

Approved for tabling.

REPUBLIC OF KENYA



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*Paper laid by
the vice chair of the
Departmental Committee
on Agriculture, Livestock
& Co-operatives on
24/04/2015*

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION: 2015

THE DEPARTMENTAL COMMITTEE ON AGRICULTURE,
LIVESTOCK AND CO-OPERATIVES



REPORT ON THE FISHERIES MANAGEMENT AND DEVELOPMENT
BILL, 2014.



CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2015

1.0 PREFACE

The Departmental Committee on Agriculture, Livestock and Co-operatives is established pursuant to provisions of Standing Order 216 (5). Under the provisions of Standing Order 216 (5) the Committee is mandated to inter alia:

Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Departmental Committee on Agriculture, Livestock and Co-operatives oversees the performance of the following Ministries and Government department:-

- (i) Agriculture,
- (ii) Livestock,
- (iii) Irrigation,
- (iv) Fisheries development,
- (v) Co-operatives development, and
- (vi) Production and marketing.

Under the above Ministries, the Committee covers the following subjects:

- (i) Agriculture policy
- (ii) Livestock policy
- (iii) Fisheries policy
- (iv) Cooperative societies

Membership

The Committee comprises the following Members:-

- | | |
|--|----------------------|
| 1. The Hon. Adan Mohamed Nooru, MBS, M.P. - | Chairman |
| 2. The Hon. Japhet M. Kareke Mbiuki, M.P. - | Vice Chairman |
| 3. The Hon. Mary Wambui Munene, M.P. | |
| 4. The Hon. Kabando Wa Kabando, M.P. | |
| 5. The Hon. Raphael Letimalo, M.P. | |
| 6. The Hon. Patrick Wangamati, M.P. | |
| 7. The Hon. Francis Munyua Waititu, M.P. | |
| 8. The Hon. Peter Njuguna Gitau, M.P. | |
| 9. The Hon. Maison Leshoomo, M.P. | |
| 10. The Hon. Anthony Kimani Ichung'wah, M.P. | |
| 11. The Hon. Alfred Kiptoo Keter, M.P. | |
| 12. The Hon. Ayub Savula Angatia, M.P. | |
| 13. The Hon. Justice Kemei, M.P. | |
| 14. The Hon. Philip L. R. Rotino, M.P. | |

15. The Hon. Korei Ole Lemein, M.P.
16. The Hon. Silas Tiren, M.P.
17. The Hon. Benjamin Jomo Washiali, M.p.
18. The Hon. (Dr.) Victor Kioko Munyaka, M.P.
19. The Hon. John Bomet Serut, M.P.
20. The Hon. Millie Odhiambo, M.P.
21. The Hon. Fredrick Outa, M.P.
22. The Hon. Maanzo, Daniel Kitonga, M.P.
23. The Hon. James Opiyo Wandayi, M.P.
24. The Hon. Ferdinand Kevin Wanyonyi, M.P.
25. The Hon. Paul Simba Arati, M.P.
26. The Hon. Florence Mwikali Mutua, M.P.
27. The Hon. Hezron Bollo Awiti, M.P.
28. The Hon. John Kobado, M.P.
29. The Hon. Zuleikha Hassan Juma, M.P.

Mr. Speaker ,

The Fisheries Management and Development Bill, 2014 underwent First reading on 3rd June, 2014 and was effectively committed to the Committee on Agriculture, Livestock and Cooperatives as provided for in the Standing order 127(1).

Pursuant to Article 118(b) and Standing Order 127(3) which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 9th June, 2014 informing the public that the Committee was considering the Fisheries Management and Development Bill, 2014 and inviting them to submit any representation they might have on the Bill.

Mr. Speaker Sir,

The Committee held meetings with the State department of Fisheries in the Ministry of Agriculture, Livestock and Fisheries to consider pertinent issues that the Bill was seeking to address however the Committee did not receive any written memorandum.

Mr. Speaker,

The State Department of Fisheries in the Ministry of Agriculture, Livestock and Fisheries Development is responsible for policy formulation in the development and sustainable use of fisheries resources. Currently the sector is guided by Fisheries Act CAP 378, 1989-Revised, 1991. These legislations provides for the management, development, conservation, exploitation and utilization of the fisheries resources

Mr. Speaker,

The objective of this Bill is to provide a comprehensive legislative framework for development, governance and investment of the oceans and fisheries resources

The Bill anchors the interventions provided in the National Oceans and Fisheries Policy, 2008. This policy outlines key intervention that should be made in order to sustainably increase production from the underutilized waters which includes the Exclusive Economic Zones, Lake Turkana, Lake Naivasha, Lake Victoria and the near shore marine waters.

The Bill provides for development of Sanitary and Phytosanitary (SPS) fish quality standards which will make Kenya competitively participate in international trade. The Bill enables Kenya meet its international obligations in fish trade and sustainable fisheries especially the fight against Illegal, Unreported and unregulated (IUU) fishing so that Kenya benefit from fisheries resources within their Exclusive Economic Zones.

Kenya as a member of fisheries organizations or bodies such as Lake Victoria Fisheries Organization (LVFO), and FAO, it is also a signatory to most of the regional and international conventions, protocols and agreements that contain guidelines for management of fisheries resources.

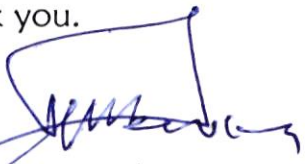
Mr. Speaker,

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report within the given timelines.

I am grateful for the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the secretariat for their technical support during the compilation of the report.

On behalf of the Committee, and pursuant to Standing Order No. 127 (4) of the National Assembly, It's my honor and privilege to present the Committee's Report on the Fisheries Management and Development Bill, 2014 to House for consideration and adoption.

Thank you.


Signed Adan Mohamed Nooru M.B.S.
Chairman

Hon. Adan Mohamed Nooru, MBS, M.P.

CHAIRMAN DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK
AND CO-OPERATIVES

DATE 27/4/15

2.0 COMMITTEE'S CONSIDERATION OF THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL, 2014

The Committee deliberated on the Bill as follows:

Clause 1 to Clause 3	- Proposed amendments
Clause 4	- Agreed to
Clause 5 to Clause 6	- Proposed amendments
Clause 7 to Clause 8	- Agreed to
Clause 9 to Clause 16	- Proposed amendments
Clause 17	- Agreed to
Clause 18	- Proposed amendment
Clause 19 to Clause 20	- Agreed to
Clause 21 to Clause 22	- Proposed amendments
Clause 23 to Clause 25	- Agreed to
Clause 26 to Clause 28	- Proposed amendments
Clause 29 to Clause 37	- Agreed to
Clause 38	- Proposed amendment
Clause 39	- Agreed to
Clause 40	- Proposed amendment
Clause 41 to Clause 43	- Agreed to
Clause 44	- Proposed amendment
Clause 45 to Clause 51	- Agreed to
Clause 52 to Clause 53	- Proposed amendments
Clause 54 to Clause 55	- Agreed to
Clause 56	- Proposed amendments
Clause 57 to Clause 67	- Agreed to
Clause 68	- Proposed amendment
Clause 69 to Clause 79	- Agreed to
Clause 80 to Clause 81	- Proposed amendments
Clause 82	- Agreed to
Clause 83	- Proposed amendment
Clause 84 to Clause 86	- Agreed to
Clause 87 to Clause 88	- Proposed amendments
Clause 89 to Clause 96	- Agreed to
Clause 97	- Proposed amendment
Clause 98 to Clause 100	- Agreed to
Clause 101 to Clause 102	- Proposed amendments
Clause 103 to Clause 104	- Agreed to
Clause 105	- Proposed amendments
Clause 106 to Clause 109	- Agreed to

Clause 110	- Proposed amendment
Clause 111 to Clause 113	- Agreed to
Clause 114	- Proposed amendment
Clause 115	- Agreed to
Clause 116	- Proposed amendment
Clause 117 to Clause 127	- Agreed to
Clause 128 to Clause 134	- Proposed amendments
Clause 135 to Clause 138	- Agreed to
Clause 139	- Proposed amendment
Clause 140 to Clause 145	- Agreed to
Clause 146	- Proposed amendment
Clause 147 to Clause 149	- Agreed to
Clause 150 to Clause 151	- Proposed amendments
Clause 152 to Clause 153	- Agreed to
Clause 154	- Proposed amendment
Clause 155 to Clause 158	- Agreed to
Clause 159 to Clause 160	- Proposed amendments
Clause 161	- Agreed to
Clause 162 to Clause 163	- Proposed amendments
Clause 164 to Clause 188	- Agreed to
Clause 189	- Proposed amendment
Clause 190 to Clause 196	- Agreed to
Clause 197	- Proposed amendment
Clause 198 to Clause 213	- Agreed to

3.0 COMMITTEE'S PROPOSED AMENDMENTS TO THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL, 2014

The Committee considered the Fisheries Management and Development Bill, 2014 as follows:-

CLAUSE 1

THAT clause 1 be amended by deleting the year “2013” and substituting therefor the year “2015”.

JUSTIFICATIONS/RATIONALE

To reflect the correct year

CLAUSE 2

THAT clause 2 be amended by inserting the definitions of the words “barter trade, illegal, unreported, unregulated and management”, in their sequential forms.

JUSTIFICATIONS/RATIONALE

The words had not been defined

CLAUSE 3

THAT Clause 3 be amended by deleting sub-clause (2).

JUSTIFICATIONS/RATIONALE

Has already been overtaken by events

CLAUSE 5

THAT Clause 5 be amended in sub-clause (1) by inserting the words “to uplift the living standards of the fishing communities and to introduce fishing to traditionally non-fishing communities to enhance food security” at the end.

JUSTIFICATIONS/RATIONALE

To promote fishing and consequently reduce poverty by enhancing food security in Kenya

CLAUSE 6

THAT Clause 6 be amended —

- (a) In sub-clause (1) by inserting the following new paragraphs immediately after paragraph (0) —

“(oa) devolution and planning”;

- “(ob) education, science and technology”;
- “(oc) representatives from the fishing industry”;
- “(od) a representative from the Council of Governors”;
- “(oe) a representative from the consumer federation”; and
- “(oe) a representative from the universities”.

JUSTIFICATIONS/RATIONALE

Being a Advisory Council all the stakeholders in the fishing industry should be included

- (b) In sub-clause (2) by inserting the word ‘national’ immediately after the word “government”.

JUSTIFICATIONS/RATIONALE

To be specific as to whether it is the County or National Government

CLAUSE 9

THAT clause 9 be amended—

- (a) In paragraph (d) by deleting the word “implement” appearing immediately after the words “prepare and” and substituting there for the word “monitor”;

JUSTIFICATIONS/RATIONALE

Implementation is the work of the County governments as per the 4th schedule of the Constitution

- (b) In paragraph (e) by deleting the word “and” appearing immediately after the words “provide education” and substituting there for the word “for”;

JUSTIFICATIONS/RATIONALE

Extension services are to be provided by the County governments and not the National government as per the 4th schedule of the Constitution)

- (c) In paragraph (i) by deleting the words “for fisheries conservation, management development and aquaculture production” appearing immediately after the words “at all levels for the Service”;

JUSTIFICATIONS/RATIONALE

Fisheries conservation, management, development and aquaculture production are functions of the County governments and not the National government as per the 4th schedule of the Constitution

- (d) In paragraph (j) by inserting the words “subject to the Treaty Making and Ratification Act” at the end of the paragraph;
- (e) In paragraph (k) by inserting the words “subject to the Treaty Making and Ratification Act” at the end of the paragraph;
- (f) In paragraph (l) by inserting the words “subject to the Treaty Making and Ratification Act” at the end of the paragraph;

JUSTIFICATIONS/RATIONALE

To realign paragraphs to Article 2(6) of the Constitution of Kenya 2010

- (g) In paragraph (o) by inserting the words “that relates to the mandate of the Service” at the end of the paragraph;

JUSTIFICATIONS/RATIONALE

For emphasis as regards to the functions of the Service

- (h) By deleting paragraph (s) and substituting there for the following new paragraph—

“Collaborate with the Fish Marketing Authority establishes under section 204 and other agencies to ensure that trade in fish is carried but in accordance with the provision of this Act”

JUSTIFICATIONS/RATIONALE

For consistency with Clause 10(1) (d))

- (i) In paragraph (u) by inserting the word “aquaculture” immediately after the words “coastal fisheries.”

JUSTIFICATIONS/RATIONALE

Had not been provided for

- (j) In paragraph (w) by inserting the words “and the Constitution” immediately after the words “the provisions of this Act”.

JUSTIFICATIONS/RATIONALE

Procedural since the Constitution is the Supreme law

CLAUSE 10

THAT Clause 10 be amended—

(a) In sub-clause (1)—

- (i) In paragraph (g) by deleting the words “ a transparent and objective” and substituting there for the words “an open, transparent and competitive”;

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

- (ii) In paragraph (h) by deleting the words “ a transparent and objective” and substituting there for the words “ an open, transparent and competitive”;

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

- (b) In sub-clause (3) by inserting the words “and other Government entities” at the end of paragraph (d).

JUSTIFICATIONS/RATIONALE

Financial data, reports and statements can also be provided by other government entities like the Auditor General apart from the Director General

CLAUSE 11

THAT Clause 11 be amended—

(a) In sub-clause (1)—

- (i) In paragraph (b) by deleting the following:
 - “(iv) trade;
 - “(v) mining.”

JUSTIFICATIONS/RATIONALE

There is no nexus/relationship with Fisheries sector and also to reduce the Membership of the Board

(ii) By deleting paragraph (c);

JUSTIFICATIONS/RATIONALE

To reduce the Membership of the Board

(iii) In paragraph (d) by inserting the words “at least five years’ experience” immediately after the words “long-term knowledge and”

JUSTIFICATIONS/RATIONALE

To allow the youths to be employed

(b) In sub-clause (3)—

(i) by deleting the words “at the beginning of each financial year,”

JUSTIFICATIONS/RATIONALE

The seat can fall vacant at any time and not just at the beginning of the financial year

(ii) by inserting the words “and shall elect a woman if the Chairperson is a man and vice versa”

JUSTIFICATIONS/RATIONALE

To meet the gender parity provisions

(c) in sub-clause (4) by inserting the words “and generational equity” immediately after the words “gender parity”.

JUSTIFICATIONS/RATIONALE

To cover the youth

CLAUSE 12

THAT Clause 12 be amended—

(a) In sub-clause (1)—

(i) in paragraph (c) by deleting the words “the permission of” appearing in sub-paragraph (i) and substituting therefor the word “notifying”;

JUSTIFICATIONS/RATIONALE

Notification to the chairperson suffices as opposed to permission

- (ii) by deleting paragraph (v) and substituting therefor the words “is unable, by reason of mental or physical infirmity, to discharge functions as a member of the Board”.

JUSTIFICATIONS/RATIONALE

To prevent malice or mischief

- (b) In sub-clause (2) in paragraph (a) by deleting the word “Minister” appearing immediately after the words “by the” and substituting therefor the words “Cabinet Secretary”.

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 13

THAT Clause 13 be amended—

- (a) In sub-clause (5) in paragraph (a) in paragraph (iii) by deleting the word “or” appearing immediately before the word “member”.

JUSTIFICATIONS/RATIONALE

Editorial

- (b) In sub-clause (6) by deleting the words “or extended” appearing immediately after the words “a person’s immediate” at the end of the paragraph (c).

JUSTIFICATIONS/RATIONALE

Can be abused since in the African culture its very broad

CLAUSE 14

THAT Clause 14 be amended—

- (a) In sub-clause (3) in paragraph (a) by deleting the word “six” and substituting therefor

the word "five";

JUSTIFICATIONS/RATIONALE

For quorum purposes, since the membership had been reduced

(b) In sub-clause (7) by deleting the word "experts" appearing before the words "as may be necessary" at the end and substituting there for the words "consultants hired by the Board".

JUSTIFICATIONS/RATIONALE

Consultants cannot interfere with the decisions of the Board

CLAUSE 15

THAT Clause 15 be amended

(a) By deleting paragraph (d) and substituting therefor the paragraph;

"(d) any other relevant area to the position,"

JUSTIFICATIONS/RATIONALE

It can be abused by the Board

CLAUSE 16

THAT Clause 16 be amended—

(a) In sub-clause (2) by deleting paragraph (d) and substituting therefor the following paragraph:

"(d) Collaborate with the Fish Marketing Authority established under section 204 and other agencies to identify marketing and investments opportunities for the fisheries sector;"

JUSTIFICATIONS/RATIONALE

For purposes of consistency with Clause 10(1)(d)

(b) In sub-clause (3) by deleting the words "or other person in the service of the Service" appearing immediately after the words "or any other staff member of the Service".

JUSTIFICATIONS/RATIONALE

Was not adding value to the Clause

CLAUSE 18

THAT Clause 18 be amended in sub-clause (1)-

- (a) by deleting the words “armed force” appearing immediately after the words “Kenya Navy or other” and substituting there for the words “Defence Forces”

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 21

THAT Clause 21 be amended in sub-clause (2)—

- (a) by deleting the word “Second” and substituting there for the word “First”;

JUSTIFICATIONS/RATIONALE

For correct reference

- (b) by inserting the word “Secretary” immediately after the word “Cabinet”

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 22

THAT Clause 22 be amended in sub-clause (2) by deleting the word “moneys” and substituting there for the word “monies”.

JUSTIFICATIONS/RATIONALE

Editorial

CLAUSE 26

THAT Clause 26 be amended in sub-clause (4) by inserting the word “Secretary” after the word “Cabinet”.

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 27

THAT Clause 27 be amended in sub-clause (3) by deleting the word “facilitate” and substituting there for the words “provide supplementary funding for”.

JUSTIFICATIONS/RATIONALE

As per the wording in Clause 28(3) since it communicates better

CLAUSE 28

THAT Clause 28 be amended by—

(a) inserting the following new sub-clause:

“(5) The Members of the Board shall include two fisherpersons from Fresh waters and Marine waters, and aquaculture and Traders Exporters Association and fish processors”.

JUSTIFICATIONS/RATIONALE

For better representation of the fishing communities

(b) inserting a new sub-clause (5) before the words “The Trustees shall be persons who meet the requirements of Chapter Six of the Constitution”.

JUSTIFICATIONS/RATIONALE

To maintain a logical sequence of the provisions of the Bill

CLAUSE 38

THAT sub-clause 2 be amended in paragraph (b) by inserting the words “and any other allowances deemed necessary” immediately after the word “administration”.

JUSTIFICATIONS/RATIONALE

Since they were levies charged, then Beach management unit staff should draw some allowances therein

CLAUSE 40

THAT Clause 40 be amended in —

(a) sub-clause (2) be amended-in paragraph (b) by inserting the words “and respecting county plans” at the end of the paragraph.

JUSTIFICATIONS/RATIONALE

There are planning activities in the counties and therefore it is important to take such plans into account

(b) in sub-clause (10) by deleting the word “two hundred and fifty” and substituting there for the words “twenty”.

JUSTIFICATIONS/RATIONALE

This deterrent measure was seen as too harsh for an ordinary poor fisherman/woman

CLAUSE 44

THAT sub-clause (1) be amended in paragraph (i) by deleting the word “light” immediately after the word “firearms”.

JUSTIFICATIONS/RATIONALE

Light is required in the fishing small fish e.g. omena hence if banned the omena business is automatically lost

CLAUSE 52

THAT sub-clause (2) be amended by deleting the words “five hundred shillings or to a term of imprisonment not exceeding five years” and substituting therefor the words “five million shillings or to a term of imprisonment not exceeding ten years”.

JUSTIFICATIONS/RATIONALE

The Fine previously advanced was seen as small bearing in mind the magnitude of the pollution

CLAUSE 53

THAT sub-clause (1) be amended in paragraph (a) by deleting the word “stations” and substituting therefor the word “ports”.

JUSTIFICATIONS/RATIONALE

For consistency with sub-clause (b)

CLAUSE 56

THAT sub-clause (3) be amended by deleting the words “five million shillings or to a term of imprisonment not exceeding five years” and substituting therefor the words “ten million shillings or to a term of imprisonment not exceeding ten years”.

JUSTIFICATIONS/RATIONALE

The fine is commensurate to international standards

CLAUSE 68

THAT Clause 68 be amended—

(a) In sub-clause (3) by inserting the words “with approval of the Board” immediately

after the words "Director General".

JUSTIFICATIONS/RATIONALE

To prevent decisions from being made by only the Director General

(b) in sub-clause (4) by deleting the word "her" and substituting therefor the words "his or her".

JUSTIFICATIONS/RATIONALE

To avoid gender bias

CLAUSE 80

THAT Clause 80 be amended in sub-clause (3) by deleting the words "five hundred thousand" and substituting there for the words "one million".

JUSTIFICATIONS/RATIONALE

To prevent sensitive information from proliferating

CLAUSE 81

THAT Clause 81 be amended—

(a) in sub-clause (1) by inserting the word "Kenya" immediately before the word "fishery"

(b) in paragraph (a) of sub-clause (1) by inserting the word "Kenya" immediately before the word "fishery".

JUSTIFICATIONS/RATIONALE

To specify the jurisdiction of the source)

CLAUSE 83

THAT Clause 83 be amended—

(a) in sub-clauses (1),(2) and (4) by deleting the word "Minister" and substituting there for the word "Secretary".

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

(b)in sub-clause (8) by deleting the words “three hundred and fifty thousand” and substituting there for the words “one million”.

JUSTIFICATIONS/RATIONALE

To prevent sensitive information from proliferating

CLAUSE 87

THAT Clause 87 be amended in sub-clause (2) by deleting the word “Kenyan” and substituting there for the word “Kenya”.

JUSTIFICATIONS/RATIONALE

For consistency

CLAUSE 88

THAT Clause 88 be amended in sub-clause (1) by inserting the words “but shall required to apply for registration” at the end.

JUSTIFICATIONS/RATIONALE

Prone to abuse If left open

CLAUSE 97

THAT sub-clause (1) be amended in paragraph (a) by inserting the words “or relevant applicable law of a third country” immediately after the word “ measures”

JUSTIFICATIONS/RATIONALE

To enable action to be taken on vessels which fall within the regional fisheries management organization if there is an infringement

CLAUSE 101

THAT Clause 101 be amended in sub-clause (2)

(a) by deleting the words “one million” and substituting there for the words “fifty million”.

(b) by deleting the word “three years” and substituting there for the words “five years”.

JUSTIFICATIONS/RATIONALE

The fine is not commensurate to international standards

CLAUSE 102

THAT Clause 102 be amended in sub-clause (2)

(c) by deleting the words “one million” and substituting there for the words “fifty million”.

(d) by deleting the word “three years” and substituting there for the words “five years”.

JUSTIFICATIONS/RATIONALE

To enable action to be taken on vessels which fall within the regional fisheries management organization if there is an infringement

CLAUSE 105

THAT Clause 110 be amended in sub-clause (2) by deleting the words “five hundred thousand” and substituting there for the words “five million”.

JUSTIFICATIONS/RATIONALE

The fine is not commensurate to international standards

CLAUSE 110

THAT Clause be amended in sub-clause (2) by deleting the words “one million” and substituting there for the words “fifty million”.

JUSTIFICATIONS/RATIONALE

Transshipment without authorization encourages fish fraud and laundering making it an economic crime

CLAUSE 114

THAT Clause 114 be amended in sub-clause (2) by deleting the words “five hundred thousand” and substituting there for the words “ten million”.

JUSTIFICATIONS/RATIONALE

The crime is serious and can huge volumes of destroys fish

CLAUSE 116

THAT Clause 116 be amended in sub-clause (1) by deleting the words “ten years” and substituting there for the words “one year”.

JUSTIFICATIONS/RATIONALE

Reduce the duration for renewal of the licence so that the set standards can be easily monitored and adhered to

CLAUSE 128

THAT Clause 128 be amended by deleting the words “two million” and substituting there for the words “fifty million”.

JUSTIFICATIONS/RATIONALE

The territorial sea ring fenced for the domestic fleet and no foreigner should fish there without permission

CLAUSE 129

THAT Clause 130 be amended in sub-clause (2) by-

- (a) deleting the words “not exceeding one million” and substituting there for the words “not less than five million”;
- (b) deleting the words “not exceeding five years” and substituting there for the words “not less than five years”.

JUSTIFICATIONS/RATIONALE

The fine is not commensurate to international standards

CLAUSE 130

THAT Clause 130 be amended in sub-clause (2) by-

- (a) deleting the words “not exceeding one million” and substituting there for the words “not less than ten million”;
- (b) deleting the words “not exceeding five years” and substituting there for the words “not less than ten years”.

JUSTIFICATIONS/RATIONALE

Transshipment without authorization encourages fish fraud and laundering making it an economic crime

CLAUSE 131

THAT Clause 131 be amended in sub-clause (1) by deleting the words “Oceans and” immediately before the words “Fisheries Advisory Council”.

JUSTIFICATIONS/RATIONALE

For consistency, the advisory Council Board is referred as the Fisheries Advisory Council

CLAUSE 132

THAT Clause 132 be amended_

a) in paragraph (e) by inserting the word “fishing” immediately after the word “unregulated”;

JUSTIFICATIONS/RATIONALE

For clarity purpose

(b) in paragraph (f) by deleting the numbers “139” and substituting therefor the numbers “137”.

JUSTIFICATIONS/RATIONALE

Correct referencing

CLAUSE 133

THAT Clause 133 be amended in sub-clause (2) by inserting the words “Advisory Council and” immediately before the words “Director General”.

JUSTIFICATIONS/RATIONALE

To avoid abuse of procedures

CLAUSE 134

THAT Clause 134 be amended in sub-clause (1) by inserting the words “Kenya” immediately before the words “fishery waters”.

JUSTIFICATIONS/RATIONALE

For clarity purpose

CLAUSE 139

THAT Clause 139 be amended-

(a) in sub-clause (3) by inserting the words “or ordering” immediately before the word “bringing”.

JUSTIFICATIONS/RATIONALE

The authorized officer may order vessel even if he/she is not on board the vessel

(b) by inserting the following new sub-clause immediately after sub-clause (5)-

5A. “Monitoring Control and Surveillance”(MCS) in this section means the

mechanism for implementation of agreed policies, plans or strategies for oceans and fisheries management and includes collection, measurement and analysis of data and information on fishing activities and using the same to specify the terms and conditions under which fisheries resources can be harvested ;checking and supervising fishing activities to ensure all applicable laws and regulations are being observed by the fishers and all licence holders and the components include surveillance on land, air and at sea.

CLAUSE 146

THAT sub-clause (1) be amended in paragraph (a) by deleting the words “take” and substituting there for the word “order”.

JUSTIFICATIONS/RATIONALE

For clarity purpose

CLAUSE 150

THAT sub-clause (1) be amended by deleting the words “The shall establish” and substituting therefor the words “There shall be established”.

JUSTIFICATIONS/RATIONALE

Editorial

CLAUSE 151

THAT sub-clause (1) be amended in paragraph (b) by deleting the numbers “152” and substituting there for the numbers “150”.

JUSTIFICATIONS/RATIONALE

For corroboration

CLAUSE 154

THAT Clause 154 be amended in sub-clause (3) by-

- (a) deleting the words “ not exceeding five hundred thousand” and substituting there for the words “ not less than ten million”;
- (b) deleting the words “ not exceeding three years” and substituting there for the words “ not less than five years”.

JUSTIFICATIONS/RATIONALE

To protect Observers on board foreign fishing vessels

CLAUSE 159

THAT Clause 159 be amended in sub-clause (3) by deleting the words “not exceeding two million” and substituting there for the words “not less than fifty million”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 160

THAT Clause 160 be amended in sub-clause (7) -

- (a) by deleting the words “not exceeding five million” and substituting therefor the words “not less than ten million”.
- (b) deleting the words “ not exceeding five years” and substituting therefor the words “ not less than ten years”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 162

THAT Clause 162 be amended in sub-clause (3) -

- (a) by deleting the words “not exceeding one million” and substituting therefor the words “not less than fifty million”.
- (b) deleting the words “ not exceeding five years” and substituting therefor the words “ not less than ten years”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 163

THAT Clause 163 be amended -

- (a) in sub-clause (3) -
 - (i) by deleting the words “not exceeding two million” and substituting therefor the words “not less than fifty million”;
 - (ii) deleting the words “ not exceeding ten years” and substituting therefor the words “ not less than ten years”.
- (b) in sub-clause (4) –
 - (i) by deleting the words “not exceeding two million” and substituting therefor the words “not less than fifty million”;
 - (ii) deleting the words “ not exceeding ten years” and substituting therefor the words “ not less than ten years”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 189

THAT sub-clause (1) be amended in paragraph (d) by deleting the numbers “171” and substituting there for the numbers “169”.

JUSTIFICATIONS/RATIONALE

Correct referencing

CLAUSE 197

THAT Clause 197 be amended by—

- (a) renumbering the existing provision as sub-clause (1);
- (b) inserting a new sub-clause immediately after the renumbered sub-clause (1)
 - “(2) where a person charged has committed a similar offence in the past, an amount not less than previously charged plus an addition ten percent shall be charged.”

JUSTIFICATIONS/RATIONALE

To cater for continued infringement so that it is deterred

SECOND SCHEDULE

THAT the second schedule to the Bill be amended-

- (a) by deleting the word “Vanga” and substituting there for the word “Shimoni”;

JUSTIFICATIONS/RATIONALE

Vanga is too near the Tanzania border

- (b) by deleting the word “Mkongoni” and substituting there for the word “Mkokoni”;

JUSTIFICATIONS/RATIONALE

Typo

- (c) by deleting the word “Old Port” and substituting there for the word “Mombasa”.

JUSTIFICATIONS/RATIONALE

Mombasa port is considered better since the current facilities like the fish port is being constructed

Approved for tabling.

REPUBLIC OF KENYA



RN
SNA
28/4/15

Paper laid by
the vice chair of the
Departmental Committee
on Agriculture, Livestock
& Co-operatives on
24/04/2015

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION: 2015

THE DEPARTMENTAL COMMITTEE ON AGRICULTURE,
LIVESTOCK AND CO-OPERATIVES



REPORT ON THE FISHERIES MANAGEMENT AND DEVELOPMENT
BILL, 2014.



CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2015

1.0 PREFACE

The Departmental Committee on Agriculture, Livestock and Co-operatives is established pursuant to provisions of Standing Order 216 (5). Under the provisions of Standing Order 216 (5) the Committee is mandated to inter alia:

Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Departmental Committee on Agriculture, Livestock and Co-operatives oversees the performance of the following Ministries and Government department:-

- (i) Agriculture,
- (ii) Livestock,
- (iii) Irrigation,
- (iv) Fisheries development,
- (v) Co-operatives development, and
- (vi) Production and marketing.

Under the above Ministries, the Committee covers the following subjects:

- (i) Agriculture policy
- (ii) Livestock policy
- (iii) Fisheries policy
- (iv) Cooperative societies

Membership

The Committee comprises the following Members:-

- | | |
|--|----------------------|
| 1. The Hon. Adan Mohamed Nooru, MBS, M.P. - | Chairman |
| 2. The Hon. Japhet M. Kareke Mbiuki, M.P. - | Vice Chairman |
| 3. The Hon. Mary Wambui Munene, M.P. | |
| 4. The Hon. Kabando Wa Kabando, M.P. | |
| 5. The Hon. Raphael Letimalo, M.P. | |
| 6. The Hon. Patrick Wangamati, M.P. | |
| 7. The Hon. Francis Munyua Waititu, M.P. | |
| 8. The Hon. Peter Njuguna Gitau, M.P. | |
| 9. The Hon. Maison Leshoomo, M.P. | |
| 10. The Hon. Anthony Kimani Ichung'wah, M.P. | |
| 11. The Hon. Alfred Kiptoo Keter, M.P. | |
| 12. The Hon. Ayub Savula Angatia, M.P. | |
| 13. The Hon. Justice Kemei, M.P. | |
| 14. The Hon. Philip L. R. Rotino, M.P. | |

15. The Hon. Korei Ole Lemein, M.P.
16. The Hon. Silas Tiren, M.P.
17. The Hon. Benjamin Jomo Washiali, M.p.
18. The Hon. (Dr.) Victor Kioko Munyaka, M.P.
19. The Hon. John Bomet Serut, M.P.
20. The Hon. Millie Odhiambo, M.P.
21. The Hon. Fredrick Outa, M.P.
22. The Hon. Maanzo, Daniel Kitonga, M.P.
23. The Hon. James Opiyo Wandayi, M.P.
24. The Hon. Ferdinand Kevin Wanyonyi, M.P.
25. The Hon. Paul Simba Arati, M.P.
26. The Hon. Florence Mwikali Mutua, M.P.
27. The Hon. Hezron Bollo Awiti, M.P.
28. The Hon. John Kobado, M.P.
29. The Hon. Zuleikha Hassan Juma, M.P.

Mr. Speaker ,

The Fisheries Management and Development Bill, 2014 underwent First reading on 3rd June, 2014 and was effectively committed to the Committee on Agriculture, Livestock and Cooperatives as provided for in the Standing order 127(1).

Pursuant to Article 118(b) and Standing Order 127(3) which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 9th June, 2014 informing the public that the Committee was considering the Fisheries Management and Development Bill, 2014 and inviting them to submit any representation they might have on the Bill.

Mr. Speaker Sir,

The Committee held meetings with the State department of Fisheries in the Ministry of Agriculture, Livestock and Fisheries to consider pertinent issues that the Bill was seeking to address however the Committee did not receive any written memorandum.

Mr. Speaker,

The State Department of Fisheries in the Ministry of Agriculture, Livestock and Fisheries Development is responsible for policy formulation in the development and sustainable use of fisheries resources. Currently the sector is guided by Fisheries Act CAP 378, 1989-Revised, 1991. These legislations provides for the management, development, conservation, exploitation and utilization of the fisheries resources

Mr. Speaker,

The objective of this Bill is to provide a comprehensive legislative framework for development, governance and investment of the oceans and fisheries resources

The Bill anchors the interventions provided in the National Oceans and Fisheries Policy, 2008. This policy outlines key intervention that should be made in order to sustainably increase production from the underutilized waters which includes the Exclusive Economic Zones, Lake Turkana, Lake Naivasha, Lake Victoria and the near shore marine waters.

The Bill provides for development of Sanitary and Phytosanitary (SPS) fish quality standards which will make Kenya competitively participate in international trade. The Bill enables Kenya meet its international obligations in fish trade and sustainable fisheries especially the fight against Illegal, Unreported and unregulated (IUU) fishing so that Kenya benefit from fisheries resources within their Exclusive Economic Zones.

Kenya as a member of fisheries organizations or bodies such as Lake Victoria Fisheries Organization (LVFO), and FAO, it is also a signatory to most of the regional and international conventions, protocols and agreements that contain guidelines for management of fisheries resources.

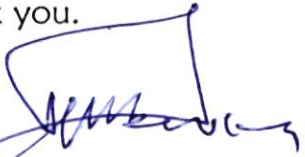
Mr. Speaker,

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support and services extended to the Members to enable the Committee complete this report within the given timelines.

I am grateful for the Members of the Committee whose support enabled the Committee to accomplish this task. Special thanks to the secretariat for their technical support during the compilation of the report.

On behalf of the Committee, and pursuant to Standing Order No. 127 (4) of the National Assembly, It's my honor and privilege to present the Committee's Report on the Fisheries Management and Development Bill, 2014 to House for consideration and adoption.

Thank you.


Signed Adan Mohamed Nooru, M.B.S.
Chairman

for Hon. Adan Mohamed Nooru, MBS, M.P.

CHAIRMAN DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK
AND CO-OPERATIVES

DATE 27/4/15

2.0 COMMITTEE'S CONSIDERATION OF THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL, 2014

The Committee deliberated on the Bill as follows:

Clause 1 to Clause 3	- Proposed amendments
Clause 4	- Agreed to
Clause 5 to Clause 6	- Proposed amendments
Clause 7 to Clause 8	- Agreed to
Clause 9 to Clause 16	- Proposed amendments
Clause 17	- Agreed to
Clause 18	- Proposed amendment
Clause 19 to Clause 20	- Agreed to
Clause 21 to Clause 22	- Proposed amendments
Clause 23 to Clause 25	- Agreed to
Clause 26 to Clause 28	- Proposed amendments
Clause 29 to Clause 37	- Agreed to
Clause 38	- Proposed amendment
Clause 39	- Agreed to
Clause 40	- Proposed amendment
Clause 41 to Clause 43	- Agreed to
Clause 44	- Proposed amendment
Clause 45 to Clause 51	- Agreed to
Clause 52 to Clause 53	- Proposed amendments
Clause 54 to Clause 55	- Agreed to
Clause 56	- Proposed amendments
Clause 57 to Clause 67	- Agreed to
Clause 68	- Proposed amendment
Clause 69 to Clause 79	- Agreed to
Clause 80 to Clause 81	- Proposed amendments
Clause 82	- Agreed to
Clause 83	- Proposed amendment
Clause 84 to Clause 86	- Agreed to
Clause 87 to Clause 88	- Proposed amendments
Clause 89 to Clause 96	- Agreed to
Clause 97	- Proposed amendment
Clause 98 to Clause 100	- Agreed to
Clause 101 to Clause 102	- Proposed amendments
Clause 103 to Clause 104	- Agreed to
Clause 105	- Proposed amendments
Clause 106 to Clause 109	- Agreed to

Clause 110	- Proposed amendment
Clause 111 to Clause 113	- Agreed to
Clause 114	- Proposed amendment
Clause 115	- Agreed to
Clause 116	- Proposed amendment
Clause 117 to Clause 127	- Agreed to
Clause 128 to Clause 134	- Proposed amendments
Clause 135 to Clause 138	- Agreed to
Clause 139	- Proposed amendment
Clause 140 to Clause 145	- Agreed to
Clause 146	- Proposed amendment
Clause 147 to Clause 149	- Agreed to
Clause 150 to Clause 151	- Proposed amendments
Clause 152 to Clause 153	- Agreed to
Clause 154	- Proposed amendment
Clause 155 to Clause 158	- Agreed to
Clause 159 to Clause 160	- Proposed amendments
Clause 161	- Agreed to
Clause 162 to Clause 163	- Proposed amendments
Clause 164 to Clause 188	- Agreed to
Clause 189	- Proposed amendment
Clause 190 to Clause 196	- Agreed to
Clause 197	- Proposed amendment
Clause 198 to Clause 213	- Agreed to

3.0 COMMITTEE'S PROPOSED AMENDMENTS TO THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL, 2014

The Committee considered the Fisheries Management and Development Bill, 2014 as follows:-

CLAUSE 1

THAT clause 1 be amended by deleting the year “2013” and substituting therefor the year “2015”.

JUSTIFICATIONS/RATIONALE

To reflect the correct year

CLAUSE 2

THAT clause 2 be amended by inserting the definitions of the words “barter trade, illegal, unreported, unregulated and management”, in their sequential forms.

JUSTIFICATIONS/RATIONALE

The words had not been defined

CLAUSE 3

THAT Clause 3 be amended by deleting sub-clause (2).

JUSTIFICATIONS/RATIONALE

Has already been overtaken by events

CLAUSE 5

THAT Clause 5 be amended in sub-clause (1) by inserting the words “to uplift the living standards of the fishing communities and to introduce fishing to traditionally non-fishing communities to enhance food security” at the end.

JUSTIFICATIONS/RATIONALE

To promote fishing and consequently reduce poverty by enhancing food security in Kenya

CLAUSE 6

THAT Clause 6 be amended —

- (a) In sub-clause (1) by inserting the following new paragraphs immediately after paragraph (0) —

“(oa) devolution and planning”;

- “(ob) education, science and technology”;
- “(oc) representatives from the fishing industry”;
- “(od) a representative from the Council of Governors”;
- “(oe) a representative from the consumer federation”; and
- “(oe) a representative from the universities”.

JUSTIFICATIONS/RATIONALE

Being a Advisory Council all the stakeholders in the fishing industry should be included

- (b) In sub-clause (2) by inserting the word ‘national’ immediately after the word “government”.

JUSTIFICATIONS/RATIONALE

To be specific as to whether it is the County or National Government

CLAUSE 9

THAT clause 9 be amended—

- (a) In paragraph (d) by deleting the word “implement” appearing immediately after the words “prepare and” and substituting there for the word “monitor”;

JUSTIFICATIONS/RATIONALE

Implementation is the work of the County governments as per the 4th schedule of the Constitution

- (b) In paragraph (e) by deleting the word “and” appearing immediately after the words “provide education” and substituting there for the word “for”;

JUSTIFICATIONS/RATIONALE

Extension services are to be provided by the County governments and not the National government as per the 4th schedule of the Constitution)

- (c) In paragraph (i) by deleting the words “for fisheries conservation, management development and aquaculture production” appearing immediately after the words “at all levels for the Service”;

JUSTIFICATIONS/RATIONALE

Fisheries conservation, management, development and aquaculture production are functions of the County governments and not the National government as per the 4th schedule of the Constitution

- (d) In paragraph (j) by inserting the words “subject to the Treaty Making and Ratification Act” at the end of the paragraph;
- (e) In paragraph (k) by inserting the words “subject to the Treaty Making and Ratification Act” at the end of the paragraph;
- (f) In paragraph (l) by inserting the words “subject to the Treaty Making and Ratification Act” at the end of the paragraph;

JUSTIFICATIONS/RATIONALE

To realign paragraphs to Article 2(6) of the Constitution of Kenya 2010

- (g) In paragraph (o) by inserting the words “that relates to the mandate of the Service” at the end of the paragraph;

JUSTIFICATIONS/RATIONALE

For emphasis as regards to the functions of the Service

- (h) By deleting paragraph (s) and substituting there for the following new paragraph—

“Collaborate with the Fish Marketing Authority establishes under section 204 and other agencies to ensure that trade in fish is carried but in accordance with the provision of this Act”

JUSTIFICATIONS/RATIONALE

For consistency with Clause 10(1) (d))

- (i) In paragraph (u) by inserting the word “aquaculture” immediately after the words “coastal fisheries.”

JUSTIFICATIONS/RATIONALE

Had not been provided for

- (j) In paragraph (w) by inserting the words “and the Constitution” immediately after the words “the provisions of this Act”.

JUSTIFICATIONS/RATIONALE

Procedural since the Constitution is the Supreme law

CLAUSE 10

THAT Clause 10 be amended—

(a) In sub-clause (1)—

- (i) In paragraph (g) by deleting the words “ a transparent and objective” and substituting there for the words “an open, transparent and competitive”;

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

- (ii) In paragraph (h) by deleting the words “ a transparent and objective” and substituting there for the words “ an open, transparent and competitive”;

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

- (b) In sub-clause (3) by inserting the words “and other Government entities” at the end of paragraph (d).

JUSTIFICATIONS/RATIONALE

Financial data, reports and statements can also be provided by other government entities like the Auditor General apart from the Director General

CLAUSE 11

THAT Clause 11 be amended—

(a) In sub-clause (1)—

- (i) In paragraph (b) by deleting the following:
 - “(iv) trade;
 - “(v) mining.”

JUSTIFICATIONS/RATIONALE

There is no nexus/relationship with Fisheries sector and also to reduce the Membership of the Board

(ii) By deleting paragraph (c);

JUSTIFICATIONS/RATIONALE

To reduce the Membership of the Board

(iii) In paragraph (d) by inserting the words “at least five years’ experience” immediately after the words “long-term knowledge and”

JUSTIFICATIONS/RATIONALE

To allow the youths to be employed

(b) In sub-clause (3)—

(i) by deleting the words “at the beginning of each financial year,”

JUSTIFICATIONS/RATIONALE

The seat can fall vacant at any time and not just at the beginning of the financial year

(ii) by inserting the words “and shall elect a woman if the Chairperson is a man and vice versa”

JUSTIFICATIONS/RATIONALE

To meet the gender parity provisions

(c) in sub-clause (4) by inserting the words “and generational equity” immediately after the words “gender parity”.

JUSTIFICATIONS/RATIONALE

To cover the youth

CLAUSE 12

THAT Clause 12 be amended—

(a) In sub-clause (1)—

(i) in paragraph (c) by deleting the words “the permission of” appearing in sub-paragraph (i) and substituting therefor the word “notifying”;

JUSTIFICATIONS/RATIONALE

Notification to the chairperson suffices as opposed to permission

- (ii) by deleting paragraph (v) and substituting therefor the words “is unable, by reason of mental or physical infirmity, to discharge functions as a member of the Board”.

JUSTIFICATIONS/RATIONALE

To prevent malice or mischief

- (b) In sub-clause (2) in paragraph (a) by deleting the word “Minister” appearing immediately after the words “by the” and substituting therefor the words “Cabinet Secretary”.

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 13

THAT Clause 13 be amended—

- (a) In sub-clause (5) in paragraph (a) in paragraph (iii) by deleting the word “or” appearing immediately before the word “member”.

JUSTIFICATIONS/RATIONALE

Editorial

- (b) In sub-clause (6) by deleting the words “or extended” appearing immediately after the words “a person’s immediate” at the end of the paragraph (c).

JUSTIFICATIONS/RATIONALE

Can be abused since in the African culture its very broad

CLAUSE 14

THAT Clause 14 be amended—

- (a) In sub-clause (3) in paragraph (a) by deleting the word “six” and substituting therefor

the word "five";

JUSTIFICATIONS/RATIONALE

For quorum purposes, since the membership had been reduced

- (b) In sub-clause (7) by deleting the word "experts" appearing before the words "as may be necessary" at the end and substituting there for the words "consultants hired by the Board".

JUSTIFICATIONS/RATIONALE

Consultants cannot interfere with the decisions of the Board

CLAUSE 15

THAT Clause 15 be amended

- (a) By deleting paragraph (d) and substituting therefor the paragraph;

"(d) any other relevant area to the position,"

JUSTIFICATIONS/RATIONALE

It can be abused by the Board

CLAUSE 16

THAT Clause 16 be amended—

- (a) In sub-clause (2) by deleting paragraph (d) and substituting therefor the following paragraph:

"(d) Collaborate with the Fish Marketing Authority established under section 204 and other agencies to identify marketing and investments opportunities for the fisheries sector;"

JUSTIFICATIONS/RATIONALE

For purposes of consistency with Clause 10(1)(d)

- (b) In sub-clause (3) by deleting the words "or other person in the service of the Service" appearing immediately after the words "or any other staff member of the Service".

JUSTIFICATIONS/RATIONALE

Was not adding value to the Clause

CLAUSE 18

THAT Clause 18 be amended in sub-clause (1)-

- (a) by deleting the words “armed force” appearing immediately after the words “Kenya Navy or other” and substituting there for the words “Defence Forces”

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 21

THAT Clause 21 be amended in sub-clause (2)—

- (a) by deleting the word “Second” and substituting there for the word “First”;

JUSTIFICATIONS/RATIONALE

For correct reference

- (b) by inserting the word “Secretary” immediately after the word “Cabinet”

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 22

THAT Clause 22 be amended in sub-clause (2) by deleting the word “moneys” and substituting there for the word “monies”.

JUSTIFICATIONS/RATIONALE

Editorial

CLAUSE 26

THAT Clause 26 be amended in sub-clause (4) by inserting the word “Secretary” after the word “Cabinet”.

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

CLAUSE 27

THAT Clause 27 be amended in sub-clause (3) by deleting the word “facilitate” and substituting there for the words “provide supplementary funding for”.

JUSTIFICATIONS/RATIONALE

As per the wording in Clause 28(3) since it communicates better

CLAUSE 28

THAT Clause 28 be amended by—

(a) inserting the following new sub-clause:

“(5) The Members of the Board shall include two fisherpersons from Fresh waters and Marine waters, and aquaculture and Traders Exporters Association and fish processors”.

JUSTIFICATIONS/RATIONALE

For better representation of the fishing communities

(b) inserting a new sub-clause (5) before the words “The Trustees shall be persons who meet the requirements of Chapter Six of the Constitution”.

JUSTIFICATIONS/RATIONALE

To maintain a logical sequence of the provisions of the Bill

CLAUSE 38

THAT sub-clause 2 be amended in paragraph (b) by inserting the words “and any other allowances deemed necessary” immediately after the word “administration”.

JUSTIFICATIONS/RATIONALE

Since they were levies charged, then Beach management unit staff should draw some allowances therein

CLAUSE 40

THAT Clause 40 be amended in —

(a) sub-clause (2) be amended-in paragraph (b) by inserting the words “and respecting county plans” at the end of the paragraph.

JUSTIFICATIONS/RATIONALE

There are planning activities in the counties and therefore it is important to take such plans into account

(b) in sub-clause (10) by deleting the word “two hundred and fifty” and substituting there for the words “twenty”.

JUSTIFICATIONS/RATIONALE

This deterrent measure was seen as too harsh for an ordinary poor fisherman/woman

CLAUSE 44

THAT sub-clause (1) be amended in paragraph (i) by deleting the word “light” immediately after the word “firearms”.

JUSTIFICATIONS/RATIONALE

Light is required in the fishing small fish e.g. omena hence if banned the omena business is automatically lost

CLAUSE 52

THAT sub-clause (2) be amended by deleting the words “five hundred shillings or to a term of imprisonment not exceeding five years” and substituting therefor the words “five million shillings or to a term of imprisonment not exceeding ten years”.

JUSTIFICATIONS/RATIONALE

The Fine previously advanced was seen as small bearing in mind the magnitude of the pollution

CLAUSE 53

THAT sub-clause (1) be amended in paragraph (a) by deleting the word “stations” and substituting therefor the word “ports”.

JUSTIFICATIONS/RATIONALE

For consistency with sub-clause (b)

CLAUSE 56

THAT sub-clause (3) be amended by deleting the words “five million shillings or to a term of imprisonment not exceeding five years” and substituting therefor the words “ten million shillings or to a term of imprisonment not exceeding ten years”.

JUSTIFICATIONS/RATIONALE

The fine is commensurate to international standards

CLAUSE 68

THAT Clause 68 be amended—

(a) In sub-clause (3) by inserting the words “with approval of the Board” immediately

after the words "Director General".

JUSTIFICATIONS/RATIONALE

To prevent decisions from being made by only the Director General

(b) in sub-clause (4) by deleting the word "her" and substituting therefor the words "his or her".

JUSTIFICATIONS/RATIONALE

To avoid gender bias

CLAUSE 80

THAT Clause 80 be amended in sub-clause (3) by deleting the words "five hundred thousand" and substituting there for the words "one million".

JUSTIFICATIONS/RATIONALE

To prevent sensitive information from proliferating

CLAUSE 81

THAT Clause 81 be amended—

(a) in sub-clause (1) by inserting the word "Kenya" immediately before the word "fishery"

(b) in paragraph (a) of sub-clause (1) by inserting the word "Kenya" immediately before the word "fishery".

JUSTIFICATIONS/RATIONALE

To specify the jurisdiction of the source)

CLAUSE 83

THAT Clause 83 be amended—

(a) in sub-clauses (1),(2) and (4) by deleting the word "Minister" and substituting there for the word "Secretary".

JUSTIFICATIONS/RATIONALE

To be consistent with the provisions of the Constitution

(b) in sub-clause (8) by deleting the words “three hundred and fifty thousand” and substituting there for the words “one million”.

JUSTIFICATIONS/RATIONALE

To prevent sensitive information from proliferating

CLAUSE 87

THAT Clause 87 be amended in sub-clause (2) by deleting the word “Kenyan” and substituting there for the word “Kenya”.

JUSTIFICATIONS/RATIONALE

For consistency

CLAUSE 88

THAT Clause 88 be amended in sub-clause (1) by inserting the words “but shall required to apply for registration” at the end.

JUSTIFICATIONS/RATIONALE

Prone to abuse if left open

CLAUSE 97

THAT sub-clause (1) be amended in paragraph (a) by inserting the words “or relevant applicable law of a third country” immediately after the word “measures”

JUSTIFICATIONS/RATIONALE

To enable action to be taken on vessels which fall within the regional fisheries management organization if there is an infringement

CLAUSE 101

THAT Clause 101 be amended in sub-clause (2)

(a) by deleting the words “one million” and substituting there for the words “fifty million”.

(b) by deleting the word “three years” and substituting there for the words “five years”.

JUSTIFICATIONS/RATIONALE

The fine is not commensurate to international standards

CLAUSE 102

THAT Clause 102 be amended in sub-clause (2)

(c) by deleting the words "one million" and substituting there for the words "fifty million".

(d) by deleting the word "three years" and substituting there for the words "five years".

JUSTIFICATIONS/RATIONALE

To enable action to be taken on vessels which fall within the regional fisheries management organization if there is an infringement

CLAUSE 105

THAT Clause 110 be amended in sub-clause (2) by deleting the words "five hundred thousand" and substituting there for the words "five million".

JUSTIFICATIONS/RATIONALE

The fine is not commensurate to international standards

CLAUSE 110

THAT Clause be amended in sub-clause (2) by deleting the words "one million" and substituting there for the words "fifty million".

JUSTIFICATIONS/RATIONALE

Transshipment without authorization encourages fish fraud and laundering making it an economic crime

CLAUSE 114

THAT Clause 114 be amended in sub-clause (2) by deleting the words "five hundred thousand" and substituting there for the words "ten million".

JUSTIFICATIONS/RATIONALE

The crime is serious and can huge volumes of destroys fish

CLAUSE 116

THAT Clause 116 be amended in sub-clause (1) by deleting the words "ten years" and substituting there for the words "one year".

JUSTIFICATIONS/RATIONALE

Reduce the duration for renewal of the licence so that the set standards can be easily monitored and adhered to

CLAUSE 128

THAT Clause 128 be amended by deleting the words “two million” and substituting there for the words “fifty million”.

JUSTIFICATIONS/RATIONALE

The territorial sea ring fenced for the domestic fleet and no foreigner should fish there without permission

CLAUSE 129

THAT Clause 130 be amended in sub-clause (2) by-

- (a) deleting the words “not exceeding one million” and substituting there for the words “not less than five million”;
- (b) deleting the words “not exceeding five years” and substituting there for the words “not less than five years”.

JUSTIFICATIONS/RATIONALE

The fine is not commensurate to international standards

CLAUSE 130

THAT Clause 130 be amended in sub-clause (2) by-

- (a) deleting the words “not exceeding one million” and substituting there for the words “not less than ten million”;
- (b) deleting the words “not exceeding five years” and substituting there for the words “not less than ten years”.

JUSTIFICATIONS/RATIONALE

Transshipment without authorization encourages fish fraud and laundering making it an economic crime

CLAUSE 131

THAT Clause 131 be amended in sub-clause (1) by deleting the words “Oceans and” immediately before the words “Fisheries Advisory Council”.

JUSTIFICATIONS/RATIONALE

For consistency, the advisory Council Board is referred as the Fisheries Advisory Council

CLAUSE 132

THAT Clause 132 be amended_

- a) in paragraph (e) by inserting the word “fishing” immediately after the word “unregulated”;

JUSTIFICATIONS/RATIONALE

For clarity purpose

- (b) in paragraph (f) by deleting the numbers “139” and substituting therefor the numbers “137”.

JUSTIFICATIONS/RATIONALE

Correct referencing

CLAUSE 133

THAT Clause 133 be amended in sub-clause (2) by inserting the words “Advisory Council and” immediately before the words “Director General”.

JUSTIFICATIONS/RATIONALE

To avoid abuse of procedures

CLAUSE 134

THAT Clause 134 be amended in sub-clause (1) by inserting the words “Kenya” immediately before the words “fishery waters”.

JUSTIFICATIONS/RATIONALE

For clarity purpose

CLAUSE 139

THAT Clause 139 be amended-

- (a) in sub-clause (3) by inserting the words “or ordering” immediately before the word “bringing”.

JUSTIFICATIONS/RATIONALE

The authorized officer may order vessel even if he/she is not on board the vessel

- (b) by inserting the following new sub-clause immediately after sub-clause (5)-

5A. “Monitoring Control and Surveillance”(MCS) in this section means the

mechanism for implementation of agreed policies, plans or strategies for oceans and fisheries management and includes collection, measurement and analysis of data and information on fishing activities and using the same to specify the terms and conditions under which fisheries resources can be harvested ;checking and supervising fishing activities to ensure all applicable laws and regulations are being observed by the fishers and all licence holders and the components include surveillance on land, air and at sea.

CLAUSE 146

THAT sub-clause (1) be amended in paragraph (a) by deleting the words “take” and substituting there for the word “order”.

JUSTIFICATIONS/RATIONALE

For clarity purpose

CLAUSE 150

THAT sub-clause (1) be amended by deleting the words “The shall establish” and substituting therefor the words “There shall be established”.

JUSTIFICATIONS/RATIONALE

Editorial

CLAUSE 151

THAT sub-clause (1) be amended in paragraph (b) by deleting the numbers “152” and substituting there for the numbers “150”.

JUSTIFICATIONS/RATIONALE

For corroboration

CLAUSE 154

THAT Clause 154 be amended in sub-clause (3) by-

- (a) deleting the words “ not exceeding five hundred thousand” and substituting there for the words “ not less than ten million”;
- (b) deleting the words “ not exceeding three years” and substituting there for the words “ not less than five years”.

JUSTIFICATIONS/RATIONALE

To protect Observers on board foreign fishing vessels

CLAUSE 159

THAT Clause 159 be amended in sub-clause (3) by deleting the words “not exceeding two million” and substituting there for the words “not less than fifty million”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 160

THAT Clause 160 be amended in sub-clause (7) -

- (a) by deleting the words “not exceeding five million” and substituting therefor the words “not less than ten million”.
- (b) deleting the words “ not exceeding five years” and substituting therefor the words “ not less than ten years”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 162

THAT Clause 162 be amended in sub-clause (3) -

- (a) by deleting the words “not exceeding one million” and substituting therefor the words “not less than fifty million”.
- (b) deleting the words “ not exceeding five years” and substituting therefor the words “ not less than ten years”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 163

THAT Clause 163 be amended -

(a) in sub-clause (3) -

- (i) by deleting the words “not exceeding two million” and substituting therefor the words “not less than fifty million”;
- (ii) deleting the words “ not exceeding ten years” and substituting therefor the words “ not less than ten years”.

(b) in sub-clause (4) –

- (i) by deleting the words “not exceeding two million” and substituting therefor the words “not less than fifty million”;
- (ii) deleting the words “ not exceeding ten years” and substituting therefor the words “ not less than ten years”.

JUSTIFICATIONS/RATIONALE

The penalty for the breach of the section was considered lenient

CLAUSE 189

THAT sub-clause (1) be amended in paragraph (d) by deleting the numbers “171” and substituting there for the numbers “169”.

JUSTIFICATIONS/RATIONALE

Correct referencing

CLAUSE 197

THAT Clause 197 be amended by–

- (a) renumbering the existing provision as sub-clause (1);
- (b) inserting a new sub-clause immediately after the renumbered sub-clause (1)

“(2) where a person charged has committed a similar offence in the past, an amount not less than previously charged plus an addition ten percent shall be charged.”

JUSTIFICATIONS/RATIONALE

To cater for continued infringement so that it is deterred

SECOND SCHEDULE

THAT the second schedule to the Bill be amended-

- (a) by deleting the word “Vanga” and substituting there for the word “Shimoni”;

JUSTIFICATIONS/RATIONALE

Vanga is too near the Tanzania border

- (b) by deleting the word “Mkongoni” and substituting there for the word “Mkokoni”;

JUSTIFICATIONS/RATIONALE

Typo

- (c) by deleting the word “Old Port” and substituting there for the word “Mombasa”.

JUSTIFICATIONS/RATIONALE

Mombasa port is considered better since the current facilities like the fish port is being constructed