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REPUBLIC OF KENYA

***BUSIA COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2016

NAIROBI, 26th January, 2016

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THE FISHERIES AND AQUACULTURE BILL, 2016**A Bill for**

An Act of the County Government of Busia to provide for the sustainable utilization, management and development of Fisheries, Aquaculture and other Aquatic resources and for connected purposes

ENACTED by the County Assembly of Busia as follows—

PART I—PRELIMINARY**Citation and commencement**

1. This Act may be cited as the Busia County Fisheries and Aquaculture Act, 2016 and shall come into operation subject to the provisions of section 25 of the County Governments Act No. 17 of 2012.

Application

2. This Act shall apply to all of Busia County Fishery waters and related fisheries activities and establishments.

Interpretation

3. In this Act, unless the context otherwise requires—

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

"aquaculture establishment" means any area, enclosure, premise or structure set up or used on land or in water for the cultivation of fish, and includes any cage or raft;

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

“beach management unit” means an organization of fishers, fish traders, fish processors and other beach stakeholders who have traditionally depended on beach fisheries activities for their livelihoods;

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

“buy” includes:

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

“chief officer” means the County Chief Officer for the time being responsible for fisheries and aquaculture;

“county” means Busia County;

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

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

“dealing in fish” means collecting, transporting, storing, transshipping, exposing or offering fish or fish products for purposes of trade;

“devolved competent authority” means the department responsible for health control and monitoring of fish production conditions throughout the fish supply chain;

“director” means a person appointed to the office of Director of Fisheries in the County Public Service;

“directorate” means the Directorate of Fisheries and Aquaculture Development in the County;

“executive member” means the County Executive Committee Member for the time being responsible for fisheries and aquaculture;

“financial year” means expenditure period of the County Government which starts on 1st July of every year and ends on 30th June of the following year;

“fish” means the aquatic resources of the sea, inland waters and the shores, including any aquatic plant or animal whether processed or not,

whether piscine or not, and any mollusk, crustacean, coral, sponge, holothurian or other echinoderm, reptile or marine mammal, and includes any part thereof, and the spat, brood, fry, spawn, ova and the young thereof;

“fisher” means a person who engages in fishing in the county waters;

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

“fishing” means—

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

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

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

“fishing vessel” means any vessel, of whatever size and in whatever way propelled, used in fishing operations or for the processing, storage or carriage of fish or for any fishing operations ancillary thereto, including transshipment;

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

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

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

The Busia County Fisheries and Aquaculture Bill, 2016

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

“licensing committee” means the Director and any other four persons serving in the county public service in the Directorate of Fisheries appointed in writing by the Executive Member to consider applications for fisheries licenses and permits;

“licensing officer” means the Director or any other person in the county public service in the Directorate of fisheries above the rank of assistant fisheries officer or any other officer in the county public service appointed in writing by the Director to be a licensing officer;

“related activity” means: —

- (a) trans-shipping fish to or from any vessel;
- (b) storing, processing or transporting fish taken from the county fisheries waters up to the time it is first landed;
- (c) refueling or supplying fishing vessels or performing other activities in support of fishing operations; or
- (d) exporting fish or fish products from the country
- (e) attempting or preparing to do any of the above;

“sell” means —

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

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

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

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

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

PART II—ADMINISTRATION AND MANAGEMENT OF FISHERIES AND AQUACULTURE

Functions of the Director

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

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

(3) Save that in the exercise of powers in sub section (2) above, the Director shall detail interagency collaboration framework where more than one agency is involved.

Fisheries development measures

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

- (a) providing a framework of extension and training services;
- (b) up scaling of fin fish, crustacean and sea weed culture;
- (c) demarcation of fish breeding areas;
- (d) development and maintenance of fish handling and marketing infrastructure across the value chain;
- (e) development of fish hatcheries and multiplication centers to be known as county fish seed bulking units;

- (f) promoting co-operation among fishers;
- (g) spearheading arrangements for the orderly marketing of fish;
- (h) stocking waters with fish and supplying fish for stocking;
- (i) promoting the adoption of alternative means of livelihood amongst fishers;
- (j) promoting the development of ornamental fisheries;
- (k) providing for the establishment of investor -friendly licensing and approval systems;
- (l) developing a comprehensive fish marketing, system, including fish auction, through strengthening of linkages along the market value chain;
- (m) encouraging persons in the private sector to organize into associations and form a county co-ordinating mechanism to ensure efficient marketing systems that that adhere to sanitary and phytosanitary requirements;
- (n) facilitating participation in county, national, regional and international trade negotiations and meetings;
- (o) promoting value addition and utilization of fish by - products and by catch; and
- (p) providing for the establishment of fish safety and quality infrastructure facilities.

Inter-governmental agreements and arrangements

6. (1) The Executive Member may by notice in the gazette, with the approval of the County Assembly enter into an inter-governmental agreement establishing a collaboration framework and arrangements with other County Governments having shared interests in the sustainable utilization and management of Fisheries and Aquaculture resources with the county.

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

Relation between National and county governments

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

Fisheries management plans

8. (1) The Director may in consultation with the Executive Member through the Chief Officer, and by notice in the Gazette establish a management plan for each fishery in such form as he may deem appropriate.

(2) Prior to publication of the management plan under subsection (1) the Director shall cause a draft plan to be prepared and shall take reasonable steps to engage in consultation thereon with all interested persons.

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

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

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

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

(6) The Management Plan may make provisions about anything prescribed in this Act or any subsidiary legislation.

Fisheries Management Measures

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

- (a) closed seasons for designated areas, species of fish or methods of fishing;
- (b) prohibited fishing areas for all or designated species of fish or methods of fishing;
- (c) limitations on the methods of gear, including mesh sizes of nets, that may be used for fishing;

- (d) limitations on the amount, size, age and other characteristics and species or composition of species, of fish that may be caught, landed or traded;
- (e) measures regulating the landing of fish and provide for the management of fish landing stations;
- (f) introduction into, or harvesting or removal from the county fishery waters of any aquatic plant;
- (g) defined and identified fragile aquatic ecosystems including fish breeding areas and provide structures to enable collaborative protection;
- (h) regulation of identification of trade in endangered species; and
- (i) other measures pursuant to this Act.

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

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

Manner of publication of notice

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

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

Fisheries Statistics and information

11. (1) The Director may by notice in writing direct any person whom he is satisfied is suitably qualified to undertake the periodic stock assessment of all the fishery waters and collect and analyse statistical and other information on fisheries and forward the same to the Director.

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

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

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

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

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

Executive Member may prescribe monitoring devices

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

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

Fish landing stations

13. (1) The Director may with the approval of the Executive Member through the Chief Officer establish suitable areas to be gazetted as fish landing stations.

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

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

Limitation of fishing

14. (1) Where proper management of fisheries requires limitation of the number of persons or of vessels, nets or areas or other means employed in a fishery, the Director may by notice in writing communicate in such manner as to bring it to the attention of persons affected thereby, and to advise them to effect the limitation.

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

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

(a) refusal to issue or renew licenses;

(b) imposition of special license and catch fees; or

(c) preferential licensing in other fisheries, for a period specified in the notice.

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

(5) If the Executive Member fails to communicate his verdict within the duration stipulated in subsection (4) the applicants prayers shall be deemed to have been accented to.

Prohibited methods of fishing

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

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

PART III—REGISTRATION AND LICENSING

Registration of fishing vessels

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

(2) A certificate of registration in the form prescribed in the regulations may on application to the licensing committee and on payment of the prescribed fees be issued by a licensing officer to the owner of the vessel.

(3) Every vessel in respect of which a certificate of registration is issued under this Act shall be issued with a reflective number plate marked in such manner as the Director may require. A registration certificate issued to a fishing vessel under this section shall unless earlier revoked or suspended, remain valid for the rest of the life of the vessel.

(4) The Director shall cause to be kept a register of all vessels registered under this Act which shall be entered the following details in respect of the vessels—

- (a) Name and particulars of the owner;
- (b) Type of boat;
- (c) Body type;
- (d) Total length;
- (e) Colour;
- (f) Year of manufacture;

(5) The Executive Member may, by notice in the Gazette, exempt any fishing vessel used only for sport fishing other than for reward or profit from the requirements of subsection (1).

(6) The Director, where satisfied that a fishing vessel inspected under this section is fit for fishing and meets the prescribed safety and hygiene standards, issue a certificate of registration in respect of that vessel upon payment of the prescribed fee by the applicant.

(7) In any court proceedings brought under this Act, the entry in respect of a vessel in the Fishing Vessel Register, or any other register maintained by the Director under this section, shall be *prima face* evidence of the ownership of the vessel.

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

(9) The requirements under this section are in addition to and not in derogation from any requirement for registration under any other law relating to vessels.

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

- (a) in the case of a first conviction, to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both; and
- (b) in the case of subsequent convictions, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

Application for a fishing vessel license

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

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

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

(4) The master and owner of a fishing vessel which any person uses or attempts to use in fishing or any fishing operation without a fishing vessel license issued under this section, and a fisherman's license issued

under section 20 (1) shall each be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

(5) The master and owner of a local fishing vessel whose license conditions under this section are contravened shall each be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

Validity of fishing vessel license

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

(2) The Director may revoke or suspend a license in respect of a fishing vessel at any time before it expires if the holder of the license is convicted of any offence under this Act or if in the judgment of the Director the action is necessary for the proper management of fisheries.

Requirement for a fishing license

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

(2) The Executive Member may by order published in the Gazette determine the quantity of fish which may be deemed to be fish for own consumption under subsection (1), and different quantities may be determined for different areas of the county.

(3) Each license issued under this Act shall be valid for such species of fish, type of fishing gear, method of fishing and area as may be specified in the license.

(4) It shall be a general condition of any license issued under this Act or regulations made thereunder that the licensee shall comply with such requirements as the Director may establish concerning the making of statistical returns and the collecting of information.

(5) Any person who catches fish in the county fishery waters without a license, or in contravention of the conditions attached to a license issued under this Act, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year.

Validity of fishing licenses

20. (1) Unless otherwise provided under this Act, any license issued under this Act shall, unless earlier cancelled or suspended in accordance with section 21(1), expire on the 30th June of the financial year in which it is issued.

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

Cancellation or suspension of fishing license

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

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

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

(3) Any notification given under subsection (2) shall be in writing.

Appeals on cancellation or suspension

22. Any person aggrieved by—

- (a) the refusal of the Director to issue or renew a license; or
- (b) the cancellation or suspension of a license issued

may within thirty days of the receipt of notification appeal to the Executive Member who may vary or stay the Directors decision.

Fees and other charges

23. There shall be payable in respect of every license issued under this Act such fees and other charges as may be prescribed vide a Gazette Notice.

Other licenses requirements

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

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

Sport fishing license

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

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

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

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

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

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

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

Fishery scientific research and test fishing operations or surveys

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

- (a) fishery scientific research; or
- (b) exploratory fishing
- (c) test fishing operations or surveys, in the county fishery waters.

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

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

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

- (a) without authorization under subsection (1); or
- (b) in contravention of any requirements or any conditions attached to the authorization under subsection (2),

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

PART IV—ENFORCEMENT**Powers of authorized officers**

27. (1) For the purpose of enforcing this Act and any Regulations made thereunder, any authorized officer may, without a warrant—

- (a) stop, board and search any fishing vessel, transport vessels in the Busia County fisheries waters;
- (b) question any person aboard the cargo, contents of holds and storage spaces, voyage and activities of the vessel;
- (c) require to be produced, examine and take copies of any license, logbook, record or other document required under this Act or concerning the operation of any vessel;
- (d) make an entry dated and signed by him in any vessel's log;
- (e) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or expedient

for any purpose specified in this Act or to provide for the compliance of the vessel or the master or any crew member thereof with the conditions of any license;

- (f) stop, enter and search any vessel, vehicle or which, on reasonable grounds, he suspects is transporting fish or fish products or is being or has been used or involved in the commission of an offence against this Act or regulations made there under;
- (g) make such inspection or inquiry as may appear necessary to him concerning any place, premises, vessel, vehicle or in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
- (h) require to be produced, and examine, any fish, fishing net, fishing gear or explosive or other noxious thing whether on the waters or on land;
- (i) at all reasonable times enter and inspect any fish processing establishment for which a license is held or required or any other place or premises where a related activity is authorized or conducted or in respect of which a license or other authorization is issued or required under this Act; and
- (j) require to be shown or produced, and examine, any fish, fish product, fish processing device or equipment, or other thing used in fish processing or for or in connection with a related activity or such other activity for which a license is issued or required under this Act.

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

- (a) enter and search any vessel, vehicle, , place or premises, other than a place or premises used exclusively as a dwelling house, in which he believes the offence has been committed or where he believes that fish illegally taken or explosives for use contrary to section 15 are being stored;
- (b) take samples of any fish found in any vessel, vehicle, , place or premises searched under this section;
- (c) give directions to the person in charge of or otherwise responsible for operation of a place or premises and any persons in the place or premises entered under subsection (1) (j), as may be necessary or expedient for any purpose specified in this Act or to provide

for the compliance by such person with the conditions of any license or authorization;

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

authorized officer in the performance of his duties, or fails to comply with any lawful order, requirement or request of an authorized officer or otherwise contravenes this section or section 37 and, where it is impracticable immediately to bring that person before a magistrate or court of competent jurisdiction without unnecessary delay, detain him.

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

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

Seizure of vessel by authorized officer

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

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

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

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

Seizure of vehicle by authorized officer

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

(2) The driver of the vehicle shall be responsible for the safety of the vehicle and for any crew, himself and any other person thereon or in while bringing the vehicle to the designated place.

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

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

Immobilizing of seized vessel, Vehicle

30. (1) An authorized officer may remove any part or parts of any vessel or vehicle detained under the provisions of this Act for the purpose of immobilizing that vessel or vehicle.

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

(3) Any person who—

- (a) possesses or arranges to obtain any part or parts removed under subsection (1);
- (b) possesses or arranges to obtain or make any replacement or substitute part or parts for those removed under paragraph (1);
- (c) fits or attempts to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle detained under the provisions of this Act with the intention of mobilizing the vessel or vehicle; commits an offence and shall be liable on conviction to a fine not exceeding three hundred and fifty thousand shillings or to imprisonment for a term not exceeding two years.

Power of authorized officer to direct persons under his command

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

(2) A person who receives a direction under subsection (1) shall have, for the purpose of carrying out the specified duties, all the powers and protections accorded to an authorized officer under this Act.

Duty to comply with instructions

32. (1) The master and all members of the crew of any fishing vessel, the driver and any passenger of any vehicle shall immediately comply with every lawful instruction or direction given by an authorized officer and facilitate safe boarding, entry and inspection of the vessel, vehicle, as

the case may be, and of any fishing gear, equipment, records, fish and fish products, and shall take all measures to ensure the safety of an authorized officer in the performance of his duties.

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

Powers beyond county fisheries waters

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

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

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

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

Identification of authorized officer

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

Compounding of offences

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

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

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

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

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

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

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

Offences committed against an authorized officer

36. Any person who—

- (a) assaults, obstructs, resists, delays, refuses boarding or entry, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with, an authorized officer, in the performance of, his duties, or any person lawfully acting under the order of the authorized officer or in his aid;
- (b) fails to comply with any lawful order, requirement or request of an authorized officer or otherwise contravenes section 53 or section 54;

- (c) uses threatening language or behaves in a threatening manner or uses abusive language towards an authorized officer while in the execution of his duties, or any person lawfully acting under the order of the authorized officer or in his aid;
- (d) incites or encourages any other person to assault, obstruct, resist, delay, refuse boarding or entry, intimidate or otherwise interfere with an authorized officer while carrying out his duties, or any person lawfully acting under the order of the authorized officer or in his aid;
- (e) knowingly furnishes to an authorized officer any particulars which are false or misleading in any respect;
- (f) impersonates or falsely represents himself to be the master or other officer of a fishing vessel;
- (g) resists lawful arrest;
- (h) interferes with, delays or prevents by any means, the lawful apprehension or arrest of another person under this Act; or
- (i) is in breach of any duty to the authorized officer required under this Act,

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

Impersonating an authorized officer

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

Destruction of evidence and avoidance of seizure

38. Any person who —

- (a) being on board any vessel being pursued, about to be boarded or which has been notified of intended boarding by any authorized officer, or
- (b) being in a fish processing establishment or a place or premises where a related activity is conducted or in relation to which a license, permit or other authorization is issued or required under this Act, throws overboard, discards or destroys any fish, fish products, fishing gear, explosive, poison, noxious substance, chart, log, document or other thing with intent to avoid the seizure thereof or the detection of any offence against this Act;

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

Receiving fish in respect of which offence has been committed

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

PART V—PROSECUTION, HANDLING OF SEIZED GOODS AND EVIDENCE

Conduct of prosecutions

40. Any authorized officer may, subject to the direction of the Director of Public Prosecutions, conduct any prosecution for any offence under this Act or the regulations made there under and shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

Forfeiture and disposal of perishables

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

- (a) return the fish or other thing to the person from whom it was seized on receiving adequate cash security equivalent to the value of the fish or thing; or
- (b) cause the sale of the fish or other thing at a price which is reasonable in the circumstances, and, if court proceedings are instituted, pay the proceeds of the sale into a suspense account of the directorate pending a court order in respect of the forfeiture of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized;

Provided that if, after making all reasonable efforts, the Director is unable to sell the fish or other thing, or where such fish or other things are unfit for sale, he may dispose of the same in such other manner as he deems fit, including by destruction.

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

Treatment of seized goods

42. (1) If any vessel, vehicle or other thing has been detained or seized in terms of paragraph 27 (2) (g), and —

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

(2) If the owner of a vessel, vehicle, or thing or the person having the possession, care or control of it at the time of its seizure or detention is convicted of an offence in terms of this Act and a fine is imposed, the vessel, vehicle or thing may be detained until all fines, orders for costs and penalties imposed in terms of this Act have been paid.

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

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

Application of Security

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

- (a) the discharge of any forfeiture ordered;
- (b) the payment of all fines or a contribution towards such a fine, for offences in terms of this Act or penalties imposed in terms of this Act, arising out of the use of or in connection with the vessel, vehicle or other thing;

- (c) the discharge of all orders for costs in proceedings in terms of this Act arising out of the use of or in connection with the vessel, vehicle, or other thing; and
- (d) if any sum remains, return to the owner of such goods.

Liability for loss, damage or deterioration of things in custody

44. The Directorate shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, or other thing while in the custody of the Directorate in terms of this Act.

Removal from Custody

45. (1) Any person who knows or can reasonably be expected to know that a vessel, vehicle or other thing is held in the custody of the Directorate in terms of this Act and who removes it commits an offence.

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

Forfeiture

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

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

Certificate of evidence

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

- (a) that an appended document is a true copy of the license, permit, authorization or certificate of registration issued to a vessel or person;
- (b) that a particular location or area of water was within the county fisheries waters or within any other controlled area of the county fisheries waters subject to specified conditions;
- (c) that an appended chart shows the boundaries of the county fisheries waters, or other areas delineated for any specified purpose;

- (d) that a particular item or piece of equipment is fishing gear;
- (e) the cause or manner of death of or injury to any fish.

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

- (a) his address and official position;
- (b) the name and call sign, if known, of the fishing vessel concerned;
- (c) the place or area in which the vessel was located, and
- (d) the date and time or period of time the vessel was in the place or area stated in paragraph (c).

(3) Any certificate given under this section shall be headed “certificate issued under section 47 of the Busia County Fisheries and Aquaculture Act, 2016.”

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

Effect of conviction

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

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

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

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

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

PART VI—THE FISHERIES DEVELOPMENT TRUST FUND

Establishment of a Fisheries Development Trust Fund

49. (1) There is hereby established a fund to be known as the Fisheries Development Trust Fund which shall be managed by a Board of Trustees.

(2) There shall be paid into the Fund—

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

(2) The Board of Trustees shall be formed as per the Regulations made pursuant to this Act.

(3) The conduct of affairs of the Board of Trustees shall be as prescribed in the Regulations made pursuant to this Act.

Administration of the Fund

50. The Executive Member in-charge of Finance and Economic Planning shall by notice in the Gazette and in accordance with section 116 of the Public Finance Management Act provide the mode of administration of the Fund established under section 49.

Objectives of the Fund

51. The object of the Fund shall be to facilitate research and technological developments, conservation efforts, development of essential fisheries and aquaculture infrastructure and capacity building intended to further the development of fisheries and aquaculture management.

PART VII—PREVENTION OF POLLUTION AND PROTECTION AND CONSERVATION OF COUNTY FISHERY WATERS

Pollution Prevention Zone

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

Discharge of Pollutants prohibited

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

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

Placing of live fish

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

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

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

PART VIII—AQUACULTURE DEVELOPMENT

Regulations for Aquaculture

55. The Director may with the approval of the Executive Member, by notice in the Gazette, and for purposes of proper management of aquaculture make Regulations outlining—

- (a) fish hatchery standards;
- (b) qualifications of persons authorized to offer aquaculture extension service;
- (c) the mode of establishment of fish cages or any such form of aquaculture establishment in Busia County fishery waters;
- (d) aquaculture extension systems;

- (e) mode of operations of commercial aquaculture establishments;
- (f) fish disease surveillance, control and management in aquaculture establishments;
- (g) codes of practice for fish farmers; or
- (h) any other measure that he deems necessary for the proper management of aquaculture.

Co-operation with other bodies

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

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

PART IX—FISH SAFETY AND QUALITY

Devolved Competent Authority

57. (1) The county department responsible for fisheries shall be the Devolved Competent Authority responsible for the official control of the safety of fish, fishery products and fish feed in the county in consultation with the National Competent Authority.

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

- (3) The functions of the devolved competent authority shall be to—
 - (a) convene on a regular basis the meetings of the standing and technical committees;
 - (b) monitor the production of, fishery products and fish feed with a view to assessing risks to humans;
 - (c) control fish handling, landing, , processing and marketing;
 - (d) work in collaboration with other Government agencies in matters related to this section;
 - (e) assess and approve plans and structures of intended fishery enterprises;
 - (f) carry out inspection of operational fishery enterprises for compliance with fish safety regulations issued by the Executive Member;

- (g) lay down all procedures to be followed for compliance with provisions under paragraph (f);
- (h) specify conditions for the placing on the market of fish, fishery products and fish feed;
- (i) maintain a register of fishery enterprises approved by the competent authority;
- (j) issue health certification of fish, fishery products and fish feed subject to the consignment meeting set requirements;
- (k) grant approval for the fishery enterprises that meet applicable requirements prescribed by the Executive Member;
- (l) perform such other functions as may be necessary or expedient for food safety conditions of fishery products in accordance with this Act.

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

Harmonization of fish safety and quality standards

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

PART X—COMMUNITY PARTICIPATION

Establishment of Beach Management Units

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

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

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

Promotion of fish production and marketing

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

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

PART XI—MISCELLANEOUS**Regulations**

61. (1) The Executive Member may make regulations for the better carrying into effect of the provisions of this Act.

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

- (a) establishing the conditions of issue of, and procedures of application for, any license or other authority under this Act or regulations thereunder, the form and the fees payable therefore;
- (b) prescribing the conditions of issue of, and procedures of application for, any license or other authority under this Act or regulations thereunder, the form and the fees payable therefore;
- (c) regulating the handling, storage and processing of fish by prescribing methods of handling, storage and processing of fish;
- (d) prescribing requirements for governing the safety and quality of fish, fishery products and fish feed;
- (e) providing for the management and control of fish landing stations and county fishery waters;
- (f) licensing of any person to engage in any form of fishing, or of handling, trans landing stationing, processing or selling of fish products;
- (g) organizing and regulating the marketing and distribution of fish;
- (h) providing for the registration of private marks to be used to distinguish the ownership of fishing gear;
- (i) prohibiting or controlling the importation, exportation, and introduction in to the county of live fish of any kind or species;

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

Suprecession

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

MEMORANDUM OF OBJECTS AND REASONS

The Constitution of Kenya at Paragraph 1(e) of Part 2 of the Fourth Schedule devolves the function of Agriculture and particularly Fisheries to be a function to be exercised by the County Government and consequently, this Bill has been formulated to provide for the sustainable utilization, management and development of Fisheries, Aquaculture and other Aquatic resources in the county and for connected purposes.

Article 69 (1) (a) of the Constitution further requires that the state should ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure equitable sharing of the accruing benefits hence the need for its regulation.

This Bill therefore seeks to bring to fruition the role of the County Government as stipulated at paragraph 1(e) of Part II of the Fourth Schedule of the Constitution.

The Bill at Part II thereof seeks to establish the Directorate of Fisheries and aquaculture headed by a Director which according to the Bill, shall be the one regulating all the activities relating to Fisheries and Aquaculture.

Part III—talks about the licensing and registration of fishing vessels and registration of persons carrying out the fishing trade for purposes of accountability. It also stipulates the requirements needed for registration and licensing of fishing vessels as well as fish sporting vessels. It makes it clear that a prescribed fee will be paid for such registration and licensing to be acquired.

Part IV—mainly touches on enforcement. This ideally means that the Directorate will put in place authorized personnel for purposes of enforcing the provisions of this Bill. Such enforcement includes ensuring that the requisite licenses are acquired by every person involved in the business of fishing including sporting and registration of fishing vessels. This part also creates some of the offences relating to Fisheries and Aquaculture and prescribes the penalties for such offences.

Part V—of the Bill talks of procedure for prosecution of offenders under this Bill and other forms of punishment. The Bill says that any form of prosecution will have due regard to the Criminal Procedure Code.

Part VI—makes provisions for establishment of the Fisheries Development Trust Fund to be managed by a Board of Trustees. The relevant sections make provisions that the affairs of the Fund shall be made known to the County Executive Member in charge of Finance and Economic Planning and shall be run in accordance to the provisions of Section 116 of the Public Finance Management Act.

The Busia County Fisheries and Aquaculture Bill, 2016

Part VII, VIII and IX—of the Bill makes provisions about the prevention of pollution and protection and conservation of county fishery waters, development of aquaculture and modes of ensuring fish safety and quality. To this end, the Bill ensures that safety and hygiene standards are maintained at the highest levels in the Fishing Industry in the county.

Part X—of the Bill makes general provisions with regard to the inclusion of the community on all matters regarding to fishing. This is done with due regard to the principle of public participation as envisaged in the Constitution and as stipulated at Part VII of the County Government Act of 2012.

Part XI—touches on miscellaneous provisions pertaining the Bill, including the powers of the Executive Member to make Regulations to ensure the proper performance of the objectives of the Bill.

Pursuant to Standing Order No. 114 of the Busia County Assembly Standing Orders, its provided at section 61 of the Bill that the County Executive Committee Member is given delegatory powers of legislation but with proper consultation and recommendations from the relevant stakeholders.

The Bill at Part IV provides for the limitation of the right to privacy as stipulated at Article 31 of the Constitution for purposes of enforcement of the provisions of this Bill.

The Bill concerns the County Government and it falls under the ambit of the functions of the County Government as outlined at paragraph 1 and 3 of this Memorandum.

The enactment of this Bill shall occasion further expenditure of public funds in terms of the establishment of the Fund referred to at Part VI of the Bill; which expenditure ought to be factored in the County Government's budget estimates.

Dated the 18th January, 2016

CHARLES WAKHUNGU,
Chairperson,
Agriculture and Animal Resources Committee.