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**MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS**

**REGULATORY IMPACT STATEMENT**

**FOR**

**THE FISH LEVY TRUST FUND REGULATIONS, 2023**

**January, 2023**

This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Mining, Blue Economy and Maritime Affairs pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of 2013).

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LIST OF ACRONYNS

|  |  |
| --- | --- |
| FLTF | Fish Levy Trust Fund |
| RIA | Regulatory Impact Assessment |
| KeFS | Kenya Fisheries Service |
| KFIC | Kenya Fishing Industries Corporation |
| BMU | Beach Management Unit |
| FMDA | Fisheries Management and Development Act, 2016 |
| KEMFRI | Kenya Marine and Fisheries Research Institute |
| KCGS | Kenya Coast Guard Service |
| SIDS | Small Island Developing States |
| LDC | Least Developing Countries |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNCLOS | United Nations Convention on the Law of the Sea |
| MPA | Marine Protected Areas |
| EEZ | Exclusive Economic Zone |
| MTP | Medium Term Plan |
| KKP | Kenya Kwanza Plan |
| MSME | Micro, Small and Medium Enterprises |
| SWAG-PLS | Sector Working Group on Policy, Legislation and Standards |
| CECM | County Executive Committee Member |
| MDA | Ministries, Departments and Agencies |
| DTI | Dairy Training Institute |
| FLR | Fish Levy Regulations |
| FLO | Fish Levy Order |
| CBO | Community Based organization |
| SDG | Sustainable Development Goals |
| PWD | Persons with disabilities |
| LVEMP | Lake Victoria Environmental Management Programme |
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# INTRODUCTION AND BACKGROUND

## Introduction

Section 208 of the Act provides that the Cabinet Secretary may make regulations for giving effect to the Act. These regulations made under this subsection shall provide for—

1. industry supportive mechanisms of levies remitted to a revolving fund in order to promote the development of persons in the fisheries sector;
2. Provide funds for urgent mitigations for climate change and natural disasters affecting the livelihoods of the fisherfolk;
3. expand access of finances to persons in the fisheries sector including women, youth and persons with disability, enterprises or groups and micro, small and medium enterprises for economic growth towards the realization of the goals of promotion of optimum utilization of living fishery resources;
4. provide loans or grants to persons including Beach Management Units, fish traders, fish processors and government institutions for the management and development of fisheries resources and ;
5. Provide awards to persons involved in the protection of endangered fisheries resources for sustainability.

In exercise of the above powers, the Cabinet Secretary has drafted the Fish Levy Trust Fund Regulations, 2023 and the Fish Levy Order, 2023 (the proposed Regulations. The proposed Regulations are intended to give full effect to the Act. This Regulatory Impact Statement (RIS) is prepared in accordance with the requirements of the Statutory Instruments Act No. 23 of 2013.

## Requirements of the Statutory Instruments Act, 2013

Under Sections 6 and 7 of the Act, if a proposed statutory instrument is likely to impose significant cost in part of the community, or part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement.

Under the Act, a regulatory impact statement shall contain;

1. a statement of the objectives of the proposed legislation and the reasons for them;
2. a statement explaining the effect of the proposed legislation, including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument;
3. a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
4. an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
5. the reasons why the other means are not appropriate;
6. any other matters specified by the guidelines; and
7. a draft copy of the proposed statutory rule.

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

## Regulatory Impact Assessment

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

1. title of the proposal;
2. the objective and intended effect of the regulatory policy;
3. an evaluation of the policy problem;
4. consideration of alternative options;
5. assessment of all their impacts distribution;
6. results of public consultation;
7. compliance strategies, and
8. processes for monitoring and evaluation[[1]](#footnote-1).

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

From a societal viewpoint, RIA should confirm whether or not a proposed regulation is welfare-enhancing, in that, the benefits will surpass the costs. RIA, therefore, has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

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# OBJECTS OF THE FISH LEVY TRUST FUND REGULATIONS, 2023

The general objective of these regulations is to give effect to Section 208 of the Act. The specific objectives are to provide:

1. industry supportive mechanisms of levies remitted to a revolving fund in order to promote the development of persons in the fisheries sector;
2. provide funds for urgent mitigations for climate change and natural disasters affecting the livelihoods of the fisherfolk;
3. expand access of finances to persons in the fisheries sector including women, youth and persons with disability, enterprises or groups and micro, small and medium enterprises for economic growth towards the realization of the goals of promotion of optimum utilization of fishery resources;
4. provide loans or grants to persons - including Beach Management Units, fish traders, fish processors and government institutions for the management and development of fisheries resources;
5. provide awards to persons involved in the protection of endangered fisheries resources for sustainability;
6. support capacity building of the beneficiaries of the Fund and their institutions through training, incubation, mentorship, start-up support and promotion of innovation and development of products; and
7. mobilize, manage, and avail funds for grants, fisheries awards, capacity building, research and dissemination;

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# BACKGROUND AND CONTEXT

GLOBAL CONTEXT OF FISHERIES FUNDS

Globally there exists Funds that support fisheries activities such as the PROBLUE Fund which is a multi-donor trust fund that supports healthy and productive oceans by tackling marine pollution, managing fisheries and fostering sustainable growth of coastal economies (World Bank, 2022). Other funds include; Fisheries Innovation Fund in USA, Coastal Fisheries Initiative Challenge Fund in Peru, Indonesia, Ecuador and Cape Verde and Global Fisheries Sustainability Fund that supports several countries in the world.

REGIONAL CONTEXT OF FISHERIES FUNDS

In Africa, resources devoted to fisheries management and aquaculture development, fisheries science and research and enforcement are limited. Several African countries have set up funds such as Fishermen Welfare Fund which is administered by the Ministry of Blue Economy, Marine Resources, Fisheries and Shipping of Mauritius. The Fund advances the welfare of registered fishermen, and sets up schemes in respect of loans and other financial assistance. South African Fisheries Development Fund is mandated to empower local fishing communities and promote access into the South African fishing sector. The Fund seeks to invest 100 million Rands with focus on supporting small scale fishing communities over the next decade. The Marine Resource Fund of Namibia is used for Research, Management and Development of Fisheries resources, Capacity building and Surveillance.

NATIONAL CONTEXT OF FISHERIES FUNDS

The emergence of Funds in Kenya started during the NARC administration with the establishment of Vision 2030 blue print. The blue print established several funds across several sectors. These funds include; Youth Enterprise Development Fund (YEDF), Women Enterprise Fund (WEF), Uwezo Fund, The National Science, Technology and Innovation Fund, Consolidated Social Protection Fund, National Fund for Persons with Disabilities (PWDs), Commodity Fund and Green Climate Fund among others. Further, the Kenya Kwanza Plan provides for the bottom- up economic transformation agenda 2022 – 27 that aims at promoting the Micro, Small and Medium Enterprises in the country. The FLTF was therefore established to provide supplementary funding in the fisheries sector with the aim of empowering and transforming small scale fishers to semi-industrial.

History of Fish Levy Trust Fund in Kenya

The ideation process to establish a Fish Levy Trust Fund was necessitated by the need for a fund for sustainability of fisheries development activities initiated by the Lake Victoria riparian Countries and supported by the Lake Victoria Environmental Management Programme (LVEMP). Each member State at the time was mandated to establish a Fish Levy Fund to be held in a trust. The fund was to be sourced from a percentage levy sourced from the fish producers, traders and exporters. The Fund was envisioned as collaborative effort to foster development while utilizing the available Fisheries Co-management Strategies put in place by the various member State governments.

Hitherto, Kenya did not have a fish levy fund hence levies have not been charged on fishing and fishing-related activities. This resulted in a gap in supplementary funding for fisheries management, development, and capacity building.

In Kenya, the establishment of the Fund was to be given a legal backing under Fisheries Act and the Beach Management Units were proposed as the collecting entities. In 2016, The Fish Levy Trust Fund was thus established under section 28 of the Fisheries Development and Management Act (FMDA) 2016 to provide supplementary funding of activities geared towards management, development, capacity building, awards and urgent mitigation to ensure sustainability of the fisheries resource. The Fund is administered by a 5-member Board of Trustees nominated through an open and competitive process that meets the requirements of chapter 6 of the constitution. As such, it became necessary to operationalize the Fund through the development of the Fish Levy Trust Fund Regulations, 2023.

Under this premise, the Ministry of Mining, Blue Economy and Maritime Affairs has developed the proposed Fish Levy Trust Fund Regulations, 2023 to operationalize section 28 of the Fisheries Management and Development Act, 2016. These Regulations seek to promote sustainable fisheries management and development in the fisheries sector for purposes of improving livelihoods of the fisherfolks. These Regulations introduce the imposition of levies from fishery resources. By imposing a higher levy on the endangered species and endangering activities, the fund aims at diverting attention from them and focusing on more sustainable fishing.

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# EVALUATION OF THE PROBLEM

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The Ministry of Mining, Blue economy and Maritime Affairs has identified the following pertinent challenges: -

1. **Untapped potential particularly in deep-sea fishing**

Kenya’s marine fisheries resources have huge unexploited potential capable of increasing employment opportunities, generating more revenue, and enhancing the economic growth of the country. The current production is about 125,000 metric tons against the estimated marine output potential of 350,000 metric tons (KeFS Annual Report, 2016). The artisanal fishermen have limited capacity and hence are not able to venture into the deep sea.

1. **Fish Quality Assurance, value addition Utilization and Trade**

Food safety and quality has become increasingly important in international fish trade. Stringent conditions imposed by major fish-importing nations in the developed world, which take in 80 percent of global fish exports, give food safety priority over price as the main determinant for market access. Nearly half of fish exports originate from developing countries, which have limited capacity to invest in the rigorous fish safety measures demanded by importing countries. Food safety is important because fish are particularly prone to rapid pathogenic contamination. The main safety concerns are unhygienic handling during and after fish harvest, insufficient refrigeration, substandard processing, and poor packaging. In fish-producing countries, failure to apply adequate quality and safety measures leads to losses at various stages of fish marketing.

Fish and fishery products have a relatively short shelf-life, and rapidly lose quality and economic value if not handled properly. The post-harvest loss during fishing is normally due to inadequate fish handling infrastructure. Postharvest fish losses include physical loss from poor handling and preservation; economic loss when spoilage occurs or when higher costs are incurred in reprocessing fish; and nutritional loss when fish is unsafe to eat. In addition, due to poor safety measures, large quantities of fish are processed into fish meals for feed when they could have been better used for human food.

Consequently, it is necessary to minimize post-harvest losses, assure fish quality and safety for human consumption, and compliance with Sanitary and Phyto-Sanitary (SPS) measures. The Fund will support capacity building activities geared towards optimum utilization of fish and fishery products that is hampered by inadequate quality assurance infrastructure, incentives to support investment, weak producer organizations, low uptake of technology for product development and value addition and lack of market segmentation.

1. **Fisheries Infrastructure Development**

Kenya is endowed with fisheries resources in the inland and marine waters. Having a few designated fishing ports there is a need to develop more ports and upgrade them to standards that would allow them to handle foreign fishing vessels. Consequently, the country needs to maximize the benefits from this fishery such as income and revenue generation, employment opportunities, and food security from Distant Waters Fishing Nations (DWFN) which land fish in other places. Other major infrastructure that hinders fisheries and aquaculture development include: poor road networks; lack/limited electricity supply to fish landing sites; inadequate fish landing site infrastructure; lack of adequate potable water supply; and inadequate processing facilities.

In addition, inadequate market infrastructure impedes the fisheries sector from making full contribution to the country’s economy. Further, the sector lacks training institutions focused to develop skills required along the fish value chain. There is therefore need for the Government to develop all this infrastructure.

1. **Investment and Finance**

Access to financial products and services is necessary in transforming fisheries into commercial enterprises. The rising demand for fish locally and regionally creates an avenue for production of more fish.

Investments in the fisheries sector have been affected by lack of knowledge on the economic value of fisheries resources, inadequate information on stocks, inadequate data, high cost of doing business in fishing and limited access to credit facilities. As a result, there is a large number of artisanal and subsistence operators in the industry. This is because most financial and insurance institutions have limited knowledge on fisheries requirements and so have limited financial products specific for this group. In addition, the migratory nature of fisher folks has contributed to the hinderance of access to financing from commercial banks. The fishers also have limited information on available financial and insurance products.

1. **Weak fisheries organizations**

Many players in the fisheries sector have been demoralized by dormant fisheries cooperatives and weak fisher associations which have discouraged the growth of fisher organizations. This scenario has denied them the benefits of economies of scale.

1. **Limited budgetary allocation**-

Although the Fisheries sector has huge potential it has continued to receive limited budgetary allocation devoted to fisheries management and aquaculture development, fisheries science and research and enforcement. The proposed Regulations propose to introduce a levy trust fund that will provide supplementary funding for the development, management and capacity building in the fisheries sector.

1. **Human Resource Development/Capacity Building**

Human resource development and management is one of the key requirements towards the transformation of fisheries in Kenya to a commercially oriented enterprise. The key issues that affect effective human resource development are inadequate skills and knowledge, inadequate technical capacity and entrepreneurship skills for efficient management and development of the fisheries sector. There is need to enhance technical and entrepreneurial skills of value chain actors. One of the key roles of the Fund is to provide supplementary funding for the capacity building for the stakeholders in the sector.

1. **Climate Change and Disaster Management**

Climate change can lead to increased sea surface temperatures, sea level rise, acidification and increased salinity which can have significant impacts on fisheries. Further, changes in precipitation patterns affects water levels of rivers and lakes, leading to droughts and floods. Floods and droughts can disrupt fish breeding and migration patterns, damage or destroy fishing infrastructure, such as boats, nets, landing and processing facilities leading to economic losses among fishing communities. It is therefore important to have initiatives to mitigate the effects of climate change and variability on fishing communities.

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# LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED FISH LEVY REGULATIONS

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

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

* + 1. ***Conservation of the living resources***

The convention requires a coastal State to:

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

The coastal State is under obligation to:

1. promote the objective of optimum utilization of the living resources in the exclusive economic zone.
2. determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws, and regulations, give other States access to the surplus of the allowable catch.
3. in giving access to other States to its exclusive economic zone, the coastal State shall consider all relevant factors, including the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests.
4. give due notice of conservation and management laws and regulations.
5. nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State.

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

## UN 2030 Agenda for Sustainable Development Goals

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

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

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

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

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

## High-Level Panel for a Sustainable Ocean Economy

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

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

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

## 2050 Africa Integrated Maritime Strategy

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

**Kenya Vision 2030**

The Kenya Vision 2030 is the long-term development blueprint expected to transform the country into a rapidly industrializing middle-income nation enjoying a high quality of life by the year 2030. The Vision, which is being implemented through successive five-year medium-term plans, aims to create a cohesive, equitable and just society based on democratic principles and issue-based politics grounded on the existing rich and diverse cultures and traditions. The vision aims to raise incomes in fisheries sector to support job creation, industrial production and manufacturing.

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

As part of the Kenya Vision 2030, the government has prioritized the five Core Pillars which focuses on agriculture, Micro Small and Medium Enterprise (MSME), housing and settlement, health care, and digital superhighway and creative economy. The pillars aim at ensuring that the ordinary Kenyan is employed or has a reliable source of livelihood, has enough and quality food, owns a home and is able to access health care. The new rights-based approach to fishing is expected to increase landed fish which will spur investments including manufacture of fishing gear, fish processing industries thereby creating employment, and promoting food security.

## The Constitution of Kenya, 2010

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

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

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

## Fisheries Management and Development Act, 2016

This is the parent Act under which the proposed Regulations are being promulgated. The Act provides for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of the communities that are dependent on fishing. The Act declares that Kenya shall have full jurisdiction and sovereign rights over fisheries resources in accordance with the Maritime Zones Act, and such other maritime zones or areas which may be claimed from time to time.

This Act applies to all Kenya fishery waters and areas over which Kenya exercises jurisdiction or sovereign rights, fishing and fishing related activities, persons (including non-citizens) and vessels (including foreign vessels) in and in relation to the Kenya fishery waters, among others. The broad objective of this Act is to protect, manage, use, and develop the aquatic resources in a manner which is consistent with ecologically sustainable development, to uplift the living standards of the fishing communities and to introduce fishing to traditionally non-fishing communities and to enhance food security.

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

1. the Kenya Fisheries Advisory Council;
2. the Kenya Fisheries Service; and
3. the Kenya Fish Marketing Authority.

The Act also establishes the Fisheries Research and Development Fund and Fish Levy Trust Fund respectively. Other institutions supporting the Blue Economy and Fisheries sector include Kenya Coast Guard Services, Kenya Marine and Fisheries Research institute, Kenya Maritime Authority, Bandari Maritime Academy, Kenya Fish marketing Authority and Kenya Fishing Industries Corporation (KFIC).

The Act empowers the Cabinet Secretary to make regulations for the better carrying into effect of the provisions of this Act.

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# PUBLIC CONSULTATIONS

## Legal requirements relating to public participation and consultation

It is a constitutional requirement to carry out public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on Article 1of the Constitution on the sovereignty principle which vests all sovereign power to the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

Article 174 gives powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognizes the rights of communities to manage their own affairs and to further their development.

The values and principles of public service require the involvement of the people in the process of policy making through provision of timely and accurate information to the public.

The Statutory Instruments Act obligates a regulation making authority to carry out appropriate consultations before making statutory instruments (Regulations) where the proposed regulations are likely to have a direct, or a substantial indirect effect on business or restrict competition. It further provides that in determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation:

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

The Act also states that the persons to be consulted should be notified either directly or by advertisement through representative organizations. They shall also be invited to make submissions by a specified date, which should not be less than 14 days or be invited to participate in public hearings concerning the proposed instrument.

## Initial participation of the stakeholders

To ensure nation-wide public participation, the Cabinet Secretary carried out consultations and stakeholder engagement forums. The regulations were first presented to the Sector Working Group on Policy, Legislation, and Standards (SWAG-PLS) for their input and approval after which they were subjected to county consultations.

These consultations had the fisheries stakeholders from various regions divided into four clusters. Cluster one comprised of stakeholders from the Western and Nyanza regions, two Central and Rift Valley regions, three Eastern and the North Eastern regions, and four from the Coastal region. These included the main public and private institutions and individuals who will be directly or indirectly affected by the proposed statutory instrument.

The stakeholders were notified of the ongoing process and invited to give their submissions on the draft Regulations within a specified reasonable period. The Fund also presented the said regulations to various MDAs within the sector for harmonization with other legislations in the sector and after, the SWAG-PLS for the second time. After the approval of the SWAG-PLS, the regulations were presented to the County Executive Committee Members (CECM) Caucus for consultations.

The representatives included:

1. Council of Governors
2. County Governments Sector Working Group (Policy Legislation and Standards)
3. County Governments;
4. Beach Management Units;
5. Fish Processors;
6. Fish Exporters;
7. Artisanal Fishers;
8. Non-Governmental Organisations;
9. MDAs;
10. Fish Traders; and
11. Fish farmers.

## Approach and Methodologies

The stakeholders were invited to submit comments on the zero draft regulations within a specified time through letters and emails. The stakeholder consultations were undertaken between the month of May 2021 and May 2022. The table below shows the list stakeholders consulted pursuant to Section 5 of the Statutory Instruments Act:

***Table 1: List of stakeholders***

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Targeted Stakeholders** | **Dates** | **Venue** |
| 1. | Sector Working Group (Policy Legislation and Standards) | 21st May 2021. | Dairy Training Institute (DTI) Naivasha |
| 2. | Stakeholders in the Western and Nyanza Regions. | 11th November 2021 | Kisumu Hotel, Maseno |
| 3. | Fisheries Stakeholders in the Central and Rift Valley Regions | 2nd December 2021 | Dairy Training Institute (DTI) Naivasha |
| 4. | Fisheries Stakeholders in the Northern and Eastern Regions | 9th December 2021 | Machakos University, Machakos |
| 5. | Coastal Region Fisheries Stakeholders | 20th December 2021 | Mombasa Beach Hotel, Mombasa |
| 6. | Harmonization and MDA’s stakeholder consultations | 8th and 9th March 2022 | Dairy Training Institute (DTI) Naivasha |
| 7. | Sector Working Group (Policy Legislation and Standards) | 24th March 2022 | Sarova White Sands, Mombasa |
| 8. | County Executive Committee Members | 19th May 2022 | PrideInn Paradise, Shanzu |

***Attached to the report is a detailed matrix (Annexure 1) indicating representations received from the stakeholders, their comments, and action taken in revising the Regulations.***

Based on the above approach, a total of four meetings were held between the Ministry of Mining, Blue Economy and Maritime Affairs and key stakeholders. The Ministry of Mining, Blue Economy and Maritime Affairs and also received 318 written and oral representations. The meetings were interactive where stakeholders gave their comments with regard to the regulations as indicated in the annex. These comments were incorporated into the Draft Regulations.

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# **AN OVERVIEW OF THE PROPOSED FISH LEVY TRUST FUND REGULATIONS**:

## Proposed regulations

The proposed regulations will bring to effect Section 208 of the Fisheries Management and Development Act 2016. Moreover, the Fish Levy Trust Fund is established under Section 28(1) of the Fisheries Management and Development Act 2016. Section 28(3) provides that the object of the fund shall be to provide supplementary funding of activities geared towards management, development and capacity building, awards, and urgent mitigation to ensure the sustainability of the fisheries resource.

The proposed regulations provide for the following salient features:

**7.2. LEVY**:

The Fund will primarily be financed by levies collected from persons engaging in fishing and fishing-related activities such as artisanal fishers, Sea Cucumber fishers, purse seiners, long liners, ornamental fisher and semi-industrial fishers. The rate of levy to be applied in a given period will be determined through a Fish Levy Order gazette notice by the Cabinet Secretary in charge of Fisheries. Out of the total levies collected, 97% will be ploughed back to supplement funding of the fisheries sector while the balance (3%) will be used to defray administration costs of The Fund. For this reason, agents will be engaged to collect the levies at source as a way to reduce operating costs.

**7.3. PARTNERSHIP AND COLLABORATION**

Under the resource mobilization strategy, strong collaborations to collect levies from fishing and fishing-related activities and partnerships with donors and other partners to ensure a financially sustainable and viable institution are envisaged. The Fund particularly intends to indirectly collect the levies through strategic partners having direct contact with the value chain actors, in order to minimize administration costs. These partners, referred to as levy agents, will subsequently remit the levies to the Fund. Similarly, funds will be mobilized through organized stakeholders’ forums/meetings and the development of bankable project proposals.

**7.4. THE FUND:**

The nature of the fund anticipated under these regulations is a revolving fund where a person will be required to comply with certain conditions to qualify for funding. Individuals, public institutions and organized groups within the sector will be considered for funding as long as their functions and activities directly relate to the objects and purpose of the fund as stipulated in the FMDA, 2016. These activities may include capacity building through training, buying gears and equipment, climate mitigation, awards in fisheries conservation, among others.

**7.5. OBJECT OF THE FUND**

The fund shall be applied to activities geared towards management, development and capacity building, awards, and urgent mitigation to ensure the sustainability of the fisheries resource. Whereas administration fee will apply, borrowed funds will be repaid without charging interest. This will facilitate the stakeholders such as Beach Management Units, fishing crews, traders, and processors to pool resources to buy equipment such as fishing gears, boats, and refrigerating facilities among others. In order to ensure equity in development of every segment of the fisheries sector, the regulations propose that any person or County Government will be eligible to access the fund as long as the purpose for obtaining the fund is to fulfill the object of the Fund.

These regulations are as follows:

1. The Fish Levy Trust Fund Regulations, 2023
2. The Fish Levy Order, 2023

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# COST-BENEFIT ANALYSIS

This section seeks to assess the changes proposed by the regulations in terms of their costs and benefits to justify the proposals pursuant to Section 7(d) of the Statutory Instruments Act.

## Matrix of Benefits and Costs on the Fish Levy Trust Fund Regulations

The analysis of the expected costs and benefits of the proposed regulations contained in this part seeks to answer the question of whether the benefits justify the costs. This would enable the Regulator to estimate the total expected cost and benefit of every aspect of the Regulations.

**Annexure 2** provides a detailed analysis on the costs and benefits of the three options available in responding to the funding challenges in the fisheries sector in the country. As observed, the Proposed Regulations yield a net benefit of KShs. 95.3 billion annually.

Artisanal fishers will benefit greatly from the Proposed Regulations in that the increased revenue streams arising from levies will be applied to strengthen their capacity and capability to fish better and further offshore, thus enhancing their gains from the sector.

Further, the Proposed Regulations put in place ways of supporting fisheries-based organizations such as Beach Management Units and state agencies involved in resource management and conservation measures, thus meeting the long-term benefits to all stakeholders. From the revenues raised through the charging of levies, the fisheries sector becomes a net positive contributor to the national development Agenda instead of a net consumer of revenues. This will significantly reduce pressure on the National Budget, while enhancing own revenue collections.

The Proposed Regulations, as analyzed create the environment for a reduction in the cost of doing business and enhance equity for enterprises in the fisheries sector in that the business will have access to the funds on pro-rata basis. Further, the Proposed Regulations establish a regulatory framework for an open, transparent and predictable source of funding. This will in turn inform the decision-makers since the cost of government action should be justified by its benefits before action is taken.

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# CONSIDERATION OF ALTERNATIVES TO THE FISH LEVY TRUST FUND REGULATIONS

The Statutory Instruments Act requires a regulator to carry out an informed evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulations should be the last resort in realizing policy objectives. The options considered under this part are: maintenance of the status quo, administrative measures and developing the proposed Fish Levy Trust Fund Regulations, 2023.

## Option one: Maintenance of the status quo

The Fish Levy Trust Fund Regulations, 2023 are responsive to the Sustainable Development Goals, Blue economy global reforms including protection, sustainable production and equitable prosperity. In the absence of these regulations, emerging issues in the blue economy will not be addressed effectively.

By maintaining the status quo, the legal requirements under Section 28 of the Fisheries Management and Development Act will not be fulfilled. In addition, the challenges identified such as limited participation in fishing by artisanal fishers to exploit deep sea fishing among others, will persist.

## Option two: Administrative measures

Administrative measures involve issuance of directives and circulars to the various planning authorities. This is a non-regulatory measure which if applied, will depend on the good will of public officers to implement the provisions of the Fisheries Management and Development Act, 2016. Administrative measures are subjective, not binding and may be challenged in a court of law. In addition, some administrative measures issued in the past have not achieved the desired objectives.

## Option three: Formulating the proposed Fish Levy Trust Fund Regulations, 2023

The Fish Levy Trust Fund Regulations, 2023 will yield the following benefits: improved incomes and livelihoods, ease of doing business, mitigation against climate change and variability, capacity building, reduction of conflicts and improved quality of fishery plans, which far outweigh the costs of the regulations.

The assessment of the cost and benefits in chapter 8, indicates that the benefits of formulating the regulations far outweigh the costs, therefore, option three was selected as the preferred option.

## Impact Analysis of the Options

An impact analysis of the options justifies the purpose of formulating the regulations and the challenges that the regulations will address. It further justifies the selection of option three on formulating the proposed Fish Levy Trust Fund Regulations, 2023 by evaluating the socio-economic, environmental and legal impact of the regulations as shown in the table below:

**Table 2: Impact analysis of the three options**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SR. No.** | **IMPACT ON SECTORS** | **OPTION ONE:**  **Maintaining the Status quo** | **OPTION TWO:**  **Administrative measures** | **OPTION THREE:**  **Developing the Fish Levy Trust Fund Regulations, 2023** |
| 1 | Impact on Public Sector | * Discouraged the growth of fisher’s organizations | * Continue landing only 125,000 MT from capture fishery against a projected potential of 350,000 MT | * Increased Fish Landing from 125,000 to 350,000 MT |
| 2 | Impact on Private Sector | * The private sector will largely remain unaffected | * There is no guarantee that administrative measures will address private sector concerns | * Increased household income due to MSMEs economies of scale |
| 3 | Economic Impact | * Underdeveloped fisheries industry | * Uncertainty | * Increased contribution to the economy * Spurring growth of infrastructure |
| 4 | Social Impact | * Lost opportunity to increase fish consumption for health | * Uncertain | * Contributing to food security |
| 5 | Human Rights Impact | * Violation of Human rights especially for women. | * Uncertain | * Gender equality and generally reduced inequality * Equitable prosperity. |
| 6 | Impact on business | * Unreliable source of funding. * Stagnation of the businesses. * Low income. | * Uncertain | * Reliable source of funding * Re-investment of some portion of fisheries revenue * Increased landed fish * Spurring growth of fish related SMEs |
| 7 | Impact on environment | * Continued underutilization of environmental resources. | * Opportunity to enhance conservation and management is lost | * Increased utilization of renewable resources * Opportunity to enhance conservation and management |
|  | Impact on taxes | * Continued loss of revenue | * Sustained suboptimal revenue | * Increased revenue collection * Expanding international exports |
| 8 | Impact on existing legal frameworks | * The existing legal gaps will not be addressed | * Regulatory concerns will remain un-addressed | * Addresses all the identified gaps * Provides harmony with related legal frameworks * No further legal amendments or enactments will be required |

# : COMPLIANCE AND IMPLEMENTATION

## Institutions

It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect and design responsive implementation strategies that make the best use of them[[2]](#footnote-2).

The implementation and enforcement of these regulations will be undertaken through the existing institutional framework at national level (Ministry of Mining, Blue Economy and Maritime Affairs) and the county level (county governments).

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# CONCLUSION

Based on the analysis in this report, Fish Levy Trust Fund Regulations, 2023 are extremely necessary. The regulations offer socio-economic, environmental and legal benefits which include ease of doing business, mitigation against climate change, reduction of conflicts, improved quality of livelihood for the fisherfolk, among others, which far outweigh the costs of the regulations.

The regulations also provide a framework for the ensuring that the people of Kenya enjoy the socio-economic rights enshrined in the Constitution.

## Recommendation

In view of the above conclusion, it is recommended that the Fish Levy Trust Fund Regulations, 2023 be adopted.

# ANNEXURES

1. Public Participation on the Fish Levy Trust Fund Regulations, 2023

* Invitation to Submit Comments on the Draft Regulations via the Fish Levy Trust Fund Email
* Invitation Letters to Stakeholder Meetings
* Invitation Letters- Delivery Book
* Confirmation of Attendance and Nominations for the Stakeholder Meeting
* Attendance Lists
* Comments given in the Stakeholder Meetings

1. Final Fish Levy Trust Fund Regulations

1. Regulatory Policy Division Directorate for Public Governance and Territorial Development: Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers. OECD, 2008 [↑](#footnote-ref-1)
2. Source: OECD (1995), The 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, Paris. [↑](#footnote-ref-2)