

FISHERIES (FOREIGN FISHING CRAFT) REGULATIONS, 1991

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FISHERIES (FOREIGN FISHING CRAFT) REGULATIONS, 1991

[L. N. 35/1991, L.N. 20/2004, L.N. 16/2009.]

REGULATIONS UNDER SECTION 23

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Fisheries (Foreign Fishing Craft) Regulations, 1991.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**approved fishing plan**” means a fishing plan approved by the Director under regulation 7;

“**by-catch**” means any species taken incidental to the target species in respect of which the licence has been granted;

“**call sign**” means the international radio call sign;

“**diplomatic representative**” means the diplomatic representative of the country or the accredited representative of the inter-governmental organization representing a country;

“**exclusive economic zone**” means the exclusive economic zone of Kenya as described in section 4 of the Maritime Zones Act (Cap. 371);

“**fishing log**” means a fishing log required to be maintained on a licensed craft under regulation 31(2);

“**flag state**” means the state in which the craft is recognized at international law as being registered;

“**high seas**” means all waters beyond the exclusive economic zone of Kenya;

“**inspection port**” means a Kenyan port that the Director has, by notification to the owner or master of a foreign fishing craft, designated as an inspection port for the purpose of these Regulations;

“**Kenya scientific authority**” means the Kenyan authority at the time empowered to grant permission for research;

“**master**” means the person for the time being having command or charge of the fishing craft;

“**owner**”, in relation to a fishing craft, includes any person by whom the craft is owned, and any charterer, sub-charterer, lessee, or sub-lessee of the craft;

“**pollutant**” means any substance or energy, which when introduced into the marine environment, including estuaries, results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for uses of the sea, impairment of quality for use of sea water and reduction of amenities;

“**ship’s log**” means a ship’s log required to be maintained on a licensed craft under regulation 31(1);

“territorial waters” has the meaning assigned to it by section 3 of the Maritime Zones Act (Cap. 371).

PART II – LICENSING OF FOREIGN FISHING VESSELS

3. Licence required

No foreign fishing vessel shall fish, attempt to fish or participate in fishing operations in Kenya fishery waters without a licence issued under regulation 6.

4. Communication to be made through diplomatic representative

Every notice, other document or communication that is to be served on or given to the Minister or the Director in respect of any foreign fishing craft or of any licensee, owner, master or crew member of any foreign fishing craft, shall be served, or given, through the diplomatic representative, unless in any particular case the Minister or Director authorizes another procedure.

5. Application for licence

Every application for a foreign fishing licence shall be—

- (a) in Form 1 set out in the First Schedule; and
- (b) submitted in writing to the Director by the diplomatic representative of the flag state of the craft.

6. Issuance of licence

(1) The Director may grant a licence in Form 2 set out in the First Schedule to the owner of a foreign fishing craft in respect of which an application has been made if—

- (a) the Government of the flag state to which the craft belongs, or an inter-governmental organization to which the craft belongs, has signed a fisheries co-operation agreement with the Government of Kenya;
- (b) the Director has approved a fishing plan, under regulation 7 for the flag state of the craft;
- (c) the licence application is complete;
- (d) the licence application is consistent with the fishing plan;
- (e) a local representative has been appointed for the craft as required by regulation 8; and
- (f) the Director has made the findings required by section 12(2) of the Act;
- (g) the applicant has paid the licence fee specified in the Second Schedule; and
- (h) the applicant has supplied a performance bond in respect of payment of royalties calculated and determined in the manner specified in the Second Schedule.

(2) A licence granted under this section is also deemed to be a registration under section 7 of the Act.

7. Fishing plan

(1) The diplomatic representative of any country in respect of which the Director has made an apportionment of the allowable catch for a foreign fishing craft under section 12(2) of the Act in respect of any fishery in the exclusive economic zone may from time to time submit to the Director a fishing plan that complies with this regulation.

(2) Every fishing plan shall be in English and shall be in the form of a memorandum, and shall outline the proposals for taking from the Kenyan fishery waters the country's apportionment, including the following information—

- (a) the area in the exclusive economic zone in which fishing will be carried out by the craft of the country;
- (b) an exact number of fishing crafts from that country that will be engaged;
- (c) the estimated times for arrival in and departure from the exclusive economic zone of such fishing crafts;
- (d) the proposed duration of the fishing plan;
- (e) an outline of the calls into Kenyan ports to be made by the fishing crafts of that country during the duration of the fishing plan;
- (f) an outline of all other proposed operations in support of the fishing crafts of that country in the exclusive economic zone during the duration of the fishing plan; and
- (g) such information as the Director may require in order to exercise his powers under section 12 of the Act.

(3) The diplomatic representative of any country in respect of which a fishing plan has been submitted shall from time to time submit, in the same manner, any proposal to revise that fishing plan.

(4) The Director may from time to time approve any fishing plan submitted to him or any proposal to revise that plan.

(5) In approval of a fishing plan, or a proposal to revise a fishing plan, the Director may specify the time for which the approval shall remain in force.

(6) The Director may from time to time, of his own motion, revise or suspend any approved fishing plan, or cancel his approval of any fishing plan.

(7) The approval of a fishing plan shall not be construed to limit any power of the Director relating to the licensing of any foreign vessel.

8. Local representative

No licence shall be issued in respect of a foreign fishing vessel unless there is appointed a local representative who is authorized to act on behalf of the owner and master of that vessel and who is able to accept legal responsibility on behalf of the owner and master.

9. Licence fees and other charges

(1) The licence fee and any other charges as may be prescribed from time to time by the Director, shall be paid before the licence is delivered to the applicant.

(2) Payment of licence fees and charges shall be as follows—

- (a) the Director shall issue an order of payment for each applicant specifying the amount due in a nominated foreign currency;
- (b) the applicant shall make the payment in the designated foreign currency to the Central Bank of Kenya, for the account of the Paymaster-General.

10. Conditions of licence

A licence may contain such terms and conditions as the Director, with the approval of the Minister, may determine and may include the following—

- (a) the stock, size, sex, weight and quantities of fish to be harvested or any matter relating thereto;

- (b) the types, size and amount of fishing gear that may be used or carried on board, and the modes of storage of that gear when not in use;
- (c) the activities authorized by the licence shall be carried out only at the times and in the area of Kenya fishery waters as set out in the licence;
- (d) the amount of by-catch that may be retained;
- (e) the requirement to take on board authorized officers or observers;
- (f) the inspection of any fishing or fishing-support vessel at any specified periods;
- (g) the landing of fish in Kenya;
- (h) the provision of statistical and other information required to be given by the foreign fishing vessel to the Director, including statistics relating to catch and effort and reports as to the position of the vessel;
- (i) the training of Kenyan citizens in the methods of fishing employed by the foreign fishing vessel and the transfer to Kenya of technology relating to fisheries;
- (j) the employment of Kenyan citizens in the fishing activities;
- (k) the period during which the licence has effect and the date of commencement of operations under the licence;
- (l) the marking of the fishing vessel and other means for its identification;
- (m) the installation on the fishing vessel and maintenance in working order of a transponder or other equipment for the identification and location of the vessel and of adequate navigation equipment to enable its position to be fixed from the vessel;
- (n) directions, instructions and other requirements given or made by vessels or aircraft of the Kenya Armed Forces or other government vessels to the fishing craft that shall be complied with;
- (o) fees and other related charges to be paid;
- (p) instruction given by the Director, from time to time, to carry out a programme of sampling or observations in connection with fisheries and scientific research in the Kenya fishery waters;
- (q) management measures in force under sections 4 and 5 of the Act; and
- (r) such other matters as the Director considers necessary or expedient for the conservation or management of fisheries resources within the exclusive economic zone.

11. Modification of licence

(1) If the Director modifies a fishing plan of a country under regulation 7 he may modify any licence of a craft with the revised fishing plan.

(2) If the Director modifies a licence he shall notify the local representative of the craft of the terms of the modification and of the person to whom the licence shall be delivered for endorsement.

(3) The modification shall take effect seven days after the local representative is notified.

(4) When a craft's licence has been modified and the craft's local representative has been notified of the modification, within seventy-two hours of when the craft next enters a Kenyan Port the master or owner shall cause the licence to be delivered to the designated person so that the modification can be endorsed on the licence.

(5) After the licence has been endorsed it shall be returned to the owner or master of the craft.

12. Replacement of licence

The Director may issue a duplicate licence to the licensee or master of a foreign fishing vessel on payment of the prescribed fee—

- (a) if he is satisfied that a licence has been accidentally lost, destroyed; or so damaged as to be illegible; or
- (b) for any other reason he deems appropriate.

13. Licence not transferable

A licence issued under regulation 6 is not transferable to any other vessel.

14. Licence to be kept on the vessel

Except as provided in regulations 11 and 16 every licence shall be maintained in good condition on the foreign vessel in respect of which it was issued, in a place where it can be readily inspected by an authorized officer and where it is safe from the elements.

15. Production of licence

Every master of a licensed foreign fishing vessel in Kenyan fishery waters shall, on demand of any authorized officer, produce to that officer for inspection the licence issued in respect of the vessel.

16. Suspension or revocation of licence

(1) The Director may revoke, or suspend for the periods he deems appropriate, a foreign fishing licence at any time—

- (a) if he determines that the owner or master has failed to comply with any provisions of the Act, these Regulations, any management measures issued under the Act or any condition of the licence; or
- (b) if he determines that such action is necessary for the proper management of the fisheries.

(2) The Director shall deliver notice of the revocation or suspension of a licence to the local representative of the vessel for which the licence was revoked or suspended and advise him of the person to whom the revoked or suspended licence shall be delivered.

(3) Within seventy-two hours of his delivery of the notice of revocation or suspension, the owner or master shall cause the licence to be delivered to the designated person.

(4) If a licence is revoked or suspended under this regulation for the proper management of the fisheries, the proportion of the fees paid for any unexpired term of the licence shall be refunded to the licensee.

17. Appeal

(1) Any person aggrieved by an action taken by the Director under regulation 16 may appeal to the Minister within thirty days of the delivery of the notice of revocation or suspension to the local representative.

(2) The appellant shall—

- (a) prepare the petition in duplicate;
- (b) describe the matter to which the appeal relates;
- (c) set forth concisely the grounds of the appeal;

- (d) sign the petition;
- (e) serve the original on the Minister;
- (f) serve the copy on the Director.

(3) The decision of the Minister shall be final and shall be communicated in writing to the appellant or his local representative with a copy to the Director.

PART III – CONTROL OF FOREIGN FISHING VESSELS IN KENYA FISHERY WATERS

18. Fishing in territorial waters prohibited

No person shall undertake fishing from a foreign fishing vessel within the territorial waters of Kenya.

19. Stowage of fishing gear

(1) Any foreign fishing vessel to which this regulation applies shall, while in Kenya fishery waters, keep all fishing gear stowed in such a manner that it is not readily available for fishing and shall comply with the following specific provisions—

- (a) all fishing gear shall be carried wholly inboard and shall be stowed below deck or otherwise removed from the place it is normally used for fishing and placed where it cannot be readily used for fishing;
- (b) all nets, trawl boards and weights shall be disconnected from their towing or hauling wires, ropes or rigid frames; and
- (c) all fishing gear carried on deck shall be secured to some part of the superstructure of the vessel;
- (d) in the case of purse seiners the boom shall be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations, helicopter shall be tied down, and launching shall be secured.

(2) This regulation applies to—

- (a) any foreign fishing vessel that is not licensed under regulation 6;
- (b) any licensed foreign fishing vessel before it receives port inspection as required by regulation 22; and
- (c) any licensed foreign fishing vessel after it has been granted clearance to leave the exclusive economic zone under regulation 23.

20. Trans-shipment of catch

(1) No fish shall be transhipped from a foreign fishing vessel in Kenya fishery waters to another vessel except at the port designated by the Director and at a time authorised for the purpose by the Director, and in accordance with such conditions as he may specify.

(2) Paragraph (1) shall not apply to a trans-shipment at the direction of an authorised officer.

21. Notice of intention to enter zone

(1) No foreign fishing vessel to which this regulation applies shall enter the exclusive economic zone from the high seas unless, not less than twenty-four hours before its entry, the Director has been notified of the following matters—

- (a) the name, call sign and flag state of the craft;
- (b) the latitude and longitude of the point at which the craft will enter the zone;

- (c) the port to which the craft will proceed for inspection under regulation 22;
- (d) the species of fish on board the craft, and the quantity and condition of each species.

(2) This regulation applies to—

- (a) any foreign fishing vessel entering the zone in furtherance of or for the purpose of making an application for a licence; and
- (b) any licensed vessel.

22. Port inspection

(1) Every vessel to which regulation 19 applies shall on entering the zone from the high seas proceed directly and immediately to an inspection port.

(2) No licensed craft shall be used for fishing in the exclusive economic zone except in pursuance of clearance to fish in the zone given by an authorized officer at an inspection port.

23. Inspection before leaving zone

(1) No licensed vessel shall enter the high seas from the exclusive economic zone except in pursuance of a clearance to leave the zone given by an authorized officer at an inspection port.

(2) Every licensed vessel in respect of which a clearance has been given under paragraph (1) shall on leaving the inspection port at which clearance is given, proceed expeditiously to the high seas.

(3) No licensed vessel in respect of which clearance has been given under paragraph (1) shall be used for fishing in the exclusive economic zone before it enters the high seas.

24. Exemption from port inspection

The Director may in any particular case or class of cases exempt a licensed vessel from compliance with regulations 22 and 23 on such conditions as he may specify.

25. Port call

Where a licensed vessel wishes to enter a Kenyan port after it has been given clearance under regulation 22 to fish in the exclusive economic zone but before it has been given clearance under regulation 23 to leave the zone, the Director shall be notified not less than twenty-four hours before its intended entry of the following details—

- (a) the name, call sign, and flag state of the craft;
- (b) the intended port of entry; and
- (c) the purpose of the intended entry.

26. Flags

Every licensed vessel shall, at all times while it is in Kenya fishery waters, fly both the flag of Kenya and that of its flag state.

27. Markings

(1) Every licensed vessel shall, at all times while it is in Kenya fishery waters, display its call sign in block Roman alphabet letters and Arabic numerals, in white markings on a black background or in black on a white background, on the port and the starboard side of the hull in such a manner that the markings are clearly visible and legible from the air and at sea level.

(2) Without limiting the requirements of paragraph (1)—

- (a) in the case of a licensed vessel whose overall length exceeds twenty metres, the lettering shall be not less than one metre in height; and
- (b) in the case of a licensed vessel whose overall length does not exceed twenty metres, the lettering shall be not less than half a metre in height.

(3) No licensed vessel shall use for fishing in the zone any fishing equipment that cannot be readily seen to be attached to the vessel unless the equipment is permanently and legibly marked with the call sign of the vessel in such a manner that it can be readily identified as being used by the craft.

(4) The owner or master of a foreign fishing vessel operating in Kenya fishery waters which is not marked as required by this regulation shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings or the equivalent but which amount shall be paid in designated foreign currency.

28. Navigational lights and shapes

Every licensed vessel shall, while it is in Kenya fishery waters, display lights and shapes prescribed by the International Regulations for preventing collisions at sea, 1972 for the craft and the activity in which it is engaged.

29. Communication

(1) Every licensed vessel in Kenya fishery waters shall carry the latest edition of the "International Code of Signals" published by the Inter-governmental Maritime Consultative Organization, Maritime Safety Committee (I.M.C.O., M.S.C.).

(2) Every person who is a master or officer of a licensed vessel shall have a working knowledge of the Code.

(3) In every communication by radio, flag or light between any licensed craft in Kenya fishery waters and Kenyan authorities, the signal specified in the Code shall be used.

(4) For the purpose of commanding a fishing craft to stop immediately to the signal shall be—

- (a) the hoisting of the International Code Flag "L";
- (b) the flashing of the International Morse code letter "L"; or
- (c) the sounding of a horn or whistle to indicate the International Morse Code letter "L".

(5) Where an authorized officer on board a Government vessel intends to board the fishing craft at sea, the signal to be used on board the Government vessel shall be—

- (a) the hoisting of the International Code flag "SQ3";
- (b) the flashing of the International Morse Code letter "SQ3"; or
- (c) the sounding of a horn or whistle to indicate the International Code letter "SQ3".

30. Compliance with directions

(1) The master and each member of the crew of a licensed foreign fishing craft shall, while in Kenya fishery waters, comply with any directions given to him by any authorised officer, and in particular, shall on request by the officer—

- (a) stop the vessel;
- (b) permit an authorized officer to board the vessel and co-operate with him in any inspection; and
- (c) bring the vessel into port.

(2) The master and each member of the crew of a licensed foreign fishing craft who does not understand a signal from a Government vessel or aircraft and who is unable to obtain clarification must consider the signal to be a command to stop the vessel instantly.

31. Records

(1) Every master of a licensed vessel shall maintain in English on board the vessel, at all time while the vessel is in Kenya fishery waters, a ship's log and shall enter in that log a record of the date, time and nature of every instruction, direction or requirement communicated to the master by the Director or an authorized officer while the vessel is in Kenya fishery waters.

(2) Every master of a licensed vessel shall maintain in English, on board the vessel in duplicate, at all times while the vessel is in Kenya fishery waters, a separate fishing log in which he shall enter daily, whenever the vessel is in Kenya fishery waters, the following information relating to the activities of the craft during that day—

- (a) the methods of fishing used;
- (b) the fishing effort of the vessel specified in terms of the number of hauls of trawls or seine nets and in case of the set nets or long lines, the length of netting or number of hooks set per day;
- (c) the area in which fishing was undertaken specified in longitude and latitude position;
- (d) the species of fish taken, and the quantity and average size of fish of each species measured by weight;
- (e) the species of fish returned from the vessel to the sea and the quantity;
- (f) such other information as the Director may require in order to ascertain the fishing activities of the craft in the Kenya fishery waters.

(3) Every fishing log shall be maintained in a form supplied or approved by the Director.

(4) Every master of a licensed vessel shall within 72 hours after each occasion on which the vessel enters a Kenya port, forward so much of the fishing log as is then completed to the Director and maintain a copy on the vessel.

32. Reporting

Every licensed foreign fishing vessel so long as it is in Kenya fishery waters, shall report on a weekly basis, to the Director or to the person designated in the license, the following information—

- (a) the name, call sign and country of registration of the vessel;
- (b) the fishing licence number;
- (c) the precise geographical position of the vessel at the time of reporting in terms of longitude and latitude;
- (d) the quantity, in kilogrammes, of each species of fish in the hold; and
- (e) the quantity, in kilogrammes, of each species of fish caught since the last port inspection or the last weekly radio report, whichever is the latter.

33. Notification of completion of quota

Every diplomatic representative of a country to which an apportionment has been made shall notify the Director forthwith—

- (a) of the completion of taking by vessels of his country of so much of the allowable catch in respect of any fishery in the exclusive economic zone as has been apportioned to the fishing vessel of his country; and

- (b) of the completion of taking of so much of that apportionment as may only be taken in a specified area or by a specified method in the exclusive economic zone.

34. Avoidance of set gear

Every master of a foreign fishing vessel in the exclusive economic zone shall conduct his operations with due regard to the activities of other fishing vessels and shall ensure that a distance of not less than one half of a nautical mile is maintained at all times between the vessel and any fishing gear from other fishing vessels, that—

- (a) has been set in the sea in such a manner that each end of the gear is anchored; and
- (b) has been marked so as to be visible to persons on board any craft navigating within one half of a nautical mile of the set gear.

35. Pollution and abandoned fishing gear

(1) Except in the cases of emergency involving safety of the fishing craft or crew, no fishing craft may intentionally or negligently place or discharge into the fishery waters, any article, including abandoned fishing gear, or pollutant which may—

- (a) cause harm to any fishery resource or marine mammal;
- (b) interfere with fishing or obstruct fishing gear or vessels; or
- (c) become a hazard to navigation.

(2) In the event of an accidental placing or discharge of such articles or pollutant into the fishery waters or in the event of encountering such articles, the master of the vessel shall immediately report the incident to the Director giving the following information—

- (a) the name of the reporting master and the name and call sign of his craft;
- (b) the nature of the article disposed of or encountered;
- (c) the location of the article or pollutant spill; and
- (d) the time and date of the incident.

36. Navigational customs

No licence shall relieve any foreign fishing craft or its master or crew of any obligation or requirement imposed by law concerning navigation, customs, immigration, health and safety or any other matter.

PART IV – MARINE FISHERIES SCIENTIFIC RESEARCH

37. Consent and permit required for conduct of marine fisheries research

(1) No marine fisheries research shall be conducted in the maritime zones of Kenya without the express consent of and subject to conditions imposed by the Kenyan scientific authority and without a permit granted by the Director.

(2) Subject to regulation 38 Kenyan scientific authority shall give its consent where the marine fisheries research would be carried out by any state or competent international organization for peaceful purposes and to increase scientific knowledge of the marine environment in Kenya fishery waters.

38. Right to withhold consent

The Kenyan scientific authority may withhold its consent to the conduct of a marine fisheries research project by any state or competent international organisation in the maritime zones of Kenya if it has reason to believe that the project—

- (a) is of direct significance to the exploration and exploitation of natural resources, whether living or non-living;

- (b) involves drilling into the sea bed, the use of explosives or the introduction of pollutants into the marine environment;
- (c) involves the construction, operation or use of artificial installations or structures;
- (d) contains information communicated pursuant to regulation 40 regarding the nature and objectives of the project which is inaccurate or if the researching state or competent international organization has an outstanding obligation to Kenya from a prior research project; or
- (e) would interfere with activities undertaken by Kenya in the exercise of its sovereign rights and jurisdiction provided for under the Maritime Zones Act (Cap. 371) and applicable written law or international law.

39. Application to do marine fisheries research

(1) Any state or competent international organization which intends to undertake marine fisheries research in the maritime zones of Kenya shall, not less than six months in advance of the expected commencement date of the fisheries scientific research, provide the Kenyan scientific authority with a comprehensive description of—

- (a) the nature and objectives of the research project;
- (b) the name of the sponsoring institution, its director and the person in charge of the research project;
- (c) the name and curriculum vitae of all scientific personnel expected to be on board the research vessel;
- (d) the methods and means to be used, including the name, tonnage, type and class of the research vessel and a description of scientific equipment on board;
- (e) the precise geographical location in which the research project is to be conducted;
- (f) the anticipated date of first appearance and final departure of the research vessel, or deployment of the equipment and its removal, as appropriate; and
- (g) the extent to which it is considered that Kenyan scientists should be able to participate or to be represented in the research project.

(2) The state or competent international organization shall also apply for a permit from the Director under regulation 5.

40. Duty to comply with certain conditions

(1) Every state or competent international organization undertaking marine fisheries research in the maritime zones of Kenya shall comply with the following conditions—

- (a) ensure the right of the Government of Kenya, if it so desires, to participate or be represented in the research project, especially on board research vessels and other crafts or scientific research installation and without obligation to contribute towards the cost of the research project;
- (b) provide the Director and the Kenyan scientific authority with preliminary reports and with the final results and conclusions after the research project;
- (c) undertake to provide access, at the request of the Director or the Kenyan scientific authority to all data and samples derived from the research project and likewise to furnish either of them or both with data which may be copied and samples which may be divided without detriment to their scientific value;

- (d) provide, at the request of the Director or the Kenyan scientific authority an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
- (e) ensure, unless otherwise specified by the Director that the collection of the research data is recorded in duplicate and a copy surrendered to the Director before departure, thereafter the results are made available through appropriate national or international channels as soon as practicable;
- (f) inform the Director or the Kenyan scientific authority immediately of any change in the research project; and
- (g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.

(2) This regulation is without prejudice to the conditions established by the Government of Kenya for the exercise of its discretion to give or withhold consent pursuant to regulations 38 and 39 as the case may be, including requiring prior agreement for making internationally available the research results of a research project of direct significance for the exploration and exploitation of the natural resources.

41. Grant of permit

(1) After the research project has been formally approved by the Kenyan Scientific Authority, the Director may grant a permit to such foreign research project under section 12 of the Act.

(2) Where a permit under paragraph (1) is granted, the Director may apply all or any of the terms and conditions prescribed for fishing licence, any conditions required by the Kenyan Scientific Authority as well as such additional conditions as may be specified.

42. Suspension, and cessation of research

(1) The Director, on the advice of the Kenyan Scientific Authority may order the suspension of any fisheries scientific research activities in progress within the maritime zones of Kenya if—

- (a) the research activities are not being conducted in accordance with the information provided under regulation 39 upon which the consent was based; or
- (b) the State or the competent international organization conducting the research activities fails to comply with the provisions of regulation 40.

(2) The Director, on the advice of the Kenyan Scientific Authority may order the cessation of any fisheries scientific activities—

- (a) which are deviating from the information provided under regulation 39 upon which the consent was based; or
- (b) if any of the situations contemplated in paragraph (1) are not rectified within a reasonable period of time as determined by the Kenyan Scientific Authority.

(3) Following notification by the Director of the order of suspension or cessation, the State or the competent international organization shall immediately terminate all or any of the fisheries scientific research activities that are the subject of such a notification.

(4) An order of suspension under paragraph (1) may be lifted by the Director on the advice of the Kenyan Scientific Authority and the fisheries scientific research activities allowed to continue if the researching state of competent international organization complies with the conditions required under regulations 39 and 40, within a period of time, as determined by the Kenyan Scientific Authority.

PART V – MISCELLANEOUS PROVISIONS

43. Powers of authorised officers

(1) For the purpose of enforcing the provisions of the Act, these Regulations, and any condition of a licence issued under these Regulations, any authorized officer may, with or without a warrant—

- (a) stop, board and search any foreign fishing craft within the Kenya fishery waters;
- (b) require to be produced, examine and take copies of, any licence, logbooks, or other documents required to be kept or maintained by or under these Regulations or the conditions stipulated in the licence;
- (c) require to be produced, and examine, any fishing nets or other fishing gear on board, or belonging to the craft, and inspect any fish or aquatic plant on board the craft;
- (d) examine and take samples of any fish on board the fishing craft and open any container found on board the craft;
- (e) take photographs of any part of the vessel, its cargo, equipment and gear and make copies of any books, logs or other documents and papers on board the craft;
- (f) make such enquiries of the master and crew of the boat as may be necessary to ascertain whether any offence has been committed under the Act;
- (g) subject to any other Kenyan law, give to the master such directions as he thinks fit as to the stowing and sealing, or the landing on shore, of any equipment on board the fishing craft that contravenes or is being used in contravention of any conditions of the licence issued in respect of the fishing craft or any Kenyan law that is applicable to the craft;
- (h) give such other directions as are necessary or reasonably expedient to the master or any other crew member of the fishing craft for any purpose specified in these Regulations or to provide for the compliance by the fishing craft or the master or any other crew member with the conditions of the licence or any Kenyan law applicable to the craft.

(2) Any authorized officer, where he has reasonable grounds to believe than an offence has been committed under the Act or these Regulations may, with or without a warrant—

- (a) seize and detain the fishing craft used in, or in connection with, the commission of the offence including any fishing gear, nets or other fishing appliances, which he has reason to believe have been used in the commission of the offence;
- (b) arrest any person whom he has reason to believe has committed such offences;
- (c) seize any fish which he has reason to believe has been caught in the commission of an offence, or is being possessed in contravention of these Regulations, the conditions of the licence, or any other regulations made under the Act;
- (d) seize any explosive, poison or other noxious substance and appliances which he has reason to believe has been used or is being possessed in contravention of section 15 of the Act.

(3) A written notice of seizure shall, wherever feasible, be given for any article or thing seized under paragraph (2) and the grounds for such seizure shall be stated in such notice of seizure.

(4) Any person arrested under paragraph (2) (b) shall be taken as soon as practicable before a court to be dealt with according to the law.

(5) Any fish or other articles of a perishable nature seized under the provisions of paragraph (2) (c) may be sold and the proceeds shall be held in place of the article disposed of.

44. Observers

(1) For the purpose of collecting scientific data and carrying out such other management and enforcement activities as he may authorize, the Director may assign an observer to any foreign fishing craft and the owner and master of any vessel to which such an observer is assigned shall—

- (a) cause the vessel to proceed to such places and at such times as may be designated by the Director for the purpose of embarking and disembarking the observer;
- (b) provide, at no cost to the observer or the Government of Kenya, accommodation and food for the observer aboard the fishing craft, which are equivalent to those provided to the officers of the fishing craft;
- (c) allow the observer to use the craft's communications equipment and personnel as necessary for the transmission and receipt of messages; and
- (d) provide all other reasonable assistance to enable the observer to carry out his duties.

45. Security

Every person who is a master or crew member of a foreign fishing vessel shall take all reasonable precautions for the safety of every authorized officer or observer who is boarding, on board, or disembarking the vessel.

46. Penalties

Any master or owner of a foreign fishing vessel who contravenes any of these Regulations shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings, which amount shall be paid in designated foreign currency.

47. Presumption

In the event of a commission of an offence under these Regulations in relation to fishing activities in the exclusive economic zone, it will be presumed that all fish found on board the fishing craft have been caught in Kenya fishery waters during the commission of the offence, until the contrary is proved.

FIRST SCHEDULE

Form 1

APPLICATION FOR A FOREIGN FISHING LICENCE

- 1. Name and address of applicant
- 2. Name and address of owner (if different from above)
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FIRST SCHEDULE—*continued*

- 3. Name and address of charterer of vessel if different from above
- 4. Name and address of legal representative or agent in Kenya
- 5. Name of vessel
- 6. Type of vessel
- 7. Country of registration and flag state (details of agreement to be attached)
- 8. Port and registration number
- 9. Fishing vessel external identification
- 10. International radio call sign and frequency
- 11. Overall length of vessel
- 12. Overall width of vessel
- 13. Engine type and rated horse power
- 14. Gross registered tonnage of vessel
- 15. Net registered tonnage of vessel
- 16. Crew complement
- (list of names, citizenship, passport/ID Nos. to be attached)
- 17. Type of fishing practised and type and quantity of fishing gear to be used
- 18. Proposed target species of fish to be caught
- 19. Proposed fishing areas
- 20. Period of validity of request
- 21. Details of communications and electronic equipment on board:
 - (a) Radio
 - (b) Auto pilot
 - (c) Depth sounder
 - (d) Sonar
 - (e) Lonar
 - (f) Radar
 - (g) Direction finder
 - (h) Decca navigator
 - (i) Other (specify)

Attach a recent side photograph of vessel if applying for licence for the first time.

Declaration

I affirm that the above particulars are correct and solemnly undertake—

- (a) to abide by the provisions of the Fisheries Act, 1989 and the Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1990;

FIRST SCHEDULE—*continued*

- (b) to abide by all the instructions of the Kenyan authorities regarding safety precautions to be taken on voyage or while engaged in fishing;
- (c) not to carry any undesirable person on board;
- (d) not to cause any undesirable activity on board the fishing craft;
- (e) to take full responsibility for the crew on board.

Date

.....
Signature

Form 2

FOREIGN FISHING CRAFT LICENCE

- Licence number
- 1. Name of licensee
 - 2. Permanent address of licensee
 - 3. Name and address of owner if different from above
 - 4. Name and address of agent or legal representative in Kenya
 - 5. (a) Name and address of master of vessel (copy of work permit to be attached if not a citizen of Kenya)
 - (b) List of names of crew (with work permit numbers in case of non-Kenyans) to be attached.
 - 6. Name of vessel
 - 7. Type of vessel
 - 8. Port and country of registration
 - 9. Registration number
 - 10. Fishing craft identification mark
 - 11. Length
 - 12. Registered net tonnage
 - 13. Engine horse power
 - 14. Radio call sign
 - 15. Frequency
 - 16. Areas to be fished
 - 17. Species of fish to be taken
 - 18. Tonnage of allowable catch

FIRST SCHEDULE—*continued*

- 19. Requirements concerning disposal of incidental catch
- 20. Reporting requirements
- 21. Authorized landing places
- 22. Special conditions
- 23. Period of validity from to
- 24. Fees paid
- 25. Date of issue

.....
Director of Fisheries

This licence is granted subject to the following conditions:

- 1. The licensee shall comply with and ensure that the fishing craft is used in conformity with the provisions of the Fisheries Act, 1989 and any regulations made thereunder.
- 2. *(Insert any other conditions to which the licence is subject).*

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SECOND SCHEDULE

[L.N. 20/2004, s. 2, L.N. 16/2009, s. 2.]

FISHERIES (FOREIGN FISHING CRAFT) REGULATIONS, 1991

FEES

(a) The licence fees for foreign fishing craft operating in the Kenyan waters shall be paid in foreign currency as follows:

(i) Longliner's licence for—

<i>Type of licence</i>	<i>Fee in US\$ (Dollars)</i>
Twelve months	30,000
Three months	20,000
One month	10,000

(ii) Purse seiner's licence for twelve months 50,000

(b) In addition to the licence the licensee shall pay royalties determined in the following manner:

- (i) a percentage of the total catch shall be determined by the Director for each agreement which shall be deemed to have been caught in the Kenya exclusive economic zone;
- (ii) a determined percentage of the value of Tuna fish and by-catch F.O.B. Mombasa is assumed caught in Kenya exclusive economic zone and hence royalties shall be calculated which will be paid at agreed intervals; and
- (iii) a non-reimbursable minimum of US\$ 20,000 per vessel per annum or at agreed intervals, may be paid in advance as deposit.