

SPECIAL ISSUE 51

LEGAL NOTICE NO. 19

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (WETLANDS, RIVER BANKS, LAKE SHORES AND SEA SHORE MANAGEMENT) REGULATIONS, 2009

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SCHEDULE – Regulated Activities Permitted within Protected Wetlands

THE ENVIRONMENTAL MANAGEMENT AND
CO-ORDINATION ACT

(No 8 of 1999)

IN EXERCISE of the powers conferred by section 42(3) and 147 of [the Environmental Management and Co-ordination Act](#), 1999, the Minister for Environment and Mineral Resources, makes the following Regulations:-

THE ENVIRONMENTAL MANAGEMENT AND
CO-ORDINATION

(WETLANDS, RIVER BANKS, LAKE SHORES AND SEA SHORE
MANAGEMENT) REGULATIONS, 2009

PART1 – PRELIMINARY

Citation

1. These Regulations may be cited as the Environmental Management and Co-ordination (Wetlands, River Banks, Lake Shores and Sea Shore Management) Regulation, 2009.

Interpretation

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

“agriculture” means all farming activities including cultivation, agroforestry, bee keeping, livestock management and aquaculture;

“alien species” means any exotic non-indigenous life forms originating from outside a given ecological location, accidentally or deliberately introduced to the location by human activity or by natural means;

“beach” means a geological landform of loose particles often composed of rock, sand, gravel, shingle, pebbles or cobble, found at the landward margin of a lake or coast line, the lower limits approximating to the position of the highest and lowest tidal water levels;

“beach front” means a strip of land facing or running along a beach;

“Board” means the Board of Management of the Authority established under section 10 of [the Act](#);

“community” means community of people living in a defined geographical area and identified by common history, common culture or common residence in an area, and may comprise of representative members of the organized institutions in the private sector or members of the civil society;

“conservation” means the care and management of a resource so that the resource maintains its ability to fulfill its functions and provide goods and services for present and future generations;

“District Environment Committee” means the District environment committee appointed under section 29 of [the Act](#);

“drainage of wetlands” means the removal or exclusion of water from a wetland by pumping, excavation of channels, planting of fast growing non-wetland trees or plants, abstraction of water from a river entering a wetland, channeling, or reclamation,

“Director-General” includes, for the purposes of these Regulations, a person authorized by the Director General to act on his behalf;

“high water mark” means the historical recorded point of the highest level of contact between the water and the shore or bank, as the case may be;

“hunting” includes the doing of an act immediately directed at killing, wounding, injuring or capture of any animal and the taking or willful interference with any nest, lair or other place where a dependent young animal is born, hatched, or reared;

“inspector” means an inspector designated as an environmental inspector under section 117 of [the Act](#);

“interested parties” includes the community the lead agency, the Provincial Environment Committee, the District Environment Committee and the Local Environment Committee, and any other party having a discernible interest or a concern;

“lake” means a body of fresh or salt water of considerable size, completely surrounded by land, or a natural body or pool of water;

“Lake shore” means the rising ground from the highest normal water mark, bordering or adjacent to a lake in the form of rock, mud, gravel or sand;

“lead agency” means any Government ministry, department, state corporation or local authority in which any law vests functions of control or management of any element of the environment or natural resource;

“livestock” includes cattle, horses, donkeys, mules, pigs, sheep, goats, camels and all other domesticated animals;

“low water mark” means the historical recorded point of the lowest level of contact between the water and the shore or the bank as the case may be:

“management plan” means a management plan for a wetland, riverbank, lakeshore or seashore, prepared under regulation 9;

“Minister” means the Minister for the time being responsible for matters relating to the environment;

“modification” means any man-made change in the natural state of a wetland, riverbank or lake shore;

“natural resources” include resources of the land, air, water, animals and plants including their aesthetic qualities;

“occupier” means a person in possession or control of any land in which there is a wetland, riverbank, lakeshore, sea shore or beach front:

“polluter pays principle” means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;

“pre-cautionary principle” is the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation;

“protected species” means any plant or animal species declared as endangered or threatened species under [the Wildlife \(Conservation and Management\) Act](#);

“endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range due to man-made or natural changes in the environment or as may be declared by the relevant national authority;

“threatened species” means any species of plant or animal is likely to become an endangered species within the foreseeable future throughout or in a significant

portion of its range or as may be declared by the relevant national authority;

“protected wetlands” means an area declared as a protected wetland under these Regulations or any other written law;

“provincial environment committee” means the Provincial Environment Committee appointed under section 29 of [the Act](#);

“restoration” means regeneration or putting back a wetland, riverbank or lake shore or sea shore to the state it was in or near to what it was before it was modified;

“river bank” means the rising ground from the highest normal water mark, bordering or adjacent to a river in the form of rock, mud, gravel or sand and in cases of flood plains include the point where the water surface touches the land, that land not being the bed of the river;

“river” includes a permanent and seasonal river;

“riverine wetlands” includes wetlands along rivers and streams;

“soil” includes earth, sand, rock, shale, minerals, and the flora and fauna in the soil and the derivatives thereof;

“soil erosion” means, a general process whereby soil [articles are worn away or removed by natural agencies;

“sustainable use” means present use of the environment or natural resources which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystems;

“Tribunal” means the National Environment Tribunal established under section 125 of [the Act](#);

“water” includes drinking water, river, stream water course, reservoir, well, dam, canal, channel, lake, swamp, open drain or underground water;

“wetlands” means areas permanently or seasonally flooded by water where plants and animals have become adapted; and include swamps, areas of marsh, peat land, mountain bogs, bank of rivers, vegetation, areas of impeded drainage or brackish, salt or alkaline; including areas of marine water the depth of which at low tide does not exceed 6 meters. It also incorporates riparian and coastal zones adjacent to the wetlands;

“wetland products” includes fish, fibre, fruit, papyrus, grass, soil, stone, gravel, sand and such other things as the Minister may by statutory instrument declare

to be wetland produce:

“Wetland resource use permit” means a permit granted to a person, community or organization to make extractive utilization of wetlands and other non-extractive uses such as tourism and cultural activities in accordance with the grant under these regulations or any other law;

PART II-MANAGEMENT OF WETLANDS AND WETLAND RESOURCES

Application of Part

3. This part applies to all wetlands in Kenya whether occurring in private or public land.

Objectives of Part

4. The Objectives of this Part of the Regulations include-

- (a) to provide for the conservation and sustainable use of wetlands and their resources in Kenya;
- (b) to promote the integration of sustainable use of resources in wetlands into the local and national management of natural resources for socio-economic development;
- (c) to ensure the conservation of water catchments and the control of floods;
- (d) to ensure the sustainable use of wetlands for ecological and aesthetic purposes for the common good of all citizens;
- (e) to ensure the protection of wetlands as habitats for species of fauna and flora;
- (f) provide a framework for public participation in the management of wetlands;
- (g) to enhance education research and related activities; and
- (h) to prevent and control pollution and siltation.

General Principles

5. (1) The following principles shall be observed in the management of all wetlands in Kenya;

- (a) Wetland resources shall be utilized in a sustainable manner compatible with the continued presence of wetlands and their hydrological, ecological, social and economic functions and services;
- (b) Environmental impact assessment and environmental audits as required under [the Act](#) shall be mandatory for all activities likely to have an adverse impact on the wetland;

(c) Special measures shall be essential to promote respect for, preserve and maintain knowledge innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

(d) Sustainable use of wetlands shall be integrated into the national and local land use plans to ensure sustainable use and management of the resources;

(e) The principle of public participation in the management of wetlands;

(f) The principle of international co-operation in the management of environmental resources shared by two or more states;

(g) The polluter-pays principle.

(h) The pre-cautionary principle.

(i) Public and private good.

(2) The obligations under these Regulations shall at all times take into account the provisions of other statutes.

The Standards Enforcement Review Committee

6. (1) The Standards and Enforcement Review Committee established under [the Act](#) shall be responsible for advising the Authority on the wise use, management and conservation of wetland resources.

(2) The functions of the Committee in relation to wetlands shall include-

(a) reviewing the implementation guidelines for wetlands management and making the necessary recommendations to the Authority;

(b) reviewing and recommending regulations or guidelines to be issued by the Authority to developers, occupiers and users;

(c) advising the Authority on any other issues relating to conservation and management of wetland resources.

The District Environment Committee

7. The District Environment Committee shall be responsible for coordinating, monitoring, and advising on all aspects of wetland resource management within the District.

Protected Wetlands.

8. (1) The Minister may, by notice in the Gazette, declare an area to be a protected wetland where such area has national and international significance due to its-

- (a) biological diversity;
- (b) ecological importance;
- (c) landscape;
- (d) natural heritage, or
- (e) aesthetic value.

(2) Upon declaration of an area to be a wetland, the following shall be the only activities be permitted to be carried out in the area-

- (a) research;
- (b) eco-tourism;
- (c) restoration or enhancement of the wetland; or
- (d) any other activities identified in the Management plan.

(3) Notwithstanding sub-regulation (2), a protected wetland may be used for the regulated activities set out in the Schedule.

Procedure for declaration of a protected wetland

9. (1) The declaration of a protected wetland under regulations 8 may be done by the Minister –

- (a) in consultation with the relevant lead agency; or
- (b) On the recommendation of the Authority on its own motion or in consultation with the lead agency, a registered civil society organization or an individual person.

(2) Where the Authority of its own motion or in consultation with the relevant lead agency initiates the process of declaring an area to be a protected wetland under sub-regulation (1), the Authority shall –

- (a) by notice in the Gazette and in at least one newspaper circulating in the local area. notify the public of its intention to declare the area to be a protected

wetland, which notice shall identify and assign terms of reference to a task force which shall be mandated to prepare the wetland management plan;

(b) set up a task to prepare a wetland management plan by, incorporating the views of the people inhabiting the areas contiguous to the wetland;

(c) cause a Strategic Environmental Assessment of the management plan to be undertaken in accordance with [the Act](#);

(d) review the report containing the findings under paragraphs (b) and (c) of this sub-regulation.

(3) Where the Authority is satisfied with the findings under sub-regulation (2) (d), it shall submit its recommendations to the Minister for the gazettelement of the wetland.

(4) Where a lead agency, a member of the public or a registered civil society organization petitions the Authority to initiate the process for declaration of an area as a protected wetland, the Authority shall consider the petition and may initiate the process as set out in sub-regulation (2).

(5) Without prejudice to the foregoing, a petitioner for the declaration of a wetland, may cause a wetland management plan to be developed in consultation with the Authority, and the such costs associated with the activities thereto shall be borne by the petitioner.

(6) Where, following a petition under subregulation (4) and (5), the Authority declines to initiate the process of declaring an area to be a protected wetland, it shall communicate its decision together with its reasons, to the petitioner within 60 days of the decision to decline.

Inventory of Wetlands

10.(1) Within three years from the date of commencement of these Regulations, the Authority shall, in consultation with the relevant lead agency, prepare and maintain an inventory of all wetlands in Kenya and shall cause such measures, including the development of wetland management plans, to prevent and control degradation of such wetlands.

(2) The inventory in sub-regulation (1) shall show for each wetland –

(a) the location;

(b) the type of fauna and flora;

(c) the soil and hydrological characteristic;

- (d) the discharge, volume fluctuations and quality of water where possible;
- (e) the existing uses;
- (f) use of the wetland;
- (g) the density of the population in the wetland catchment, drawing attention especially to those most dependant on the wetland;
- (h) the conservation status;
- (i) the area of the wetland;
- (j) the land tenure system in the wetland catchment, and
- (k) any other factor relevant to the wetland.

(3) The boundaries of such wetlands shall be shown on all official boundary maps of Kenya.

(4) The Authority shall periodically inspect the wetlands to determine the necessity for revision or correction of the inventory maintained under this Regulation.

(5) The Authority may, in consultation with the relevant lead agency register changes in the boundaries of wetlands on maps in the inventory referred to in sub-regulation(3) and make any other necessary changes in the inventory to reflect the actual situation on the ground.

(6) In preparing an inventory of wetlands, the Director – General shall consult with the District Environment Committees with a view to involving the public in determining whether a wetland should be included in the list of wetlands of national or international importance.

(7) The Authority shall, in consultation with the relevant lead agency, publish the inventory of wetlands after very two years, reflecting the current state of wetlands included in the inventory.

Permitted use of Wetlands.

11. The following sustainable uses of wetland resources shall not be subject to these Regulations –

- (a) subsistence harvesting of papyrus, medicinal plants, trees and reeds;
- (b) any cultivation where the cultivated area is not likely to adversely affect the wetland;

- (c) fishing, subject to the provisions of [the Fisheries Act](#);
- (d) collection of water for domestic use;
- (e) hunting, subject to the provisions of [the Wildlife \(Conservation and Management\) Act](#);
- (f) small-scale fish farming; and
- (g) grazing of livestock.

Wetland Resource Use Permit

12. Subject to the provisions of Section 42 of [the Act](#), no person shall carry out any of the activities stipulated therein without a permit issued by the relevant lead agency and an Environmental Impact Assessment License issued by the Authority where applicable.

Temporary Permit

13. (1) The lead agency may, after consultation with the Director-General, grant a temporary permit to an applicant for the use of a wetland where –

- (a) there is need to use water for emergency situations pending the availability of alternative sources of supply; or
- (b) a special research project requires the use of the wetland for a specified period of time;

(2) The temporary permit issued under this Regulation therein shall be valid for a maximum period of three months, and may be renewed for a further period of three months upon application by the holder with reasons to the satisfaction of the Director-General.

Duty of land owners users and occupiers.

14. (1) Every owner, occupier or user of land which is adjacent or contiguous to a wetland shall, with advice from the Authority, have a duty to prevent the degradation or destruction of the wetland, and shall maintain the ecological and other functions of the wetland.

(2) Any person who fails, neglects or refuses to protect a wetland under sub-regulation (1) commits an offence.

PART III – MANAGEMENT OF RIVER BANKS, LAKE SHORES AND SEA SHORE

Application of Part

15. This part shall apply to all river banks, lake shores and to the sea shore in Kenya.

Objectives of Part

16. The objectives of this Part include –

(a) to facilitate the sustainable utilization and conservation of resources on river banks, lake shores, and on the seashore by and for the benefit of the people and community living in the area;

(b) promote the integration of sustainable use of resources in riverbanks lake shores and the seashore into the local and national management of natural resources for socio economic development;

(c) enhance education, research and research related activities; and

(d) prevent siltation of rivers and lakes and control pollution or and other activities likely to degrade the environment.

General Principles.

17. The following principles shall be observed in the management and conservation of river banks, lake shores and the seashore;

(a) Resources on the river banks, lake shores and the sea shore shall be utilized in a sustainable manner;

(b) Environmental impact assessment as required under [the Act](#) shall be mandatory for all major activities on river banks, lake shores and the seashore; and

(c) Special measures, including prevention of soil erosion, siltation and water pollution are essential for the protection of river banks, lake shores and the seashore.

Identification and inventory of degraded river banks, lake shores and sea shores and conservation measures.

18. (1) Within five years from the date of commencement of these Regulations, the Authority shall, in consultation with the relevant lead agencies –

(a) identify river bank, lake shores and the part of the seashore which are at risk from environmental degradation;

(b) prepare and maintain an inventory of the river banks, lakeshore and the part of the sea shore which are at risk from environmental degradation, and cause such measures as are necessary to be taken to prevent and reduce degradation of such areas;

(c) Promote soil conservation measures along river banks, lake shores, and the seashore, including the following-

- i. bunding;
- ii. terracing;
- iii. mulching;
- iv. tree planting or agro forestry;
- v. grassing;
- vi. Soil engineering, compaction and placement of fills;
- vii. zoning and planning;
- viii. building of gabions;
- ix. control of grazing, and
- x. recommending the promulgation of appropriate by-laws by the relevant local authorities.

Resource use permit

19. Subject to the provisions of Section 42 of [the Act](#), no person shall carry out any of the activities stipulated in that section without a permit issued by the relevant lead agency and an environmental impact assessment licence issued by the Authority where applicable.

Duty of District Environment Committee

20. A District Environment Committee within whose jurisdiction an activity likely to degrade the environment, river banks, lake shores or sea shore is taking place, shall –

- (a) in writing require the lead agency to take appropriate action;
- (b) ensure protection of all the riverbanks and shores; and
- (c) assist local communities in conservation and sustainable utilization of the resources and services for ecological, aesthetic and social economic purposes.

PART IV- MESCELLANEOUS

Requirement for Environmental Impact Assessment.

21.(1) A developer intending to undertake a project which may have a significant impact on a wetland, river bank, lake shore or the sea shore shall carry out an environmental impact assessment in accordance with the provisions of [the Act](#).

(2) The developer referred to in sub-regulation (1) shall carry out an environmental audit as provided for by [the Act](#), and the Authority to monitor such activities in accordance with [the Act](#).

Environmental Restoration Orders.

22. The Director – General may issue Environmental Restoration orders pursuant to the provisions of [the Act](#) in order to allow a wetland, riverbank, lake shore or the sea shore area which has been degraded to regenerate.

Duty of Environment Officer

23. An environment officer within whose jurisdiction activities likely to degrade or are degrading, river banks, lake shores or the sea shore are taking place, shall ensure that the communities living near such areas participate in conservation activities and assist them in implementing these Regulations and any other law that protects.

Sanitation

24. (1) Each local authority shall, on the advice of the Authority, make by-laws managing solid waste and waste waters in lake shores, river banks and the sea shore areas in accordance with [the Public Health Act](#).

(2) Where two or more districts share a river bank or lake shore, minimum sanitation standards shall be prescribed by the Authority.

Transition

25. Any person carrying out any activities on a wetland, riverbank, lake shore or the sea shore immediately before the coming into force of these Regulations, shall within six months from the coming into force thereof, take all necessary measures to ensure full compliance with these Regulations.

Improvement Notice

26. (1) Where an inspector has reasonable cause to believe that any person is violating the provisions of these Regulations, the inspector may –

(a) issue against such person an improvement notice in accordance with the provisions of [the Act](#); or

(b) take such measures as are provided for under [the Act](#).

Offences and Penalties

27. Any person who contravenes the provisions of these Regulations commits an

offence and shall be liable on conviction to imprisonment for such term and such fine as are provided for in [the Act](#).

Appeals

28. A person aggrieved by a decision of the Director- General under these Regulations may appeal to the Tribunal in the manner as prescribed in [the Act](#).

Delegation of powers and functions

29. The Director-General may where necessary, delegate any of the functions and powers provided for within these Regulations to any officer of the Authority or to a lead agency.

Operations of Regulations

30. These Regulations shall be in addition and not in derogation from any other regulations relating to the environment made under any other law.

