DURING THE PUBLIC PARTICIPATION**

The public and stakeholders kept on asking and giving recommendations on the following:

1. How and who will manage the proposed levies?
2. The Bag Limit for subsistence fishers should be increased from the proposed 5kg to 10 kg per day
3. Sport fishers want to be allowed to sell fish they catch during sport fishing
4. How prepared the Government is to implement the Regulations

## **CONCLUSION**

The process attracted a lot of interests based on the overwhelming responses from all walks of life.

It is highly likely that the people who are opposed to the proposed changes of shifting fisheries resource management from licensing regimes to right-based management system may seek court injunctions to stop the process. These include sport fishers who seemed to have been benefiting from sale of fish from sport fishing.

## 10.5 Annexure 5: Public Notice on Public Participation for the Proposed Regulations



REPUBLIC OF KENYA

### MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES

#### CALL FOR PUBLIC PARTICIPATION ON THE DRAFT MARINE FISHERIES (ACCESS AND DEVELOPMENT) REGULATIONS, 2021

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The Ministry of Agriculture, Livestock, Fisheries and Cooperatives through the State Department for Fisheries, Aquaculture and the Blue Economy has developed Draft Marine Fisheries (Access and Development) Regulations, 2021 to provide a comprehensive legislative framework to operationalise the provisions of the Fisheries Management and Development Act, 2016.

The Proposed Draft Regulations have been developed pursuant to sections 128 and 208 of the Fisheries Management and Development Act, No. 35 of 2016. The objects and purpose of the proposed draft regulations have been clearly captured in Regulation 3. They include; -

- (a) *To define the modalities and criteria for allowing access to Kenya's marine resources;*
- (b) *To enable realization of economic benefits from marine resources to the country;*
- (c) *To provide levies for promoting development of artisanal fishers;*
- (d) *To establish mechanisms for management and conservation of marine fisheries; and,*
- (e) *To strengthen monitoring control and surveillance to eradicate illegal, unreported and unregulated fishing within Kenya's marine waters*

In compliance with Article 69 of the Constitution of Kenya 2010, and the Fisheries Management and Development Act No. 35 of 2016 the State Department has planned to undertake a Public Participation Exercise beginning on the 7<sup>th</sup> to 25<sup>th</sup> February, 2022. The exercise will cover the entire country and will involve representation from the stakeholders in the Fisheries and Blue Economy Sector. Logistics planning on the specific locations and dates for the exercise is ongoing and a communication on the same will be shared in due course.

The public is invited to submit written comments and Memoranda on the Draft Regulations for consideration during the Public Participation Exercise. All interested persons should submit written comments on the Draft Regulations using prescribed **public comments form**, to reach the undersigned not later than seven (7) days from the date of publication of this notice.

Soft copies of the **Draft Marine Fisheries (Access and Development) Regulations, 2021, comments, feedback forms** are available and can be accessed through the Ministry website: **[www.kilimo.go.ke](http://www.kilimo.go.ke)**. Duly filled comments and feedback forms or written memoranda may be submitted back via the following emails; **[fibes@kilimo.go.ke](mailto:fibes@kilimo.go.ke)** and copied to **[psfisheries@kilimo.go.ke](mailto:psfisheries@kilimo.go.ke)** or delivered by post to;

**The Cabinet Secretary,**  
Ministry of Agriculture, Livestock, Fisheries & Cooperatives,  
Cathedral Road,  
Kilimo House,  
P.O Box 30028 – 00100,  
**NAIROBI.**

**Hon. Peter Munya, E.G.H.**  
**Cabinet Secretary,**  
**Ministry of Agriculture, Livestock, Fisheries & Cooperatives**