**LEGAL NOTICE NO……**

**THE** **FISHERIES MANAGEMENT AND DEVELOPMENT ACT, 2016**

*(No. 35 of 2016)*

**IN EXERCISE** of the powers conferred by section 28 of the Fisheries Management and Development Act, 2016, the Cabinet Secretary for Agriculture, Livestock, Fisheries, and Co-operatives makes the following Order: —

**THE FISHERIES MANAGEMENT AND DEVELOPMENT (FISH LEVY) ORDER, 2022**

|  |  |
| --- | --- |
|  |  |
| Citation. | 1. This Order may be cited as the Fisheries Management and Development (Fish Levy) Order, 2022. |
|  |  |
| Interpretation. | 1. In this Order— |
|  |  |
| No. 35 of 2016. | “Act” means Fisheries Management and Development Act; |
|  |  |
|  | “Board of Trustees” means the Board of Trustees of The Fish Levy Trust Fund established under section 28 of the Act; |
|  |  |
|  | “Cabinet Secretary” means the Cabinet Secretary responsible for fisheries; and |
|  |  |
|  | “fish levy” means the levy imposed under paragraph 2. |
|  |  |
| Imposition of fish levy. | 1. (1) A person who engages in fishing or a fishing related activity shall pay the fish levy at the rates specified in the First Schedule. |
|  |  |
|  | (2) The fish levy shall be payable for by the tenth day of the month immediately following the month when the fish levy is due. |
|  |  |
|  | (3) The fish levy shall be remitted through a bank deposit, banker’s cheque, electronic money transfer, mobile money transfer. |
|  |  |
|  | (4) A person who does not comply with sub-paragraph (2) shall be liable to an instant penalty of a thousand shillings and thereafter to an additional penalty of three per cent of the amount of the levy due, for each month or part thereof during which the amount due remains unpaid. |
|  |  |
|  | (5) A person who does not comply with sub-paragraph (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both. |
|  |  |
| Monthly records in respect of the fish levy. | 1. (1) Every person liable to pay the fish levy shall maintain a monthly record in Form FLO 1 set out in the Second Schedule. |
|  |  |
|  | (2) A copy of the record maintained under sub-paragraph (1) shall be submitted to the Board of Trustees when remitting the fish levy payable for that month. |
|  |  |
|  | (3) A copy of the record maintained under sub-paragraph (1) shall be submitted to the agent at the source. |
|  |  |
|  | (2) A person who does not comply with sub-paragraph (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both. |
|  |  |
| Recovery of unpaid levy. | 1. (1) Any amount due in respect of the fish levy that has not been remitted in accordance with paragraph 2, such amount shall be a civil debt recoverable summarily by the Board of Trustees. |
|  |  |
|  | (2) Where an amount is due in respect of the fish levy that has not been remitted in accordance with paragraph 2, the Board of Trustees may recover such amount by levying distress, over the assets of the person liable to pay such amount: |
|  |  |
|  | Provided that— |
|  |  |
|  | 1. where the full amount due is not recovered by distress levied, the Board of Trustees may recover the difference in the manner specified in sub-paragraph (1); and |
|  |  |
|  | 1. where the full amount due has been paid after levying distress and before the execution of the distress, any costs and expenses incurred by the Board of Trustees before payment of the amount that was due shall be deemed to be a debt due and payable to the Board of Trustees and may be recovered by the Board of Trustees in the manner specified in sub-paragraph (1). |
|  |  |
|  | (3) The Board of Trustees may co-ordinate with the National Police Service to be present while distress is being levied under sub-paragraph (2). |
|  |  |
|  | (4) Distress levied under sub-paragraph (2) shall be for a period not exceeding fourteen days. |
|  |  |
|  | (5) If the person against whom distress is levied under sub-paragraph (2) does not pay the fish levy together with the costs of the distress in accordance with sub-paragraph (4), the assets of the person shall be sold by public auction and the proceeds of the sale shall be applied towards the recovery of the levy. |
|  |  |
|  | (6) In any case where the Board of Trustees is of the opinion that they should refrain from recovering levy from any licensee or owner of business by reason of filing of receivership or bankruptcy claims, impossibility, or undue difficulty or expense of the recovery of the levy, the Board of Trustees may refrain from recovering the levy in question and thereupon liability to the fish levy shall be deemed to be extinguished or abandoned. |
|  |  |
|  | (7) Where the Board of Trustees has decided to refrain from the recovery of the levy under paragraph (1), it shall report that decision in writing to the Cabinet Secretary within three months next following the decision for the information of the Cabinet Secretary |
|  |  |
| Maintenance of a register of activities. | 1. (1) Every person engaged in fishing or a fishing related activity shall maintain a register of the fishing or fishing related activity conducted. |
|  |  |
|  | (2) The register referred to in sub-paragraph (1) shall specify— |
|  |  |
|  | 1. the fishing craft or premises where the fishing or fishing related activity is conducted; |
|  |  |
|  | 1. the fishing area; |
|  |  |
|  | 1. the quantity of fish caught; |
|  |  |
|  | 1. the fish landing station; and |
|  |  |
|  | 1. the sales receipts of the catches, |
|  |  |
|  | for the purpose of computing the fish levy payable. |
|  |  |
|  | (2) Every holder of a fishing license shall maintain a record of such particulars as may be prescribed and shall include in the record, the name and address of the fish trader, fish species purchased and business premises location. |
|  |  |
|  | (3) Any person who fails to comply with sub-paragraph (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both. |
|  |  |
|  | (4) Any person who makes, causes or permits to be made in the register referred to in sub-paragraph (1) an entry which the knows or has reason to believe is false, commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both. |
|  |  |
|  | (5) A holder of a fishing licence who makes, causes or permits to be made in the record referred to in sub-paragraph (3) an entry which he knows or has reason to believe is false, commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both. |
|  |  |
| Erroneous declarations | 1. Where it appears to the Board of Trustees that any registered fishing-related activity is declaring rates substantially below the average market price, the Board of Trustees shall use the national annual average value of fish received. |
|  |  |
| Overpayment of fish levy. | 1. (1) Where a person has made an overpayment to the Fund, the person may apply to the Board of Trustees for a refund of the amount as specified in Form No: FLO 2 set out in the Second Schedule. |
|  |  |
|  | (2) An application for a refund shall be made within ninety days after the date when the overpaid amount was received by the Board of Trustees. |
|  |  |
|  | (3) An application for a refund shall be accompanied by any records, documents and evidence required — |
|  |  |
|  | 1. to prove the claim; and |
|  |  |
|  | 1. to determine the amount of the money that was remitted to the Board of Trustees and the amount to be refunded. |
|  |  |
|  | (4) If in the opinion of the Board of Trustees, an applicant has misrepresented a material fact, the application for a refund shall be rejected. |
|  |  |
| Fish levy agent. | 1. (1) The Board of Trustees may by written notice addressed to any person or institution identified as capable to serve as a fish levy agent— |
|  |  |
|  | 1. appoint such person to be an agent of the Board of Trustees for the purposes of the collection and recovery of the fish levy; and |
|  |  |
|  | 1. specify the amount of fish levy to be collected and recovered by such agent. |
|  |  |
|  | (2) A fish levy agent shall remit the fish levy specified in his appointment notice out of any monies which may, at any time following the date of the notice of his appointment, be held by him for, or due from him to the Board of Trustees. |
|  |  |
|  | (1) Any person authorized in writing by the Board of Trustees may, at all reasonable times, enter without warrant any premises upon which a person carries on business, or in which he has reasonable grounds to believe that a person is carrying on fishing or a fishing related activity and liable to pay the fish levy and on entry the authorized person may— |
|  |  |
|  | 1. require the production of, and may examine, make and take copies of, any record, book, account or other document kept on the premises relating, or appearing to relate to fishing and fishing-related activity or service subject to fish levy; |
|  |  |
|  | 1. take possession of or make a copy of a record, book, account or other document which the authorized person has reasonable ground for suspecting to be, or to contain, evidence of the commission of any offence under these Regulations; |
|  |  |
|  | 1. require the occupier of the premises or any person employed therein to answer questions relating to any record, book, account or other documents, or any entry therein and render such explanations, and give such information, in respect of the business concerned as the authorized person may require for the exercise of the functions under these Regulations; |
|  |  |
|  | 1. require any safe, container, envelope or other receptacles in the establishment to be opened; or |
|  |  |
|  | 1. stay at the premise during working hours of the business to establish the average performance of the business. |
|  |  |
|  | (2) Any person who — |
|  |  |
|  | 1. resists, hinders or obstructs, or attempts to resist, hinder or obstruct, an authorized officer acting under this paragraph; |
|  |  |
|  | 1. fails to comply with any requirement made under this paragraph; or |
|  |  |
|  | 1. makes any statement in response to any such requirement, knowing it to be false or incomplete in any material particular, or not having reason to believe that it is true or complete in all material respects, |
|  |  |
|  | commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both. |
|  |  |
|  | **FIRST SCHEDULE** |
|  |  |
|  | **LEVIES** |
|  |  |
|  | |  |  | | --- | --- | | **Category of Fisher** | **Levy Payable of the value of the total fish landed/received per month** | | Artisanal fisher | 2% | | Sea Cucumber fishers | 2 % | | Shell Collectors | 1% | | Kenyan semi-industrial – special | 3% | | Kenyan semi-industrial | 5% | | Artisanal fisher landing fish for meal processing | 0 | | Kenyan Semi and Industrial landing fish for fish meal processing | 2% | | Foreign Fishing landing fish for fish meal processing | 2% | | Semi Industrial Foreign Fishing Landings | 7% | | Industrial Foreign Fishing Landings | 12% | | Ornamental fisher | 50% /piece | | Bycatch landed by artisanal (less than 2% of the total catch) | None | | Bycatch landed (more than 2% of the total catch) | 15% | | Authorized trans-shipment | 30% | |
|  |  |
|  | **Second Schedule** |
|  |  |
|  | **FISH LEVY TRUST FUND** |
|  |  |
|  | **FORM FLO 1** |
|  |  |
|  | **Sheet No……….**  **MONTHLY LEVY RETURN**  **Monthly record required under the Fisheries Levy Order, 2021**  **Name of Person……………………………………………….**  **Person License No……………………………………………..**   |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | | Account Code | FL |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | | **Date** | **Fish Species** | **Quantity of Fish Landed/received** | | **Value of Total Fish Landed/received** | | **Levy Payable** | | | Kgs | Grams | Kshs | Cts | Kshs | Cts | |  |  |  |  |  |  |  |  | |  |  |  |  |  |  |  |  | |  |  |  |  |  |  |  |  | |  |  |  |  |  |  | . |  | |  |  | , |  | . |  | . |  | |  |  | . |  |  |  | . |  | |  |  |  |  |  |  |  |  | |  |  | . |  |  |  | . |  | |  |  | . |  |  |  |  |  | |  |  | . |  |  |  | . |  | |  |  | . |  |  |  | . |  | |  |  | . |  | . |  |  |  | |  |  | . |  |  |  |  |  | | Total |  |  |  | . |  | . |  |   I certify that the Fish Levy payable to the Fund is KSh…………………… for which a bank deposit/ Banker's cheque/ Electronic Money Transfer/Real Time Gross System no………………………  Dated………………………………….  Is enclosed  Date……………………………..  Manager/ Owner…………………………................  Signature……………………………. |
|  |  |
|  | **FORM FLO 2** |
|  |  |
|  | **CLAIM FOR REFUND OF FISH LEVY PAID** |
|  |  |
|  | **For Official Use Only**  **Claim No……………………….**  **Date Received………………….**  **Part 1: Instructions**  **(Please read the notes below before completing this form)**   1. You are required to attach copies of any relevant documentation to the claim. 2. Claims for amounts of one hundred thousand shillings or more (Kshs. 100,000) must be accompanied by an Auditor’s certificate. 3. The declaration under Part 5 must be signed by a person of sufficient rank not below the Company Director Level. Levy/Tax Agents, Accountant and Auditors are not eligible to sign the declaration.   **Part 2: Claimant’s details**   1. Name of Claimant/Registered Name of Business………………… 2. FLTF establishment account code............................................... 3. Kenya Revenue Authority PIN…………………………………… 4. Postal Address…………………………………………………….. 5. Telephone Number(s)................................................................. 6. Email address..........................................................................   **Part 3: Claim details**   1. Claim Period: \*From (Day, Month &Year) .......................to…….............   (If it applies to remittance of Levy, copy of FLR 1 form(s) pertaining to the period must be attached)   1. Reason(s) Leading to claim (Select/Tick below)   **A—Amount paid in error**  **B—Other reason**  **For “Other” reasons, please give details below**  **………………………………………………………………………………..………………………………………………………………………………..**  Amount Claimed  In figures (Kshs)……………..  In words: (Kshs)…………………………………….  **Part 4: Bank Details**  Bank Name…………………………………………  Bank Branch………………………………………..  Swift Code………………………………………….  Account Number……………………………………  Account Name………………………………………  ID Number …………………………………………..  Phone No……………………………………………  City / Town…………………………………………  **Part 5: Declaration**  I certify that the levy refund claimed above is properly refundable as stated in this document and is in conformity with the law.  **Name: ………………………………………**  **National Identity Card No: ……………………………………………..**  **Company…………………………………………………………………..**  **Designation …………………………...........**  **Signature………………………**  **Part 6: FOR OFFICIAL USE ONLY**  **REVIEWED BY FUND SECRETARIAT**  **Name in Full ……………………. ………………………………………**  **Signature ……………………………………**  **Date ……………………………………………**  **Comments if any…………………………………………………………**  **…………………….………………………………………………………………………………**  **RECOMMENDED/NOT RECOMMENDED BY THE MANAGING TRUSTEE OF THE FUND**  **Name in Full ……………………. ………………………………….**  **Signature …………………………………………**  **Date ……………………………………………**  **Comments if any……………………………………**  **………………………….…**  **APPROVED/NOT APPROVED BY THE BOARD ……**  **Minute No. ………………….**  **Name in Full ……………………. ………………………………….**  **Signature …………………….**  **Date ………………………………………………………………..** |
|  |  |

Made this ………………………………… Day of …………………………………….2022

**Peter Munya,**

*Cabinet Secretary,*

*Ministry of Agriculture, Livestock, Fisheries and Cooperatives.*