

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT
(No. 47 of 2013)

IN EXERCISE of the powers conferred by section 32 (4) and Section 36(4) of the Wildlife Conservation and Management Act, 2013, the Cabinet Secretary for Environment and Natural Resources, makes the following Regulations:-

WILDLIFE CONSERVATION AND MANAGEMENT (MARINE PROTECTED AND MARINE CONSERVATION AREAS) REGULATIONS, 2016

PART 1- PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Wildlife Conservation and Management (Marine Protected & Marine Conservation Areas) Regulations, 2016

(2) These Regulations shall come into force on the date of their publication in the Kenya Gazette.

Interpretation

2. In these Regulations, unless the context otherwise requires -

“Act” means the Wildlife Conservation and Management Act, No. 47 of 2013;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to wildlife;

“Committee” means County Wildlife Conservation and Compensation Committee" the committee established under section 18 of the Act;

“Conservation area” means a tract of land, lake or sea with notable environmental, natural features, biological diversity, cultural heritage, or historical importance that is protected by law against undesirable changes;

“Marine Park” means a protected marine area where no fishing, construction work or any disturbance is allowed unless with written permission of the Director-General;

“Marine protected area” means any park or reserve covering the area of intertidal or sub-tidal terrain, together with its overlying water and associated flora, fauna, historical and

cultural features, which has been reserved by law, and includes any dry land found within the gazetted boundary;

“marine reserve” means a marine protected area where subsistence fishing is permitted;

"Mangrove" means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).

“Service” means the Kenya Wildlife Service established under section 6 of the Act; and

“Tribunal” means the National Environmental Tribunal established under section 125 of the Environment Management and Coordination Act, No. 8 of 1999.

PART II-MANAGEMENT OF MARINE CONSERVATION AND PROTECTED AREAS

Designation of marine protected areas

3. (1) Pursuant to section 32 of the Act, the Cabinet Secretary may, from time to time, on recommendation of the Service and after consultations with the National Land Commission and following proper public consultations declare, by notice in the Gazette, a certain part and zone within the Republic of Kenya, to be a marine protected area.

(2) A marine protected area shall adopt a system of zoning that caters for multiple uses of marine resources for any or all of the following:

- (a) extraction or no extraction zones in respect of marine resources;
- (b) protection of nesting, breeding and foraging areas;
- (c) no take areas in respect of fisheries;
- (d) areas that may be used by local vessels for passage; and
- (e) any other purposes with respect to specified human activities within the zone.

Designation of Marine Conservation Areas

4. (1) Pursuant to section 36 of the Act, the Cabinet Secretary may, upon recommendation of the relevant county government after consultation with the relevant lead agencies, by notice in the Gazette, declare any marine area to be a marine conservation area where the area is-

- (a) rich in biodiversity or harbors endangered and threatened marine species;
or
- (b) a critical habitat for a variety of marine resources.

(2) A marine conservation area established under sub-regulation (1) shall be managed by the relevant county government under an approved management plan prepared through a consultative process with the relevant lead agencies and communities.

(3) Notwithstanding the provisions of sub-regulation (2), a marine conservation area shall adopt a system of zoning that caters for multiple uses of marine resources for any or all of the following-

- (a) extraction or no extraction zones in respect of marine resources;
- (b) protection of nesting, breeding and foraging areas;
- (c) no take areas in respect of fisheries; and
- (d) any other purposes with respect to specified human activities within the zone.

(4) A declaration of a marine protected area shall be made only after the Service has conducted effective public participation consultation within the affected community.

(5) A declaration of a marine conservation area shall be made only after the County government has conducted effective public participation consultation within the affected community.

Protected area notice

5. The Service may, from time to time, display visible notices at the entrance of any marine protected area or marine conservation area-

- (a) prohibiting or restricting the use and access of any person, vehicle, vessel, pet or species or specimen to any protected area or any other place or part thereof; or
- (b) designate the times and conditions during which and subject to which any sports or other activities may be practiced or performed on such land or water area.

Involvement of Communities and other Agencies in marine protection

6. (1) The Service shall take effective measures to ensure community involvement in

marine protection including but not limited to-

- (a) Beach Management Units; and
- (b) hiring of community wildlife scouts to patrol risk areas.
- (c) The County wildlife committees.

(2) The Service shall collaborate with other conservation agencies in marine protection including, but not limited to, the Kenya Forest Service, Kenya Maritime Authorities, Agriculture, Fisheries and Food Authority the Wildlife Research Training and Institute.

PART III- ADMINISTRATION AND PERMITS

Permits for certain undertakings

7. (1) Except on grant of a permit from the Service, no person shall be allowed to injure, damage, take, or possess any living, geological, or cultural, marine resource whether for personal or commercial interest.
- (2) The Service may grant a permit for research in a marine protected area or marine conservation area upon satisfaction of the requirements set down in Regulation 13 and 14 herein.
- (3) Application for a research permit under sub-regulation (2) shall be made under the Wildlife Conservation and Management (Wildlife Research) Regulations.
- (4) An applicant for a research permit in a marine conservation area must after receipt of permit seek further consent from the Committee.
- (5) The Service may designate certain marine protected and conservation areas open to the public at certain times for educational, recreational and other non-consumptive human use consistent with the protection of all marine resources in the areas.

Permits for vessels

8. (1) Any person intending to use a vessel for purposes of research or recreation in a marine protected or marine conservation area must apply for a permit for such a vessel through Form A prescribed in the First Schedule to these Regulations.
- (2) A permit granted under this Regulation shall be in Form B prescribed in the First Schedule to these Regulations.

(3) No vessel, which is propelled by means of a propeller above the water, shall be used in a marine protected or marine conservation area.

(4) No person may paint any vessel in a marine protected area unless the prior written approval by the Service has been obtained.

(5) No person may dispose of any solid or liquid waste, including motor oil into any marine protected area.

Variation of permit

9. The Service may give direction for the changes and steps necessary for effective compliance with the terms of a permit issued under these Regulations.

Revocation of permit

10. A permit issued under these Regulations may be revoked for any of the following reasons, among others-

- (1) fundamental breach of the terms of the permit;
- (2) use of the marine resources for unauthorized purposes;
- (3) if the marine resources in the permit holders custody are in danger due to neglect and unlawful use; and
- (4) if the Service determines that it is in the interest of the long-term conservation of the wildlife resource that the permit be revoked.

provided that the Service shall communicate the intention to revoke a permit and give the permit holder 30 days to show cause why the permit should not be revoked.

Submission of plans

11. Any person who intends to undertake an activity in a marine protected or marine conservation area must submit to the Service for approval, not less than 90 days before the start of the proposed activity, a plan that indicates the specific areas in which the activity is proposed to be carried out and must include-

- (1) a statement of the purpose of the activity;
- (2) a detailed description of the activity;
- (3) the identity of every vessel, if at all, proposed to be used during or in connection with the activity;
- (4) the proposed period or periods during which the activity will take place;
- (5) the location of the activity, expressed in latitude and longitude;

- (6) two copies of all plans and specifications relating to the activity;
- (7) two copies of an Environmental Impact Assessment report considering the environmental impact of the activity, including a consideration of any cumulative environmental effects that are likely to result from the activity in combination with any other past and current activities undertaken in or affecting that area and any other anticipated activities that may be undertaken in or may affect that area;
- (8) a list of every license, permit, authorization or consent obtained or applied for in respect of the activity; and
- (9) the name, address and telephone number and, if applicable, and electronic mail address of the contact person.

Provided that the activity permitted shall be in line and in compliance with the approved management plan for the conservation area.

Approval of plans

12. (1) Subject to sub-regulation (2) herein, the Cabinet Secretary shall within a period of 30 days evaluate and approve the plan as submitted or suggest amendments thereon taking into consideration the following matters -

- (a) the activities to be undertaken thereof;
- (b) area to be covered;
- (c) possibility of monitoring the activities being undertaken; and
- (d) environmental impact of the planned activities
- (e) The comments and recommendations of the county wildlife management committee.

(2) If the Cabinet Secretary makes proposals for amendments, the plan shall not be approved without inclusion of the proposals.

(3) The Cabinet Secretary shall not approve the plan referred to in sub-regulation (1) if the cumulative environmental effects of the proposed activity, in combination with any other past and current activities undertaken in or affecting the marine conservation or protected area and any other anticipated activities that may be undertaken in or may affect that area, are likely to result in disturbance, damage or destruction of the protected area beyond what may be reasonably anticipated to be restored.

Exemptions

13. (1) The Service may grant a permit for the removal of living marine organisms from a marine protected area or marine conservation area in the following circumstances; when-

- (a) the removal does not cause any damage or destruction referred to in these Regulations;
 - (b) the removal causes only damage or destruction referred to in Regulation 8 sub-regulations (1) (2) and (3) that is within the natural variation of the ecosystem in which that area is located;
 - (c) the removal of the living marine organisms is only to an extent that is within the natural variation of the ecosystem in which, as the case may be, is located;
 - (d) fishing for a species of fish authorized by a permit, complies with the terms and conditions of the permit;
 - (e) the permit is for ground fish and the holder of the permit, when fishing complies with the terms and conditions of the permit; and
 - (f) the permit is a valid commercial fishing permit, other than a permit referred to in paragraph (a) or (b), and the holder of the permit, when fishing for a species of fish authorized by the permit.
- (2) In the case of a marine conservation area, a person allowed to remove marine living organisms must seek further consent from the Committee.

Regulated activities

14. (1) The Service may, from time to time, display notices in any marine protected or marine conservation area directing the following activities in these areas:
- (a) visiting hours;
 - (b) types of vessels that may be driven in the areas;
 - (c) speed limits;
 - (d) levels of noise;
 - (e) zones that may be out of bounds;
- (2) In addition to sub-regulation (1) the Service shall regulate the following activities
- (a) trade;
 - (b) activities in the area 30M above the high water mark in accordance with the Act.
 - (c) fishing in the marine reserves using artisanal or traditional fishing methods; and
 - (d) any other activity as the Service or the Committee may elect.

Prohibited activities

15. (1) The following activities are prohibited in a marine conservation and marine protection area-

- (a) all prohibited activities in terrestrial parks;
- (b) disposal of garbage;
- (c) carrying of weapon, unless expressly permitted by the Service;
- (d) collection of shells;
- (e) harvesting of coral;
- (f) construction of structures below 60M above the high water mark in accordance with the Physical Planning Act, Cap 286;
- (g) construction of beach walls and shoreline re-enforcement;
- (h) closing of beach access roads;
- (i) fishing activities inside a marine park; and
- (j) commercial fishing in a marine reserve.
- (k) disturb, damage or destroy or remove any living marine organism or any part of its habitat;
- (l) disturb, damage or destroy or remove any part of the seabed, including the subsoil of the seabed;
- (m) carry out any activity, including depositing, discharging or dumping any substance, or causing any substance to be deposited, discharged or dumped, in the vicinity of that area that is likely to result in the disturbance, damage, destruction or removal of anything referred to in paragraph (1) or (2);
- (n) install or modify a stream crossing;
- (o) drain, dyke, or block a manmade or natural waterway or wetland;
- (p) engage in mineral exploration or extraction; or
- (q) apply pesticides

(2) The warden of the marine park and reserve shall have the authority to declare closed seasons for fishing or any activity based on prevailing conditions as may be necessitated.

Protection of mangrove forests

16. (1) All activities, which are likely to pose a risk to a mangrove ecosystem, shall be subjected to an Environmental Impact Assessment report prior to decisions being made.

(2) Decisions shall only be made after it has been demonstrated that:

(a) the potential advantages outweigh the potential damage should the activity be allowed to commence.

(b) the activities will not lead to degradation, over exploitation or diminish the natural productivity of the mangroves.

(3) Decisions on the use of mangrove ecosystems shall include consideration of the need:

(i) to utilise the mangrove resources so that their natural productivity is preserved;

(ii) to avoid degradation of the mangrove ecosystems;

(iii) to rehabilitate degraded mangrove areas;

(iv) to avoid over exploitation of the natural resources produced by the mangrove ecosystems;

(v) to avoid negative impacts on neighbouring ecosystems;

(vi) to recognise the social and economic welfare of indigenous mangrove dwellers;

(vii) to control and restrict non-sustainable uses so that long term productivity and benefits of the mangrove ecosystems are not lost.

PART IV-FINAL PROVISIONS

Application of other laws

17. These Regulations shall be applied in consonance with the Fisheries Act, Cap 378 and the Regulations formulated under it, the EMCA provisions and other Acts of parliament relevant to the management of natural resources.

Appeal

18. Any person aggrieved by the decision of the Service under these Regulations may prefer an appeal to the Tribunal within a period of sixty days from the date of such decision:

provided that the Tribunal may entertain any appeal after the expiry of the said period of the sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

FIRST SCHEDULE

FORM A (To be completed in Triplicate)

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

Wildlife Conservation and Management (Marine Protected and Marine Conservation) Regulations, 2015

(Regulation 7 (1))

APPLICATION FOR A VESSEL PERMIT

PART I- DETAILS OF APPLICANT

INDIVIDUAL APPLICANTS

NAME OF APPLICANT _____
(First) (Middle) (Surname))

SEX M F

ID NUMBER/ _____

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

CORPORATE APPLICANTS

NAME OF APPLICANT _____

REGISTRATION NUMBER _____

(Attach copy of certificate of registration)

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

Name of the contact person in regard to this application and the position held in the organization _____

FOR ALL APPLICANTS

Have you ever been convicted of any criminal violation relating to wildlife, in Kenya or in any other jurisdiction? Yes No

If yes, please list and explain type of violation and country in which the violation occurred:

Have you ever had a wildlife- related permit or license suspended or revoked?

Yes No

If yes, explain _____

PART II- DETAILS OF PERMIT

TYPE OF PERMIT _____

TYPE OF APPLICATION:

NEW APPLICATION

RENEWAL- PERMIT NUMBER _____ GRANTED ON _____

REASON FOR PERMIT _____

(Commercial, recreation)

DURATION OF PERMIT _____

(Where applicable, state period during the year in months for which permit is required)

PART III-DETAILS OF VESSEL

SIZE OF VESSEL _____

MAKE AND MODEL _____

NUMBER OF PEOPLE ON VESSEL _____

PART IV-DETAILS OF AREA

NAME OF PROTECTED AREA _____

LAND TO WHICH APPLICATION RELATES _____

(Specify and identify each piece of land to which this application relates by reference to lot, location, plot number, county.)

PART V-FINAL

OTHER DOCUMENTS (Check if attached)

- Payment of prescribed fee;
- Location(s) of access;

I hereby apply for a permit and swear by signature that the information submitted in this application and supporting documents is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to criminal penalties. I further state that I will abide by all applicable laws, those governing wildlife and the terms and conditions of this permit.

SIGNATURE OF APPLICANT _____ DATE _____

OFFICIAL USE ONLY

NAME OF RECEIVING OFFICER _____

DATE _____

STATION _____

PERMIT APPROVED DECLINED

If declined, reason _____

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T

FORM B

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

Wildlife Conservation and Management (Marine Protected and Marine Conservation) Regulations, 2015

(Regulation 7 (2))

VESSEL PERMIT



Original



Not Transferable

Permit No. _____

This permit is granted to _____

of ID/ REG NO. _____ and address _____

in accordance with Regulation 5(3) of the Wildlife Conservation and Management (Marine Protected Areas) Regulations, 2015 for _____

(insert reason for permit)

at _____

(insert name of marine protected area)

The holder of this permit is allowed to use the vessel _____

(insert make and model) without contravention of the Act and the Regulations formulated therewith.

This permit is issued subject to the Act and the Regulations and may be suspended, cancelled or revoked should the holder breach any of the conditions of issue and those contained in the Regulations.

_____ being the holder of this permit undertakes to abide by the conditions of this permit and to promptly report to the Kenya Wildlife Service any matter within knowledge that may prejudice the interests, security and welfare of wildlife in Kenya.

Issued on _____

Valid until _____

SIGNED _____

DATE _____

DIRECTOR GENERAL
KENYA WILDLIFE SERVICE

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