

LEGAL NOTICE NO. 123

THE FISHERIES MANAGEMENT AND DEVELOPMENT ACT

(Cap. 378)

THE FISHERIES MANAGEMENT AND DEVELOPMENT (FISH
LEVY TRUST FUND) ORDER, 2024

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SCHEDULE

THE FISHERIES MANAGEMENT AND DEVELOPMENT ACT

(Cap. 378)

IN EXERCISE of the powers conferred by section 28(2)(a) of the Fisheries Management and Development Act, the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs makes the following Order—

THE FISHERIES MANAGEMENT AND DEVELOPMENT (FISH LEVY TRUST FUND) ORDER, 2024

PART I – PRELIMINARY

1. This Order may be cited as the Fisheries Management (Fish Levy Trust Fund) Order, 2024. Citation.
2. In this Order, unless the context otherwise requires— Interpretation.
 - “Act” means the Fisheries Management and Development Act; Cap. 378.
 - “applicant” means a person who has applied to the Fund for funds;
 - “Board of Trustees” means the Board of Trustees of the Fund constituted in accordance with section 28 of the Act;
 - “by-catch” means the non-target species of fish that are retained and sold because it is economic to do so;
 - “Cabinet Secretary” has the meaning assigned to it in the Act;
 - “County Executive Committee Member” means the County Executive Committee Member responsible for fisheries within the relevant county;
 - “fisher” has the meaning assigned to it under the Act;
 - “Fund” means the Fish Levy Trust Fund established under section 28 of the Act; and
 - “loan” means sum of money borrowed to be paid back at no interest.
3. The purposes of the Fund shall be to— Purposes of the Fund.
 - (a) promote fisheries management and conservation;
 - (b) mobilize, manage and avail resources for grants, fisheries awards, capacity building and dissemination;
 - (c) provide financial resources for urgent mitigation due to climate change and natural disasters that may affect the livelihoods of fishers; and
 - (d) promote public awareness on fisheries conservation and management.
4. (1) The Board of Trustees may use a maximum of three percent of the approved budget of the Fund to cover the administrative costs of the Fund. Expenditures of the Fund.

(2) The expenditure incurred on the Fund shall be on the basis of, and limited to, the annual budget estimates which shall be prepared by the Board of Trustees and recommended to the Cabinet Secretary for approval and submission to the Cabinet Secretary for the National Treasury, at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual budget estimates shall be referred to the Board of Trustees for approval.

PART II—MANAGEMENT OF THE FUND

5. (1) The Fund shall be administered by the Board of Trustees established under section 28 (4) and (5) of the Act.

Board of Trustees.

(2) The Board of Trustees shall elect the Chairperson of the Board at the first meeting of the Board.

6. A person shall be eligible for appointment as a member of the Board of Trustees under section 28 (5) (c) if the person—

Qualifications of members of the Board of Trustees.

- (a) possesses a degree from a university recognized in Kenya;
- (b) has the knowledge and at least ten years' experience in the field of aquatic science;
- (c) is a Kenyan Citizen; and
- (d) is not a public officer.

7. (1) The functions of the Board of Trustees shall be to—

Functions of the Board of Trustees.

- (a) oversee the administration of the Fund;
- (b) receive reports on the performance of the Fund;
- (c) advise the Cabinet Secretary on the operations of the Fund;
- (d) review the estimates of annual revenue and expenditure of the Fund and recommend the estimates to the Cabinet Secretary for approval and submission to the Cabinet Secretary responsible for the National Treasury;
- (e) review the Fund priorities and criteria for allocation and disbursement of funds to beneficiaries in furtherance of the purposes of the Fund;
- (f) mobilize resources for the Fund;
- (g) open and operate a bank account with the approval of the National Treasury;
- (h) manage assets, equipment and all properties under the Fund; and
- (i) promote and facilitate realization of the objects and purposes of the Fund.

(2) The Board of Trustees may in writing, delegate to an employee of the Fund, the performance of any of the functions.

8. The Board of Trustees may for the purposes of performing its functions, establish such committees of the Board of Trustees it

Committees of the Board of Trustees.

deems necessary and the Board of Trustees may delegate to any such committee such of its functions as it deems fit.

9. (1) The Board shall appoint a Managing Trustee who shall hold office on such terms and conditions of service as may be specified in the instrument of appointment.

Managing
Trustee.

(2) The Managing Trustee shall be selected through a competitive process and shall be accountable to the Board in the performance of duties.

(3) The Managing Trustee shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(4) The functions of the Managing Trustee shall be to—

- (a) manage the day-to-day affairs of the Fund;
- (b) ensure the proper management of contracts and agreements entered into by the Fund;
- (c) advise the Board of Trustees on policies intended to enable the Board of Trustees effectively administer the Fund;
- (d) manage the staff of the Fund;
- (e) facilitate the preparation of the budget, strategies, operational proposals, annual plans and corporate policies for deliberation by the Board of Trustees and implementing decisions and resolutions of the Board of Trustees;
- (f) effectively manage the operations of the Fund and foster a conducive corporate culture that promotes ethical practices in the operations of the Fund; and
- (g) perform such other functions as assigned by the Board of Trustees from time to time.

(5) A person shall be eligible for appointment as a managing trustee if the person—

- (a) has a bachelor's degree from a recognized institution in any of the following disciplines—
 - (i) fisheries;
 - (ii) natural resource management;
 - (iii) environmental management or science;
 - (iv) biological sciences;
 - (v) aquatic sciences; or
 - (vi) equivalent qualification;
- (b) has ten years' relevant work experience, five of which shall be at a senior management level;
- (c) meets the requirements of Chapter Six of the Constitution; and

- (d) demonstrates managerial, administrative, and professional competence in work performance and results.

10. (1) The Board of Trustees shall appoint such officers and other staff of the Fund as shall be necessary for the proper discharge of the functions of the Fund under this Order, upon such terms and conditions of service as determined by the Board of Trustees on the recommendations of the Salaries and Remuneration Commission.

Staff of the Fund.

(2) The Board of Trustees may, upon request, accept the secondment of such number of staff to assist the Fund in discharging its functions.

(3) A public officer seconded to the Fund shall, during the period of secondment be deemed to be an officer of the Fund and shall be subject to the direction and control of the Board of Trustees.

PART III—FUND DISBURSEMENTS

11. (1) A person who wishes to access funds from the Fund shall apply to the Fund in the manner set out in paragraph 12 and the Schedule.

Registration of applicants..

(2) A person referred to in sub-paragraph (1) shall be eligible to access funds from the Fund if the person is—

- (a) an artisanal fisher;
- (b) a fishing gear maker or repairer;
- (c) a boat maker;
- (d) a fish trader;
- (e) a fish processor; or
- (f) a fish transporter.

(3) Any person engaged in the following fishing related activities may apply for registration with the Fund in Form FLR 1 set out in the Schedule—

- (a) fisheries research;
- (b) fisheries management;
- (c) capacity building;
- (d) climate change impacts; or
- (e) insurance.

12. A person who intends to obtain a loan from the Fund shall submit an application for the loan to the Board of Trustees in Form FLR 2 set out in the Schedule, and attach the following to the application—

Loans application procedure.

- (a) a recommendation letter from the beach management unit in which the applicant is a member;
- (b) in the case of a fish trader, a recommendation letter from the relevant association;

- (c) guarantees of repayment of the loan executed by at least two guarantors; and
- (d) any other relevant information

13. (1) The Board of Trustees shall use the following criteria when evaluating a loan application submitted in accordance with paragraph 12—

Processing of application of loans.

- (a) first in first out principle of loan processing;
- (b) preference to applicants who are women, youth or persons with disability;
- (c) applicable loan threshold for each category of applicant based on the ratio of the maximum amount applied for to the annual turn-over of the applicant's business or projected annual turn-over for start-ups;
- (d) ability to repay the loan within the stipulated loan tenure;
- (e) an undertaking by the applicant that the loan shall only be used for the purpose applied for until the loan is repaid in full by the applicant;
- (f) an applicant shall not be eligible for more than one loan from the Fund unless the applicant has fully repaid the initial loan; and
- (g) an undertaking by the applicant to notify the Board of Trustees of any change in physical address.

(2) All loans shall be disbursed to a successful applicant subject to the fulfillment of the following conditions—

- (a) all loans from the Fund shall be approved and recorded in the minutes of the meetings of the Board of Trustees;
- (b) all loans from the Fund shall be advanced to the successful applicants and shall be disbursed through the bank account of the successful applicant, or any other appropriate account approved by the Board of Trustees; and
- (c) the Board of Trustees shall open and maintain loan accounts of all successful applicants and the amount disbursed in each account and the balance thereof.

(3) The Board of Trustees shall communicate its decision on every loan application in writing to the applicant within twenty-one days of receiving the application.

14. (1) A beach management unit shall be eligible to apply for a conditional grant from the Fund if the beach management unit —

Eligibility criteria for conditional grants.

- (a) has an annual work program aligned to the strategic plan of the beach management unit approved by the governing body of the beach management unit; and
- (b) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities,

approved by the governing body of the beach management unit and the requisite regulatory approvals from relevant government institutions.

(2) An association of persons undertaking a fishing related activity shall be eligible to apply for a conditional grant from the Fund if the association—

- (a) has an annual work program aligned to the strategic plan of the association approved by the governing body of the association; and
- (b) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body of the association and the requisite regulatory approvals from relevant government institutions.

(3) A county or an agency of the national government shall be eligible to apply for a conditional grant from the Fund if the county or agency has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the county assembly and the requisite regulatory approvals from relevant government institutions.

15. (1) The Board of Trustees shall, by the 15th September of each year issue a budget circular to the eligible persons referred to in paragraph 11 indicating—

Procedure for
accessing
conditional grants.

- (a) the ceilings for the conditional grants that may be issued for each object of the Fund; and
- (b) priority programs, projects and activities to be eligible to receive a conditional grant in that financial year.

(2) A person or entity which intends to receive a conditional grant from the Fund and meets the criteria set out under paragraph 14 shall at least six months before the commencement of a financial year apply to the Administrator of the Fund by submitting Form FLR 3 set out in the Schedule.

(3) A person who intends to receive a conditional grant shall provide thirty percent of the required sum.

(4) An application under sub-paragraph (2) submitted by a beach management unit shall be accompanied by—

- (a) the minutes of a properly constituted meeting of the governing body of the beach management unit containing the resolution to apply for a conditional grant from the Fund;
- (b) an annual work program aligned to the strategic plan of the beach management unit approved by the governing body of the beach management unit;
- (c) where the project for which the conditional grant is applied for is an infrastructure development project, the project designs, plans and bills of quantities approved by the

governing body of the beach management unit and the requisite regulatory approvals from relevant government institutions, where applicable;

- (d) a statutory declaration of programs funded through other sources, if any; and
- (e) the details and signatories of the bank account in the name of the beach management unit where the conditional grant shall be channeled.

(5) An application under sub-paragraph (2) submitted by an association of persons undertaking a fishing related activity shall be accompanied by—

- (a) the minutes of a properly constituted meeting of the governing body of the association containing the resolution to apply for a conditional grant from the Fund;
- (b) an annual work program aligned to the strategic plan of the association approved by the governing body of the association;
- (c) where the project for which the conditional grant is applied for is an infrastructure development project, the project designs, plans and bills of quantities approved by the governing body of the association and the requisite regulatory approvals from relevant government institutions, where applicable;
- (d) a statutory declaration of programs funded through other sources, if any; and
- (e) the details and signatories of the bank account in the name of the association where the conditional grant shall be channeled.

(6) An application under sub-paragraph (2) submitted by a county government shall be accompanied by—

- (a) an annual work program aligned to the strategic plan of the county government;
- (b) a written confirmation from the county assembly that there is no other funding for the same program, project or activity;
- (c) where the project for which the conditional grant is applied for is an infrastructure development project, the project designs, plans and bills of quantities approved by the county assembly and the requisite regulatory approvals from relevant government institutions, where applicable;
- (d) a statutory declaration of programs funded through other sources, if any; and
- (e) the details and signatories of the bank account in the name of the county government where the conditional grant shall be channeled.

(7) An application under sub-paragraph (2) submitted by a state agency shall be accompanied by—

- (a) the minutes of a properly constituted meeting of the governing body of the state agency containing the resolution to apply for a conditional grant from the Fund;
- (b) an annual work program aligned to the strategic plan of the state agency approved by the governing body of the state agency;
- (c) where the project for which the conditional grant is applied for is an infrastructure development project, the project designs, plans and bills of quantities approved by the governing body of the state agency and the requisite regulatory approvals from relevant government institutions, where applicable;
- (d) a statutory declaration of programs funded through other sources, if any; and
- (e) the details and signatories of the bank account in the name of the state agency where the conditional grant shall be channeled.

16. A conditional grant shall only be disbursed if—

- (a) the disbursement is approved and recorded in minutes of the Board of Trustees; and
- (b) the disbursement is to meet the expenses related to the objects and purpose of the Fund.

Conditions for disbursements of conditional grants.

17. (1) The Board of trustees may reject an application for disbursement of a loan or grants if the applicant has—

- (a) previously defaulted;
- (b) not complied with any requirement under this Order; or
- (c) been previously convicted for breaching various fisheries laws.

Appeals.

(2) An applicant whose application for a grant or a loan is rejected, may appeal to the Cabinet Secretary in writing.

(3) Upon receipt of an appeal under sub-paragraph (2) above, the Cabinet Secretary shall form an ad-hoc committee to determine the appeal.

(4) The decision of the ad-hoc committee shall be final.

(5) Without prejudice to sub-paragraph (4) an aggrieved person has a right to seek legal redress at the court.

18. (1) A person who receives a conditional grant or a loan shall—

- (a) submit quarterly and annual progress reports of the program, project or activity funded by the Fund; and

Obligations of recipient of conditional grants or loans.

- (b) allow the staff of the Fund to monitor and evaluate the program, project or activity funded by the Fund.
- (2) A person who receives a conditional grant or loan from the Fund shall return any unutilized funds where—
 - (a) the purpose for which the funds were disbursed was not undertaken;
 - (b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized; or
 - (c) savings from the funds are realized as a result of change in circumstances.
- (3) Unutilized funds returned under sub-paragraph (2) shall be recorded as a receipt of the Fund.
- (4) A person who fails to comply with sub-paragraph (2) or (3) shall not be eligible for any subsequent disbursement from the Fund.

PART IV—MISCELLANEOUS

19. The levies payable on the value of the fish landed shall be as set out in the Schedule.

Levies.

20. (1) At least three months before the commencement of each financial year, the Board of Trustees shall prepare estimates of the revenue and expenditure of the Fund for that year.

Annual estimates.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under this Order;
- (b) moneys allocated as conditional grants and loans under this Order;
- (c) monies for the administration expenses of the Fund;
- (d) the payment of the salaries, allowances and other charges in respect of the staff of the Fund;
- (e) the payment of the allowances and other charges in respect of the Board of Trustees;
- (f) the payment of pensions, gratuities and other charges in respect of the staff of the Fund; and
- (g) the proper maintenance of the assets, equipment and properties under the Fund.

(3) The annual estimates shall be submitted to the Cabinet Secretary for the National Treasury for approval and thereafter, the Board of Trustees shall not increase or decrease the annual estimates unless a supplementary budget has been approved in the same manner.

21. The Board of Trustees shall prepare quarterly financial and non-financial reports in accordance with the format prescribed in the

Quarterly reports.

Public Finance Management Act, , and submit the report to the Cabinet Secretary and the Cabinet Secretary for the National Treasury.	Cap. 412A.
22. (1) The Board of Trustees shall keep proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.	Accounts and audit.
(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General with a copy to the National Treasury, the accounts of the Fund together with—	
(a) a statement of the income and expenditure of the Fund during the financial year; and	
(b) a statement of the assets and liabilities of the Fund on the last day of that financial year.	
(3) The financial statements prepared under sub-paragraph (2), shall be in accordance with the prescribed format in the Public Finance Management Act.	
(4) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act.	Cap. 412A. Cap. 412B.
(5) The Board shall inform and keep the public informed of its activities and operations through regular publications and such activities and operations shall be accessible to the public unless there are reasons of commercial confidentiality or security justifying exclusions.	
23. The Administrator may invest any of the funds of the Fund which are not immediately required for its purposes in such government securities in accordance with the provisions of the Public Finance Management Act.	Investment of funds. Cap. 412A.
24. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.	Retention of receipts and earnings.
25. (1) A person who misappropriates any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Order, commits an offence and shall, on conviction, be liable to the penalties provided under section 24(5) of the Statutory Instruments Act.	Offences and penalties. Cap. 2A.
(2) A person who commits an offence under this Order, for which no penalty has been prescribed shall, on conviction, be liable to the penalties provided under section 24(5) of the Statutory Instruments Act.	Cap. 2A. Revocation of L.N. No. 58 of 2024.
26. (1) The Fisheries Management and Development (Fish Levy Trust Fund) Order, 2024 is revoked.	
(2) Notwithstanding the provisions of sub-paragraph (1)—	
(a) a person who is an employee of the Fund under the revoked Order shall, at the commencement of this Order, be deemed to be an employee of the Fund; and	
(b) the assets and liabilities of the Fund under the revoked Order shall, at the commencement of this Order, be deemed to be assets and liabilities of the Fund.	

FIRST SCHEDULE
FORMS

FORM No.: FLR 1 (r. 11(3))

REGISTRATION WITH FISH LEVY TRUST FUND

<i>For Official Use only</i>
Application No.....
Date Received.....

1.0 Personal information

Surname	First name	other name(s)
.....

County: Sub county: Ward:

Gender : Male Female

Kenya Revenue Authority Pin:

Physical address..... City/town:Postal code:

Street/ road:

Phone: Email:

Name of organization:

Registration No.:

to be completed by a Beach Management Unit applicant:

BMU number:

Name of BMU

Registration No.:

Verification by BMU chairperson

Name.....

Signature.....

Official stamp

to be completed by the trader

Verification by association's chairperson

Name.....

Signature.....

Official stamp

2.0 Registration of organization

Are you a registered organization? Yes No

If yes, go to 2.1 if No go to 3.0

2.1 Details of the organization

Name of Organization:

Year of Incorporation: Registration No.:

Activity(s) involved in:
.....
.....
.....

Postal Address:

Phone: Email:

No. of members/staff: Gender disaggregation: M: F:

3.0 Declaration

3.1 I hereby declare that the above details are correct and true to the best of my knowledge.

Name:

Signature: Date:

3.2 Witness.....

Name.....BMU numberSignature.....

4.0 For official use only

Name of approving County Executive Committee Member:

Signature: Date:

FORM FLR 2 (r. 12)

LOAN APPLICATION FORM

<p><i>For Official Use only</i></p> <p>Application No.....</p> <p>Date Received.....</p>
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Part 1: Instructions

Please read the notes below before completing this form:

Amounts applied for MUST be strictly for the purpose set out in section 28 of the Fisheries Management & Development Act.

Attach copies of the detailed proposal as specified by the Fish Levy Trust Fund including related budget forecast and forecasted gains.

The declaration under Part 4 must be signed by the person making the application.

The Board of Trustees may approve with or without conditions, not approve with or without explanations.

Part 2: Applicant details

Name of Applicant.....

KRA PIN.....

Postal Address.....

Telephone Number(s).....

Email Address.....

Part 3: Bank Details

Account Name.....

Account Number.....

Bank Name.....

Bank Branch.....

City/Town.....

Part 4: Declaration

I certify that the funds shall be applied for the purpose set out in the attached proposal and in conformity with the law.

Name.....

ID No/Registration No..... (attach copy)
Signature.....Date.....

Part 5: FOR OFFICIAL USE ONLY

Amount applied for (Kshs).....in words.....
Amount approved (Kshs).....in words.....
If not approved(reasons).....

APPROVED/NOT APPROVED BY THE BOARD OF TRUSTEES.....

Minute No.
Name in Full
Signature.....Date.....

FORM NO: FLR 3 (r. 15(2))

CONDITIONAL GRANT APPLICATION FORM

<p><i>For Official Use only</i></p> <p>Application No.....</p> <p>Date Received.....</p>
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Part 1: Instructions

Please read the notes below before completing this form

Amounts applied for MUST be strictly for the purpose set out under Fisheries Management & Development Act.

Attach copies of the detailed proposal as specified by the Fish Levy Trust Fund including related budget forecast and forecasted gains.

The declaration under Part 4 must be signed by the person making the application

The Board of Trustees may approve with or without conditions, not approve with or without explanations.

Part 2: Applicant details

Surname First name other name(s)
.....
County: Sub county: Ward:

RECOMMENDED/NOT RECOMMENDED BY THE MANAGING TRUSTEE OF THE FUND

Name in Full

Signature Date

Comments if any

APPROVED/NOT APPROVED BY THE BOARD Minute No.

Name in Full

Signature

Date

LEVIES (r. 19)	
Category of Fisher	Levy Payable of the value of the total fish per landing
Artisanal fisher	2%
Sea Cucumber fishers	2 %
Shell Collectors	1%
Kenyan semi-industrial	3%
Kenyan industrial	5%
Artisanal fisher landing fish bycatch for fish meal processing	0%
Kenyan Semi and Industrial landing fish for fish meal processing	2%
Foreign Fishing landing fish for fish meal processing	2%
Semi Industrial Foreign Fishing Landings	7%
Industrial Foreign Fishing Landings	12%
Ornamental fisher	50% /piece
Bycatch landed by artisanal (less than 2% of the total catch)	0%
Bycatch landed (more than 2% of the total catch)	15%
Authorized trans-shipment	30%

Made on the 16th July, 2024.

SALIM MVURYA,
Cabinet Secretary, Ministry of Mining,
Blue Economy and Maritime Affairs.