



**EAST AFRICAN COMMUNITY**

**EAC HARMONIZED FISHERIES AND AQUACULTURE BORDER  
INSPECTION MANUAL**

*for promotion of Regional Fish Trade*

*2<sup>nd</sup> Draft*

**Mwanza, Tanzania.**

**November 2016**

## **DISCLAIMER**

Border Fisheries Inspectors have many tools at their disposal while performing official controls. Therefore this guide does not replace the traditional inspection and MCS tools but instead it complements them.

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## **FOREWORD**

Fish and fishery products are among the most traded food commodities worldwide with international trade worth over US\$100 billion per annum. Fish contributes significantly to the employment, income and food security of millions of people and for many countries fishery exports and imports have become essential to the economy.

In Africa, the African Union (AU) Policy Framework and reform Strategy on Fisheries and Aquaculture adopted in 2014 recognized the importance of intra-regional trade of fish and fishery products but observed that this trade is largely informal with poor infrastructure and insufficient facilitation. The Policy Framework recommended for development of mechanisms for improved intra-regional trade liberalization and strengthening of systems for fish quality and safety including data collection. The border points in the East African Community (EAC) have inadequate systems in place for fish inspection leading to limited traceability, quality assurance, data and information on cross boarder fish trade.

The EAC established Protocol on Custom Union in 2004 with an objective under Article 3 to liberalize intra-regional trade in goods on the basis of mutually beneficial trade arrangement among the Partner States. The Protocol under Article 4 provides for simplification and harmonization of trade documentation, production and exchange of trade statistics and information, while Article 6 provides for adoption of common standards of trade documents and procedures, collection and dissemination of information on trade. In 2010, the EAC established the Protocol on the Common Market to accelerate economic growth and development of the Partner States through free movements of goods among others. Furthermore, in 2012 EAC adopted harmonized Sanitary and Phyto-Sanitary (SPS) measures Volume III (Sanitary Measure for Fish and Fishery Products) as a way to ensure the quality and safety of fish and fishery products and facilitate access to international and regional markets.

The development of the Fisheries and Aquaculture border inspection manual is in line with EAC SPS and will greatly facilitate intra-regional trade by adopting common systems, documentation and procedures at all border posts in the EAC. The manual is based on the core principles of food inspection as well as internationally recognized best practices for safe and wholesome food. It promotes the UN Code of Conduct for Responsible Fisheries and provides the necessary administrative and procedural guidance for the preparation and execution of official controls by Border Fisheries Inspectors (BFI). It is anticipated that the manual will be used to ensure that fish and fishery products entering or leaving the country will not be harmful to the consumer, that fish and fishing inputs are of the standard and quality demanded, and comply with fishery management regulations. The manual provides for collection and dissemination of data and information on trade including alerts in fish diseases and non-compliance cases. The manual highlights procedures, facilities and equipment for inspection, documentation required and procedures for arrest, seizure and disposal in cases of non-compliance.

The manual will be operationalized through necessary laws and regulations in Partner States.

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Secretary General

**EAST AFRICAN COMMUNITY**

## **ACKNOWLEDGEMENTS**

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We appreciate the Sectoral Council of Fisheries and Aquaculture and the EAC Council of Ministers for consideration, endorsement and approval of this manual.

## ABBREVIATIONS

ACP	African Caribbean Pacific
BFI	Border Fisheries Inspector
CA	Competent Authority
CAC	Codex Alimentarius Commission
CCRF	Code of Conduct for Responsible Fisheries
CCP	Critical Control Point
CCTV	Closed-circuit television
CODEX	Codex Alimentarius
COFI	Committee on Fisheries
COMESA	Common market for Eastern and Southern Africa
CPA	Cotonou Partnership Agreement
CAP	Corrective Action Plan
EPAs	Economic Partnership Agreements
EAC	East African Community
EAN	Establishment Approval Number
EU	European Union
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization
FDA	Food and Drug Administration
GHP	Good Hygiene Practices
GIS	Global Information System
GMP	Good Manufacturing Practice
GPS	Global Positioning System
HACCP	Hazard Analysis Critical Control Point
HIV/AIDS	Human Immunodeficiency Virus/Acquired immunodeficiency syndrome
IEC	Information, education and communication
IFM	Integrated Fisheries Management
IGAD	Intergovernmental Authority on Development
IOC	Indian Ocean Commission
IPOA	International Plans of Action
IPOA–Capacity	International Plan of Action for the Management of Fishing Capacity
IPOA–IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
ISO	International Standards Organization
MCS	Monitoring Control and Surveillance
MFN	Most Favored Nation
IUU	Illegal Unreported Unregulated
LTC	Lake Tanganyika Convention
LVFO	Lake Victoria Fisheries Organization
PAH	Polycyclic Aromatic Hydrocarbons
PCB	Polychlorinated biphenyl
PH	Power of hydrogen



POP	Persistent organic pollutants
QMP	Quality Management Programme
RASFF	Rapid Alert System for Food and Feed
RFMO	Regional Fisheries Management Organization
SADC	Southern African Development Community
SOPs	Standard Operating Procedures
SSOP	Sanitation Standard Operating Procedures
SPS	Sanitary and PhytoSanitary
TMA-N	Trimethylaminenitrogen
TVB-N	Total volatile basic nitrogen
UNCLOS	United Nations Convention on the Law of the Sea
US	United States
VMS	Vessel monitoring systems
WTO	World Trade Organization

## DEFINITIONS

This set of definitions covers some issues mentioned in the guide and then other terms that Border Fisheries Inspector (BFI) may come into contact with. The list of key definitions has been taken from various Fish Inspection Regulations, Codex, European Union (EU) and the United States (US) Food and Drug Administration (FDA). Others have been added for the purpose of assisting in the interpretation of this inspectors' guide. A BFI should also be aware of the key definitions set out in the national regulations they are enforcing.

“Audit” means systematic and independent examination to determine whether activities and related results comply with the planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve the objectives;

“Border Post” is the official designated area where fish and fish products are allowed to enter or leave a country. Thus it can be an internal point e.g. airport or physical border point sharing boundaries with other country or Countries;

“Certification” means the procedure by which official certification bodies or officially recognized certification bodies provide written or equivalent assurance that foods or food control systems conform to requirements. Certification of food may be, as appropriate, based on a range of inspection activities which may include continuous on-line inspection, auditing of quality assurance systems, or examination of finished products (Codex - Principles for Food Import and Export);

“Clean water” means: Sea and fresh water which is free from microbiological contamination, harmful substances and or toxic marine plankton in such quantities as may affect the health quality of fishery products and which is used under the conditions laid down in this regulation;

“Chilling” means the process of cooling fish or a fish product to a temperature approaching that of melting ice (0°C);

“Checklist” means a worksheet used during a Compliance inspection and Verification. The elements of a checklist include: the standard or requirement to be met; a task list of questions and actions to be completed; and areas to record objective evidence and findings;

“Capacity utilization” means the degree to which a fishing unit is utilized under normal working conditions within a specified period of time;

“Catch per unit effort” means average catch by a fishing unit over a specified period of time;

“Code of Conduct for Responsible Fisheries” (CCRF) means the BFI Code of Conduct for Responsible Fisheries as adopted by the 28th Session of the FBFI Conference on 31 October 1995;

“Competent Authority” means Fisheries and Aquatic Resources, or other officially-designated national and regional authority having the legal competence to enforce relevant national and international food safety regulations, and to verify and certify compliance with the regulatory requirements. It is therefore the fish inspection, quality control and safety assurance service of Fisheries Resources who is competent in Fisheries and aquaculture matters and who carries out official controls;

“Consignment” means a quantity of fish or fishery & aquaculture products bound for one or more customers in the country of destination and conveyed by one means of transport only;

“Control measure (also known as preventative measure)” means an action performed to maintain adherence to a standard or to eliminate a hazard or reduce it to an acceptable level;

“Corrective action” means the procedure that is to be followed whenever a deviation from a critical limit in a Hazard Analysis Critical Control Point (HACCP) plan occurs or whenever the results of monitoring procedures in respect of a prerequisite program plan, a regulatory action point plan or a quality management program for the importing of fish show that there is non-compliance with the Fish Inspection Regulations;

“Corrective Action Plan (CAP)” means a documented plan of corrective actions required, including time frames, persons responsible for implementing the plan and the processor's verification that the corrective action is working. A Corrective Action Plan is prepared in response to a compliance verification or inspection report, and must be reviewed and accepted by the fish Inspector;

“Critical Control Point (CCP)” means a point in a process operation at which control is to be applied in order to prevent or eliminate a hazard or reduce it to an acceptable level;

“Critical limit” means the maximum or minimum value to which a hazard must be controlled at a critical control point;

“Critical non-conformity” means a failure of a processing establishment's QMP system that may result, or has already resulted, in the production of an unsafe or fraudulent product. (non-conformité critique);

“grading” means the process of assessing fish based on the characteristics of texture, life condition, size, colour, odour, or the absence or presence of other defects;

“Dry salting (kench curing)” means the process of mixing fish with suitable food grade salt and stacking the fish in such a manner, that the excess of the resulting brine drains away;

“Establishment” means any premises where fish or fishery and aquaculture products are prepared, handled, processed, chilled, frozen, packaged or stored, but does not include auction and Wholesale markets in which only display and sale by wholesale takes place;

“Equivalence means” the capability of different inspection and certification systems to meet the same objectives. In food safety systems – achieving similar levels of protection against fish borne hazards and quality defects whatever means of control are used for as long as the food safety objective is achieved (protection of public health and promotion of fair trade practices);

“Finding” means a conclusion drawn with respect to conditions or activities observed based on analysis of the objective evidence gathered during a Compliance Verification;

“Fish” means a vertebrate fish alive or dead and any part of it and includes the young and eggs; “Fisheries co-management” means a partnership that harnesses the knowledge and capacities of those who have a shared interest in the sustainability of a fishery towards promoting this common end. Central to this, is the relationship between resource users and government but it includes the private and civil society, each of which has critical potential contributions to make at different stages;

“Fishing capacity” means the sum total of fishing effort applied by all fishing units on a fishery within a period of time if fully utilized;

“Fishing effort” means a measure of application and efficiency of a fishing unit to catch fish;

“Fish Stock” means the abundance, distribution and composition of a fish species throughout its range in the lake;

”Fishery establishments” means a - facility where Fish and Fish products are cultured, handled, prepared, and/or processed as canned, smoked, dried, salted, chilled, frozen, packed, and stored;

”Fish inspectors” means the authorized and or designated national and regional/ Border inspectors/auditors having the skills and competence to evaluate/assess, verify and monitor fishery and aquaculture establishment including fishing/freezer vessels, fish port and landing sites, auction market, ice plant and cold storage facilities, pre-processing and processing plants to determine compliance with the regulatory requirements on food safety;

“Fish feed establishment” means premises where fish feed are prepared, handled, packaged or stored;

“Fish import license” means license issued in accordance with the relevant regulations of the exporting countries;

“Fish and fish products” means products of any form from capture fisheries and aquaculture. Live fish means roe, fry, adult and or ornamental fish etc;

“Fish market” means the place where holding or displaying for sale, offering for sale, selling, delivering or any other mode of placing a consignment of fish and fish products on the market in or outside a country;

“Fishing unit” means a defined single combination of the craft, crew, gear and means of propulsion;

“Fisheries management” means the integrated process of information gathering, analysis , planning, consultation, decision-making, allocation of resources and formulation and implementation, with enforcement as necessary, of regulations or rules which govern fisheries activities in order to ensure the continued productivity of the resources and accomplishment of other fisheries objectives;

”Food additive” means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its byproducts becoming a component of or otherwise affecting the characteristics of such foods. The term does not include contaminants or substances added to food for maintaining or improving nutritional qualities;

“Food safety” is the assurance that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use.

“Food safety measures” the laws, regulations and administrative provisions governing food in general, and food safety in particular and covers any stage of production, processing, storage transportation and/or sale distribution , of food, and also of feed produced for, or fed to, food producing animals;

”Fresh fishery products” means unprocessed fishery products, whether whole or prepared, including products packaged under vacuum or in a preservation other than chilling;

“Fraud” means a deliberate act or practice conducted in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding the character, value, quantity, composition, merit or safety of a fish product;

“Fraudulent product” means a product that has been intentionally produced, packaged or labeled in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety;

“Fresh product” means a fishery product whether whole or prepared, which has not undergone any treatment to ensure preservation, other than chilling, and includes fish products packaged under vacuum or in a modified atmosphere;

“Fresh fishery products” means Unprocessed fishery products, whether whole or prepared, including products packaged under vacuum or in a modified atmosphere that have not undergone any treatment to ensure preservation other than chilling;

“Frozen product” means a fishery product which has under-gone a freezing process to reach a core temperature of -18°C or less after temperature stabilization;

“Harmonization” means wider use of internationally agreed, scientifically based standards;

“Hazard” means biological, chemical or physical agent or factor that has the potential to cause illness or injury to humans in the absence of its control;

“Hazard Analysis Critical Control Point (HACCP)” means a system which identifies, evaluates and controls hazards which are significant for food safety. HACCP is an internationally recognized approach to food safety management;

“High-risk products” means products that, if not properly prepared or processed, may pose a serious risk to human health and safety;

"Inspector" means an inspector, officer or other person designated by the competent authority responsible for fisheries to exercise the powers of an inspector under the Act or the regulations;

"Inspection” means the examination of food or systems for control of food, raw materials, processing, and distribution including in-process and finished product (Codex - Principles for Food Import and Export);

“Landing site” means officially designated place of landing fish, may be gazetted with a fish inspector or under the management of a community management unit;

"Legislation” means Acts, regulations, requirements or procedures, issued by public authorities, related to foods and covering the protection of public health, the protection of consumers and conditions of fair trading;

“Means of transport” means those parts set aside for goods in automobile vehicles, rail vehicles, aircraft and holds of vessels and containers for transport by land, sea or air;

“Monitoring, Control and Surveillance” is a specialized branch of fisheries management whose purpose is to increase compliance with fisheries rules and regulations by stakeholders and thus contribute to sustainable exploitation of fish stocks;

“Monitoring procedure” means a planned observation or measurement of a parameter, at a specified point or time, which is then compared to a target (i.e., a standard, an operational limit, a critical limit);

“Maximum Use Level” of an additive is the highest concentration of the additive determined to be functionally effective in a food or food category and agreed to be safe by the Codex Alimentarius Commission. It is generally expressed as mg additive/kg of food;

“Non-conformity” means a deviation from a standard, an operational limit, a critical limit or procedure, practice not complying with the Fish Inspection Regulations;

“Objective evidence” means qualitative or quantitative information, facts, or records obtained through observations, measurements, tests, inspections, or interviews made during a Compliance Verification, which can be independently confirmed;

“Official controls” means any form of control that the competent authority or delegated competent authority performs for verification of compliance with food safety and quality assurance legislations (Inspections; certification; sampling, auditing);

“Official sample” means a sample taken by the competent authority for the purposes of official controls;

“Overcapacity” means a situation whereby the current fishing effort is higher than required to ensure a target level of capacity commensurate with sustainable exploitation;

“Packaging” means protecting a fishery product by use of a container, wrapper or any other suitable material;

“Placing on the market” means the holding or displaying for sale, offering for sale, selling, delivering or any other mode of placing on the market in or outside;

“Potable water” means water that meets requirements for drinking water for human consumption;

“Prepared fishery products” means unprocessed fishery products that have undergone an operation affecting their anatomical wholeness, such as gutting, heading, slicing, filleting, and chopping;

“Processed fishery products” means processed products resulting from the processing of fishery products or from the further processing of such processed products;

“Prepared product” means a fishery product which has undergone an operation affecting its anatomical wholesomeness, such as gutting, heading, slicing, filleting or chopping;

“Processing” means subjecting fish or a fishery & aquaculture product to a chemical or physical process such as staking, filleting, skinning, heating, smoking, salting, dehydrating; or marinating of a chilled or frozen product, whether or not associated with other foodstuffs, or a combination of these processes;

“Quality assurance system” means activities, procedures and methods put in place to ensure the production of safe and quality Fish and Fish products;

“Quarantine” means maintaining a product or group of products/animals in isolation with no direct or indirect contact with other products/animals, in order to undergo observation for a specified length of time and, if appropriate, testing and treatment, including proper treatment of the effluent waters;

“Requirements” means the criteria set down by the Competent Authority relating to trade in foodstuff covering the protection of public health, the protection of consumers and conditions of fair trading;

“Residue” means a residue of substances having a pharmacological action, or their metabolites and of other substances transmitted to animal products and likely to be harmful to human health;

“Risk” means the likelihood of the occurrence and the likely magnitude of the hazard and economic consequences of an adverse event or effect to animal or human health;

“Risk analysis” means the complete process composed of hazard identification, risk assessment, risk management and risk communication;

“Risk assessment” means a scientifically based process consisting of hazard identification, hazard characterization, exposure assessment and risk characterization;

“Risk characterization” means the estimation of the incidence and severity of the adverse effects likely to occur in a population or environmental compartments due to actual or predicted exposure to a substance. This may include risk estimation, i.e. quantification of that likelihood. It serves as a summary and description of the results of a risk analysis for a risk manager or the public and other interested parties;

“Revocation of a certificate” means certificate of registration, license or permit issued pursuant to the Fish Inspection Regulations is cancelled and withdrawn for violations of the Fish Inspection Regulations and that all privileges with respect to the certificate of registration, license or permit are removed;

“Target level of fishing effort” means the optimum level of fishing effort that optimizes economic returns from a fishery without compromising resource sustainability;

“Traceability” means the ability to trace, follow and identify uniquely a product unit or batch through all stages of production, processing and distribution;

“Salted” means a process where fish is treated with sodium chloride or a brine solution in order to preserve the fish to the extent that the uptake of salt ceases and the fish does not become tainted or decomposed for a minimum of 6 months if refrigerated without freezing and “salting” has a corresponding meaning;

“Slot size” means lower and upper total length of a fish species allowed for capture, processing and marketing;



"Suspension of certificate" means a certificate of registration, license or permit issued pursuant to the Fish Inspection Regulations is temporarily withdrawn for the specific period of time noted in the notice of suspension and that all privileges with respect to the certificate of registration, license or permit are temporarily removed;

"Validation" means supportive evidence or documentation to confirm that the values of the critical limits for each Critical Control Point (CCP) are sufficient to prevent, eliminate or reduce to an acceptable level, food safety hazards in the final product;

"Verification" Means checking, by examination and the consideration of objective evidence, whether specified requirements have been fulfilled. It may involve a review of a control system or its records performed on a regular basis to determine whether the controls are working as intended and are functioning effectively to control the relevant hazards. Verification activities may include conducting records checks, reviewing procedures, conducting operational simulations (such as mock recalls), internal audits, tests or measurements (independent of monitoring controls), and product sampling (including microbiological & chemical);

"Unauthorised substances or products" shall mean substances or products, the administering of which to aquaculture products is prohibited under the legislation;

"Upstream activities" shall mean official controls undertaken by the CA from the time of harvesting to delivery at the processing establishment;

"Vessel" means any vessel which may be harvesting or transporting fish to the landing site;

"Wet salting (pickling)" means the process whereby fish is mixed with suitable food grade salt and stored in water-tight containers under the resultant brine (pickle) which forms by solution of salt in the water extracted from the fish tissue. The fish is subsequently removed from the container and stacked so that the brine drains away.

## **1.0 INTRODUCTION OF THE MANUAL**

The manual provides for harmonized procedures and information to help facilitate cross border trade to make it easier, more transparent and less costly. It is designed to help ensure fish and fish products that cross borders are of high quality and safe to eat and also to ensure that the fishing and aquaculture inputs are of the required standard. The manual is intended for fisheries and aquaculture inspectors working at border posts, as well as for anyone else involved in fisheries trade such as environmental health departments, extension workers, local authorities and the business operators. It is expected to help understand what is expected in terms of documentation, quality and standards when trading in fish and fishery products as well as fishing and aquaculture inputs across borders.

The manual has been informed by international food safety standards, the East African Community Harmonized Sanitary and Phytosanitary Protocol Volume III and aspects of Monitoring, Control and Surveillance which is traditionally a fisheries resource management tool, but has been adapted here to help combat the trade in Illegal Unreported Unregulated (IUU) fish and fishery products.

### **1.1 Background**

Fish contributes significantly to the employment, income and food security of millions of people and for many countries fishery exports and imports have become essential to the economy. Increased consumer spending power, increased consumption of fishery products, trade liberalization policies, regional free trade initiatives, globalization of food systems, technological innovations, improvements in the efficiency of processing, packaging, transportation and changes in distribution and marketing chains have all helped influence the way in which fishery products are prepared, marketed and delivered to consumers.

The African Union (AU) Policy Framework and Reform Strategy on Fisheries and Aquaculture adopted in 2014 recognized the importance of intra-regional trade of fish and fishery products and EAC as members of AU committed themselves to “accelerate trade by developing fish value chains, promoting responsible and equitable fish trade and marketing in order to significantly harness the benefits of Africa’s fisheries and aquaculture endowments.

In the EAC, the aspects of fish trade are addressed in the EAC Protocol on Custom Union established in 2004 and the EAC Protocol on the Common Market established in 2010. In 2012, the EAC adopted harmonized Sanitary and Phyto-Sanitary (SPS) measures Volume III (Sanitary Measure for Fish and Fishery Products) to specifically address the concerns of fish and fishery products regarding quality and safety.

Fish trade across borders in EAC region has tremendously increased to cover countries within and outside the region, and represents a significant source of foreign exchange earnings, in addition to the sector’s important role in income generation, employment and food security. The

range of products has also expanded to include chilled, frozen, and canned fishery products in addition to fresh, salted, sundried, smoked and deep-fried products. The market outlets have also grown from the solitary fish monger to specialized agents, super markets, retail stores, supermarkets, restaurants and hotels. Fish, depending on the product, may be taken across a border using one of a variety of means, including refrigerated containers and trucks, pick-ups, cars, motorcycles, bicycles, and by pedestrians on foot. Many traders operate outside the formal economy and informal cross border trade is common. Such consignments escape the regulatory framework, set by government, avoiding certain taxes and regulatory burdens. That type of trade goes unrecorded in official government records and revenue is lost to the state. Fish can pass through unofficial cross border routes and avoid customs controls. Fish may also pass through the official border crossing but is under-invoiced (i.e. Reporting a lower quantity, weight or value of goods to pay lower tariffs), misclassified (i.e. falsifying the description to attract lower tariffs), or are mis-declared with a fake country of origin. This leads to a lack of proper revenue collection and the risk of harmful and illegal products being sold on the market. The fish trade is also constrained by inadequate market and trade infrastructure and poor market information which undermine optimizing the social and economic benefits available in regional fish trade. Lack of harmonization and and/or enforcement in trade policies continue to hamper the development of intra-regional trade in fish and fishery products.

The Border Fisheries Inspectors (BFI) are responsible for facilitating cross-border trade. Based at border posts their task is to make sure that fish and fishery products entering or leaving their country will not be harmful to the consumer, are of the standard and quality demanded, and comply with fishery management regulations. Despite their important role, they are faced with a range of constraints which make it difficult for them to carry out their duties effectively. Challenges include inadequate operational funds, lack of training and awareness of regulatory requirements, limited skills and knowledge of modern food safety requirements, limited or no access to laboratory testing facilities, exposure to corrupt practices, heavy workloads, and a lack of overall staff and equipment. Difficulties also arise due to the different legislative requirements between countries with the duplication of export/ import requirements becoming a trade barrier.

The development of this manual presents an opportunity to facilitate intra-regional trade by adopting common systems, documentations and procedures at all border posts in the EAC but also to promote trade to other economic blocs like COMESA, SADC among others and the international market. The manual provides for collection and dissemination of data and information on trade including alerts in fish diseases and non-compliance cases. It highlights procedures, facilities and equipment for inspection, documentation required and procedures for arrest, seizure and disposal in cases of non-compliance

## **2.0 REQUIREMENTS**

This section outlines the basic requirements in terms of institutional support, knowledge, understanding, skills, attitude and behavior a BFI should have as well as the basic facilities and equipment to carry out inspection duties effectively. We start by describing the attributes that the inspection authority should have in order to facilitate the work of BFI.

### **2.1 Institutional framework support**

Authorities responsible for fish safety, fish inspection and quality assurance and enforcement of fisheries legislation, should derive their powers from an Acts of Parliament. Such organizations should be responsible for fisheries and Aquaculture. The authority is sometimes known as the Competent Authority (CA). BFI are usually employees of the CA.

The CA is often legally responsible for regulating and controlling safety and quality of fish and fishery products and aquaculture. They ensure that health conditions for the production and distribution of along the value chain including fish feeds, live fish hygiene, premises, and equipment for fisheries and aquaculture meet the requirements for human consumption, meet the required standards and laws.

A CA is often legally responsible for regulating and controlling food safety activities by carrying out statutory inspection and control of fish and fishery products. They ensure that the health conditions for the production and distribution of fishery products for human consumption, feedstuffs, hygiene, premises, and equipment meet the required standards and laws. A CA certify fish and fish products intended for export and local consumption as well as prevent illegalities, such as the trade in undersize fish, illegal fishing gears. They may also have powers to enforce fisheries management measures and regulate the use of chemical and medicinal products in aquaculture.

A CA should be able to make rapid decisions so that non-compliant products can be prevented from reaching the market. This can be helped by delegating decision making to BFI at border posts so they can make “on the spot” decisions. It is also the responsibility of the CA to make sure a BFI’s knowledge is kept up-to-date.

National legislation provides the legal basis for the implementation of the official controls for fish and fish products. The National legislation differs from country to country, as well as legal systems, but it is implemented through laws and regulations related to food safety, the exploitation of fisheries resources as well as the transport, trade and hygiene. The legislation empowers BFI to carry out their duties.

## 2.2 Border fisheries inspector duties and powers

The primary role of a BFI is to assess the food safety, quality and legality of a product and the associated documentation against the legal requirements (regulations, standards, guidelines). An inspector is expected to take appropriate action(s) to prevent harm to the final consumer and prevent illegal or unsafe products entering the market.

A fish inspector's work is a combination of law enforcement and extension. They are expected to perform, the following duties:

- i. Verify product quality and safety by physical checks where applicable;
- ii. Verify authenticity of key documents such as relevant health certificates , e.g. sanitary health certificate, in-transit certificates, import/export permits, certificates of origin; ensure fish and fisheries products and consignment have necessary imports / export documents
- iii. Inspect hygiene conditions and certification of fish transport;
- iv. Inspect Fishing gears and Aquaculture products
- v. Verify requirements of labeling and packaging;
- vi. Monitor and control the implementation of Good Hygiene Practices (GHP);
- vii. Ensure measuring equipment is periodically calibrated;
- viii. Prepare and submit monthly reports to the CA; Advise the Head of the CA or line manager on all matters concerning controls in fish and fish products in accordance to the law.
- ix. Conduct training, sensitization and awareness raising for key stakeholders on regional trade requirements;
- x. Facilitate cross border trade by building synergy with other authorities and stakeholders including those of neighboring countries;
- xi. Collect statistical data on volumes of fish, fish species, fishing gears, aquaculture inputs and products
- xii. Collect data on size of fish when immature/undersize
- xiii. Arrest offenders, prefer charges, compile case dockets and witness statements and give evidence in court;
- xiv. Coordinate the activities with relevant enforcement agencies such as police in gathering intelligence and enforcing fisheries regulations.

In order to carry their duties effectively, a BFI must have the **powers** to:

- i. Enter, inspect and search, at any reasonable time, any vessel, vehicle, fish processing establishment, or any place where fish are being transported, kept or stored.
- ii. Seize any fish or fish product that is unfit for human consumption, undersize, diseased or otherwise contaminated; or any fish, fish product, vessel, vehicle, equipment or gear used in the commission of the offence or anything that can serve as evidence in proving the committing of the offence.

- iii. Cause arrest of any offender who contravenes the requirement for safety and quality of fish or fishery product, or any other contravention of the legislation.
- iv. Destroy or otherwise render harmless any fish or fishery product which he or she has reasonable grounds to believe is unfit for human consumption, diseased or otherwise contaminated; or, in certain circumstances, due to its perishable nature, any fish or fish product that was seized.
- v. Take samples of any fish or fishery product, aquaculture inputs for purposes of verification of the products.
- vi. Take appropriate samples of non-fishery items such as water, ingredients, fishing gears to verify compliance with regulations;
- vii. Reject entry/import or exit/export of fish and fish products which they have reasonable grounds to believe is unfit for human consumption, diseased, otherwise contaminated or undersize;
- viii. Cancel a sanitary health certificate upon rejection of a consignment;

### **2.3 Immunity and liability of BFI**

The actions and decisions taken by a BFI should be within the provisions of the relevant legislations. Otherwise, actions or decisions that are **CONTRARY TO THE LAW** shall require the responsible inspector to be dealt with as a person.

### **2.4 Border fisheries inspector knowledge, skills, attitude and behavior**

The FBI should also have basic knowledge and (or) working skills of the following topics:

- (i) Knowledge and content of Legislation
- (ii) Pre-requisite programs such as GHP / GMP, SSOP (See Annex 1);
- (iii) Fish quality, post-mortem changes, product risk (See Annex 2);
- (iv) Identification of hazards based on HACCP (See Annex 2);
- (v) Monitoring Control and Surveillance (MCS) (See Annex 3);
- (vi) Inspection procedures (see Inspection section)
- (vii) Legal proceedings (see Inspection section)

BFI should have a detailed knowledge of the content of their **national legislation**, especially:

- i. Overall mandate of the CA;
- ii. Legal status of the inspector as a representative of the CA;
- iii. Procedures for certification of products;
- iv. Powers of inspectors (inspection, search, sampling, seizure, etc);
- v. Immunity of inspectors while on lawful duty;
- vi. Responsibilities of food business operators/ fish traders;
- vii. Responsibilities of inspectors (including commercial confidentiality);

- viii. Technical food safety conditions to be complied with in relation to fishery products;
- ix. Key documents to be controlled;
- x. Criminal liability created by legislative provisions;
- xi. Administrative enforcement tools (such as the issuing of notices or cancellation of licenses and permits).

It should be noted that these provisions may not always be expressed in specific legislation dealing with fishery products, but in other general provisions (for example food law, veterinary law or standards laws). BFI should be also in position to cross reference other legal provisions e.g. regulations on water, public health or the environment. In addition, when instituting prosecution, knowledge of criminal procedure legislation becomes essential. The law of administrative justice, requiring a fair procedure to be followed where a person’s rights may be infringed, is applicable where administrative enforcement action, such as the issuing of a compliance notice against a transgressor, is taken. BFI also need to know what products have recently been withdrawn and what products are not allowed to pass across a border.

BFIs must exhibit a professional image when dealing with fishery business operators and should wear uniforms or have an appropriate means of identification. Table 1 highlights a number of other good skills, attitudes and behavior practices that a BFI should have.

**Table 1: Additional skills, attitudes and behavior**

<b>Competencies</b>	<b>Examples</b>
Professional knowledge and skills	Ability to apply and relate professional knowledge and skills to fish inspection work. For example be able to judge when physical checks are required.
Result oriented	Takes up duty willingly and produces results. Conducts inspection, submits monthly reports, train stakeholders, development and implementation of work plans.
Integrity	Honest, open and provides quality services without need for inducements. Guides traders on official fees, provides receipts for official payments, respects the code of conduct – dress code etc.
Decision making	Makes logical analysis of relevant information, develops appropriate solutions, takes actions and provides reasons for decisions or actions taken. For instance, seizure, detention and disposal of fish and containers transporting fish.
Communication	Ability to send out clear oral and written messages; ability to understand the impact of messages. For instance good writing skills in reports, memos, simplified procedural messages on notice boards, written statements for court actions, training messages, sensitization and awareness messages.
Team work	Cooperates and collaborates with other stakeholders, builds strong teams, shares information. Works closely with customs officers, fish traders

Competencies	Examples
	associations, local government, judiciary (police, magistrates). Builds teams to reduce informal cross border trade.
Confidentiality	Ability to keep secrets and privacy and not use such information for personal gain e.g. divulgence of results of laboratory tests of non-compliant products to the public before official communication is affected.
Transparency	Establish a framework for the greater involvement of stakeholders at all stages of inspection system. This mechanism is necessary to increase the confidence of fish traders and reduce corruption. Procedures should be followed and where there are cases of suspicion on the consignment, though it is within the jurisdiction of the inspector but for purposes of transparency, the inspector is encouraged to involve other regulatory agencies while undertaking inspection.

The inspector should be aware of the different ways in which they could become involved in **corrupt practices and conflicts of interest**, and avoid them. Examples of **corrupt practices** to avoid are:

- i. Receiving payments (in cash or kind) for approval of consignments to pass across borders;
- ii. Fraudulent issuance of any documentation required for cross border trade;
- iii. “Sampling” of products for personal use or gain;
- iv. Allowing a consignment of immature fish to pass across a border;
- v. Alteration of charges due to payments/favors;
- vi. Allowing unlicensed fish traders to import or export consignments of fish and fishery products;
- vii. Alteration of measurements or sample results in exchange for money or gifts;
- viii. Allowing importation of illegal fishing gears;

#### **Tools of minimizing corruption by BFI**

- i. Regular rotation of inspection INSPECTORS FROM One station to another duties;
- ii. Combined inspection missions (two or more inspectors);
- iii. Specific training regarding corruption and corruption avoidance;
- iv. Periodic declaration and transparency of personal assets and incomes;
- v. Inspectors should be counseled on how to deal with corruption, and should be required to sign a copy of a code of good practice to the effect that they have read and understood anti-corruption measures to be used

There are also a number of **conflicts of interest** that a BFI should avoid such as:



- i. Entering into a business relationship with fishery business operators (e.g. consultancy/training contracts, hold shares in fish processing plants or trading operations);
- ii. Investing in fishery sector activities e.g. fish processing, fish trade, sale of fishing gears;
- iii. Requiring official control tests to be carried out in a laboratory in which the CA has a financial interest and where the independence of a decision or judgment could be compromised for financial gain;
- iv. Seeking employment for relatives in fishery businesses;
- v. Supplying fish and other ingredients to fishery business operators.

## 2.5 Facilities needed by Border Fisheries Inspector

The basic services and facilities required for BFIs to carry out their duties effectively are:

- i. Electricity and water supplies;-
- ii. Office space for the inspector;
- iii. Office furniture including filing cabinet;
- iv. Transport and communication facilities
- v. Storage area for equipment and samples;
- vi. Toilet with hand washing facility.

Table 2: shows the tools and equipment a BFI should ideally have and be able to use properly.

**Table 2 List of inspection tools and equipment**

<b>Item</b>	<b>Purpose</b>
Safety bump hat	Personal safety avoiding cross contamination
Shoe covers disposable	Avoiding cross contamination
Protective coat	Avoiding cross contamination
Raincoat Heavy Duty	Inspection in bad weather
Boots Heavy Duty	Wet environment inspection
Folding Knife or multi tool: knife plier scan opener fish hook remover	Cut samples; scrape surfaces, open cans
Ruler plastic	Measure Deviations e.g. size to determine immature fish
Magnifying glass(Illuminated)	Inspect more thoroughly
Stamping devices	Official certification
Infra-red Thermometer	Measure temperature without contact
Digital stick Thermometer Temperatures: -30°C to +150°C	Measure temperature more accurately
pH paper test strips	Measure Ph
pH meter	Inspecting fish products in acidic environment+ canneries

<b>Item</b>	<b>Purpose</b>
End cutting nippers for cans (Stainless steel or nickel plated total length 15-20cm)	During integrity testing of cans
Seam measuring device /micrometer	Metal can integrity testing which measures Graduations 0,01 mm. Range: 0-9,5mm Thickness +width
Flashlight	Inspect dark corners and during night
Tape measure	Measuring length of fish to verify size Will also assist in measure met of the gear sizes
Recording Devices	Cameras, PC or laptop and accessories scanner; photocopier, Printers Modems, Fax
Plastic bags Poly ethylene with specifications of:- 25,4 x 38cm with closing strip 25,4 x 50,8 with closing strip 38 x 50,8 with closing strip	For sampling(fish)
Disinfectant tissues in 70% alcohol – specification of 12 x 200	To clean sampling tools
Cool box separate ice /elements Compartment with water drain hole Sizes: 41x 8 x 24cm to 87x41x43cm contents: 45-90 liters	Keep samples cool
Weighing scales	
Rapid test kits	
Computers and internet connectivity – for communication Personal Device Assistance – PDAs	
Seals for the border – in transit	
chart of fish spp	

### 3.0 INSPECTION

This section describes the preparation, execution and resulting actions of the inspection process. It explains what to look at, what to look for, how to seize a consignment of fish and how to ensure successful prosecution of those dealing in IUU fishing or fishery products. For the purpose of this section, inspection duties at a border post are divided into:

- i. Preparation
- ii. Execution
- iii. Reporting

#### 3.1 Preparation

Herein below is a process pertaining to preparation:-

- i. Identity card;
- ii. Inspection tools e.g., thermometer, flashlight, meter ruler, rapid microbe detection kits, forceps, dissection kit, gloves, disinfectants;
- iii. Sampling kits, Sterile sample bottles and bags and sample collection form;
- iv. Seals for laboratory samples;
- v. Copies of relevant national and importing countries' food regulations and directives ;
- vi. Camera, pens and note book/diary.

And before embarking on an inspection a BFI should

- i. Be medically fit to inspect fish and avoid handling fish when suffering from communicable diseases - common cold, flue, cough, diarrhea;
- ii. Have trimmed nails and without nail polish;
- iii. Wash and disinfect hands before and after handling fish;
- iv. Wear the appropriate clean uniform overcoat, head gear, foot ware, gloves;
- v. Ensure instruments are kept in a clean environment and disinfected before and after use;
- vi. Should not wear perfume or jewelry;
- vii. Don't chew, eat, drink or smoke while carrying out an inspection;
- viii. Don't use hand held gadgets e.g. cellular phone while handling fish.

It is important for BFI to keep daily records of their activities and actions. This is best achieved using a notebook/diary. More information on how to record information and the use of a notebook is given in Annex 4.

#### 3.2 Execution

A BFI carries out two types of checks: physical and documentation. Checks are based on two key principles: **“LOOK AT”** and **LOOK FOR!** A BFI “looks at”: products, personnel, equipment, transportation and documentation. They “look for” whether these meet the required

standards. If there are no defects and standards, regulations are met then the consignment is cleared to pass across the border. If non-compliance is found then the BFI will consider issuing warnings, making arrests, preparing statements, seizing and disposing of consignments and giving evidence in court. **Annex 3** gives further details on checks in the context of MCS. Based on the checks, the BFI is required to complete a Border Action Form (see **Annex 5**).

### **3.3 Physical checks**

Physical checks are checks on the feed or food itself which may include checks on the means of transport, on packaging, labeling and temperature, the sampling for analysis and laboratory testing and any other check necessary to verify compliance with feed or food law. Physical checks are carried out within an internationally acceptable sampling plan.

A physical check involves an inspection of the contents of the consignment to ensure that it presents no animal or public health risk or quality defect, according to standards. For export license holders requesting certification of fish that were not processed in a registered plant, it is required that the consignment be inspected prior to certification. If a producer or trader has a record of non-compliance or the product is from an area associated with a food safety or IUU concern then the BFI may wish to inspect all such consignments. Where consignments are from areas of high risk, such as where there has been a cholera outbreaks such consignment(s) should be subjected to inspection under a Quarantine Law.

Physical checks will normally focus on:

- i. the product, its packaging and label and compliance with standards and regulations;
- ii. whether the use of additives complies with standards;
- iii. whether poisonous or hazardous substances are present;
- iv. fish is of the legal size and species and is not IUU;
- v. fishing gear and equipment consignments are legal e.g. checks on mesh size and gear type;
- vi. Traceability.

#### **Products**

Determining whether products are legal, safe and pose no risk to the consumer is the priority. Regulations and standards should provide the benchmark for decision making. Indicators of quality, health and safety risks of some products are given in **Table 3**.

**Table 3: Products and what to “look for”**

<b>Product description</b>	<b>Look for</b>
Cured products (Salted dried and Smoked products)	Presence of moulds; moisture; maggots/insects Foreign materials Offensive smell Dust Size
Fresh and frozen products	Temperature Color Smell Texture Traceability code Size
Canned products	Type of can Seal is not broken Traceability code Swelling “in” and swelling “out” of the can Expiry date

A score sheet to help assess the quality of fresh fish on ice is given as Annex 6. This format may need to be adapted for different species/products. Such an approach enables the BFI to systematically understand freshness and quality and help the decision making process. Further information on quality, hazards and risks is also given in **Annex 2**.

As well as the product, checks are also made to verify the condition of the transport means used. **Annex 7** provides a checklist to help the BFI carry out checks on transport and decide whether the conditions meet the required GHP standards.

BFI also have a responsibility to monitor IUU practices such as:

- i. Trade in immature/undersize fish and fish products;
- ii. Importation of illegal fishing gears like nets, hooks, monofilament nets, beach seines etc;
- iii. Export, import and transit of fish products.
- iv. Aquaculture inputs

Detection of any of these is classed as non-compliance.

In terms of labels, these should contain specified information, displayed conspicuously and in terms that the ordinary consumer is likely to read and understand under ordinary conditions of purchase and use.

The following specific labeling requirements apply to processed and packaged products:

- i. Common name of the product as “dried, smoked, salted, marinated, chilled, frozen and salt-dried fish” with the specific name of the fish in close proximity.
- ii. complete list of ingredients shall be declared on the label in descending order of proportion;
- iii. net weight in metric units; type and size ;
- iv. name and physical address of the manufacturer/packer/distributor of the product shall be declared on the label;
- v. date of manufacture;
- vi. list of ingredients;
- vii. lot identification;
- viii. expiry date;
- ix. country of origin;
- x. the net weight in metric units;
- xi. storage instructions;
- xii. Instructions on disposal of used package.

If the label of a food bears representations in a foreign language, the label must bear all of the required statements in the foreign language, as well as in English.

Border Fisheries Inspectors shall also ensure that materials used in the packaging of fishery products:

- i. Protect the product from substances that are harmful to health;
- ii. Are strong enough to protect the fish
- iii. Do not affect the taste or smell of the fish
- iv. Are not re-used unless made of materials which are easy to clean and have previously been cleaned and disinfected.

### **3.4 Inspection on Aquaculture Products**

#### **(a) Live fish**

The BFI has the responsibility of ensuring live fish are transported under the right conditions. Parameters to check should include the following:

- i. Water temperature, oxygen and pH levels;
- ii. Signs of notifiable diseases
- iii. Containers used should be easy to clean and disinfect;
- iv. Containers should allow or permit free aeration;
- v. Inner surfaces of a container do not injure or cause damage to the fish;

- vi. Container made of material that does not offer any undesirable attributes to or change the wholesomeness of the contents;
- vii. Containers are clean, labeled and for exclusive use of transporting live fish.
- viii. Accompanied by certificate- letters

**(b) Fish feeds**

Fish feed safety and quality have come to the forefront in recent years, and the feed sector now finds that it needs to be applying food safety and quality measures, which are common practice in human food sector. All feeds transiting any border shall be accompanied by health certificate. Fish feed shall be labelled in a clear and informative manner as to how the user should handle, store and use feed and feed ingredients. Where labels are used a duplicate label shall be enclosed within the container. Every container shall bear the following particulars printed or indelibly inscribed thereon or upon the invoice delivered with the consignment:

- i. Name or description of the feed;
- ii. Name and address or contact information of manufacturer;
- iii. Designation of the feed or concentrate;
- iv. Declared proportions of crude protein, crude fibre, and crude fat, phosphorus, calcium, ash, vitamins A, D and E;
- v. Net weight in kilograms;
- vi. Directions and precautions for use, if a concentrate, the proportion which in it is to be mixed with the basal ingredient;
- vii. Information about the species or category of animals for which the feed is intended;
- viii. Purpose for which the feed is intended ( fry, fingerling; juvenile; grower and brooding)
- ix. list of feed ingredients, including appropriate reference to additives, in descending order of proportion;
- x. lot identification;
- xi. Manufacturing date; and
- xii. “Use before” or expiry date.

**3.5. Traceability requirements**

Although globalization has created substantial opportunities for fish trade, on the other hand there are risks inherent in such a widespread chain. For example, a common fraudulent practice is species substitution, which can be unintentional or intentional for tax evasion, for laundering illegally caught fish or for selling one fish species for a higher-priced species. There are also problems with the use of unauthorized additives and excessive use of permitted additives. Traceability systems are increasingly being used to mitigate these risks by providing evidence to verify the integrity of the supply chain and to remedy failure when a supply chain’s integrity is broken. The role of the BFI is to confirm that batches are traceable back to the supplier and forward to the next customer. This is facilitated by:

- a) Batch codes;
- b) Documented traceability procedures;
- c) Record keeping.

Traceability of consignments is helped by the sanitary health certificate that should accompany a consignment and the following information should be verified at the border:

- i. Country of origin;
- ii. Company name/ Name of supplier;
- iii. Species of fish;
- iv. Product description no. (e.g. skinless skin-on, whole & gutted, steaks );
- v. Batch code numbers;
- vi. Storage condition;
- vii. Net weight;
- viii. Production date;
- ix. Expiry date;
- x. Establishment Approval Number (EAN);
- xi. Date and time of receipt;
- xii. Name of consignor;
- xiii. Name of consignee;
- xiv. Date and time of dispatch;
- xv. Place of origin and final destination.

Batch codes should show: species, area of capture, date of capture, supplying vessel/truck, processing establishment, date and shift of production, minimum size of certain fish species. An example of a batch coding system is given below:

D	W	W	Y	P	X	X	S	S	L	L
---	---	---	---	---	---	---	---	---	---	---

Where:

D	Day of week	1 – Sunday 2 – Monday 3 – Tuesday
WW	Week number	1 to 53
Y	Year	1,2,3 etc
P	Production shift	1 - day 2 - night
XX	Supplier code	01, 02, 03 etc
SS	Species code	Refer codes in annex 10
LL	Landing site	

The batch code enables a consignment to be traced to the supplier and landing site. It is important to note that a batch code can be represented in any form as long as it is able to trace the product up to the source.



### 3.6. Determining the Severity of non-compliance

To determine the severity of any defects or hazards when conducting physical checks it is good practice to categorize observations according to critical, serious, major or minor. Table 4 provides guidance on how to categorize defects. As is shown, issues which are classed as major, serious and critical are associated with non-compliance and warrant further action.

**Table 4 determining the severity of non-compliance**

Category level	Description	Action To Be Taken
<p>Critical (C) poses a threat to the health and safety of consumers</p>	<p>Any condition or practice that can lead to fish becoming unsafe or unwholesome for instance presence of flies on products; offensive odours, evidence of chemicals, temperature abuse, use of un permitted additives or use of excessive levels of permitted additives, evidence of moulds on cured fish; lack of ice, workers with communicable diseases &amp; open wounds, exposing fish to animals such as poultry and animal products. Evidence of communicable disease risk. Evidence of swelling in and out as an indicator of a critical finding in tinned fish. Presence of fish disease signs on live fish for aquaculture products. Presence of moulds on feeds (subject to discussion). Absence of medical health certificates for the fish handlers in the trucks. Presence of moulds on the packaging materials</p> <p>For IUU and conservation purposes immature fish are treated as critical.</p>	<p>Critical Non conformances generally warrant immediate action and these may include: sampling to determine food safety risk of product, product withdrawals and recalls, quarantine of products, arrest of the offender etc., product seizure and destruction, Immediate suspension, withdrawal/cancel certificate. Disinfect transport means before allowing entry. Destroy consignment.</p>
<p>Serious (S) - High risk implication to food safety.</p>	<p>Any condition or practice that precludes proper implementation of hygiene practices leading to products contaminated or spoiled but no safety implications (e.g. dirty uniform, use of sharp equipment; dirty fish containers, use of inappropriate packaging materials, rusty surfaces and equipment; use of dirty/recycled ice); Under declaration of weight; Lack of labels on packages or poor labeling. Local health inspection certificate, Movement permit, Truck license and certificate of approval</p>	<p>Such measures may apply: Issuance of warning Where applicable immediate corrective action such as seizure of consignment; arrest of the offender etc. Temporary suspension of traders' activities. Inspection and official samples taken. Surcharge. Where</p>

Category level	Description	Action To Be Taken
		evidence of numerous serious no conformances are seen then the action for critical nonconformance may apply.
Major (M) Medium risk implication to food safety.	Any condition or practice that precludes general hygiene practices leading to production of contaminated or spoiled product (in adequate icing, delays in loading & unloading, mixed batches; rusty surfaces but not in contact with fish ;)	Any action indicated in “serious” may be undertaken.
Minor (m)	Any condition or practice not conforming to the sanitary requirements but which are not major, serious or critical e.g. spelling errors on documents.	Immediately corrective actions

### 3.6. Document checks

Documentation checks should be conducted for all consignments to verify that the consignment matches that described in the documentation and where necessary check the “health mark” especially fish product imports, which typically identifies the country and establishment identity. If a document is missing, has been falsified or amended un-officially, then this is deemed a non-compliance and further action taken.

Documentation is designed to show fish and fishery products and trader meet food safety, wholesomeness and conformity requirements. Depending on the type of product and where it originates from, a BFI should look at the following essential documents to make sure they are valid, authentic and completed correctly:

- i. Health Certificate (see Annex 8 for contents and example);
- ii. Import /export permit (see Annex 9);
- iii. Certificate of origin (see Annex 10);
- iv. In transit certificate;
- v. Live fish import/export permit.
- vi. Consider prevailing diseases

To help facilitate international trade, the numbers and types of certificates should be limited and based on international (Codex) model certificates. Remember that some countries may also require additional documents to accompany consignments. Where administratively and economically feasible, certificates may be issued in an electronic format provided that the relevant authorities of both the importing and exporting country are satisfied with the security of the certification system.

Checks should be made to verify:

- i. Any copies of the original certificate must be identified as a copy and should be readily distinguishable from the original document;
- ii. All certificates should be signed and stamped using ink that is a different color from the other text on the certificate. The official stamp should bear national official features of country of origin, date, responsible competent authority and stamp number;
- iii. Serial numbers of certificate/ certificate reference number, for easy reference and follow up in case of product recalls and rejections of consignments, fraudulent practices;
- iv. Inspectors name, signature, qualification and designation/title;
- v. Product description (form, size, grade, type, weight of consignment (gross and net weight);
- vi. Type of packaging materials e.g. Styrofoam boxes, waxed cartons, jute bags, baskets, polybags etc;
- vii. Number of packages;
- viii. Country and city of dispatch;
- ix. Country and city of final destination;
- x. Product identification marks(batch codes, traceability codes);
- xi. Dates of manufacture and expiry;
- xii. Details of consignee ( name and address of the person or company that is marketing fish);
- xiii. Details of consignor (name and address of the person or company to whom fish is being sold);
- xiv. Place /location where the certificate was issued;
- xv. Mode of transport - rail , water/sea, air, road;
- xvi. Validity of certificate;
- xvii. Country logo and where possible a water mark.

The original certificate should be identifiable and this status should be displayed appropriately with the mark “ORIGINAL” or if a copy is necessary, this certificate should be marked as “COPY” or terms of this effect. The term “REPLACEMENT” is reserved for use on certificates where, for any good and sufficient reason (such as damage to the certificate in transit), a replacement certificate is issued by the BFI. Page numbering should be used where the certificate occupies more than one sheet of paper. Seal and signature should be applied in a manner that minimizes the risk of fraud

If consignments do not arrive in a container then check some of the consignment to ensure that the stamps, official marks and health marks identifying the country and establishment are present. If there is no establishment then check the name of producer, address, origin and confirm to those in the documentation. If consignments arrive in containers with official seals, they do not need to be opened in order to complete a check provided official seals have been used in the country of dispatch and the seal numbers are clearly recorded in the documentation. If consignments arrive in containers with no official seals or there is doubt over whether the seal number was recorded by the certifying inspector, the container would need to be opened and a check made on the contents to ensure that the stamps, health marks and other marks identifying the country and establishment of origin are present and conform to those on the certificate or document. Physical checks are also recommended.

Health Certificates are obtained from the CA of the country of origin. They must contain specific information as detailed in legislation. The general requirements for all health certificates are that it must:

- i. Be the original copy;
- ii. Have a unique reference number;
- iii. Be fully completed;
- iv. Not have unauthorized alterations or be defaced in any way, i.e. no tippex/whiteout, crossings out etc. However where it has occurred then it should be countersigned and stamped by the official certifying inspector;
- v. Drawn up in language of the Member State where the checks are carried out. If necessary more than one language can be used e.g. English, French, Kiswahili;
- vi. Made out to a single recipient;
- vii. Consist of a single sheet of paper thus printed back to back;
- viii. Signed by the Official representative of the Competent Authority of the country of origin and have an official health stamp of the country of origin in a different color to that of the printing ink;
- ix. Dated in relation to the date of loading of the products for dispatch. Detail the address(s) and approval number(s) of the processing plant of origin, if applicable. This must correspond to that detailed on the packaging;
- x. Certificate should have a validity period.

Where health certificates fail to comply with any of these requirements, the consignment will be refused entry. When a fish consignment reaches a border exit point without a sanitary health certificate, such a consignment may be inspected at the cost of the consignor and issued with a certificate. Where a BFI has reasonable grounds to believe that fish has deteriorated after the date on which it was inspected or that it otherwise fails to meet the requirements of the regulations being followed in that country, the BFI may re-inspect such fish to ascertain the conditions under which a certificate was issued. Where lots are not accessible to an inspector for inspection, or the

fish traders' records of inspection pertaining to the consignment are not available for verification, then the inspection cannot be carried out and a certificate cannot be issued. Under such circumstances the inspector may invoke the powers bestowed upon them to use reasonable force and access the lot for inspection. If such a consignment has the seal, the inspector shall request express authority from the relevant customs authority to break the seal or may request a court order, police action or action by any other relevant authority as per the laws of the country.

### **3.7 Replacing documents**

If certificates are issued to replace lost or damaged certificates, then a statement is required on the replacement certificate to cancel the first certificate. In instances where inspectors are asked to supply certificate(s) for a re-consignment or sub-lot, they must ensure that the product still meets the requirements of the original certificate(s) and that all pertinent product information on the original certificate(s) is incorporated on the certificate(s) for the re-consignment or sub-lot(s). Certificates for re-consigned lots or sub-lots shall not be issued without an inspection of the lot if the interval between the original certificate and the certificate request exceeds:

- i. 7 days for fresh product;
- ii. 30 days for cured fish products (salted , sundried, smoked);
- iii. 180 days for frozen products;
- iv. 365 days for canned products;
- v. The best before date for any product.

Replacement certificates may be issued in legitimate cases if the integrity of the shipment has not been compromised. Such legitimate cases would include, but are not limited to:

- i. administrative errors;
- ii. lost or damaged certificates;
- iii. changes to the consignee; and/or
- iv. Last minute changes to the quantity shipped.

*Note:* Replacement certificates will not be issued for a shipment that has been imported into another country.

### **3.8 Sampling**

As a result of checks, product samples may be sent for further testing. The professional judgment of the BFI will determine if tests are required to verify the safety and authenticity of a consignment. See “precautionary principle” in the non-compliance section and Table 4. Various laboratory tests may be requested for. “On the spot” testing at the border post is also feasible using rapid test kits. It is important to remember that tests are expensive and will delay transit of products. More information on standard and specialized sampling as well as an example of a

sample form is given in Annex 11. Being able to interpret the results of test is also important, Annexes 12 and 13 give microbiological guidance levels for fresh fish and dried fish.

### **3.9 Non-compliance**

Compliance is simply the ideal state where the regulated community, in this instance the transporters and traders in fish and fish products, comply with the law, whether out of respect for the law, understanding the need for compliance, due to incentives to comply, based on the fear for retribution in the case of non-compliance, or because of a combination of these factors. Non-compliance occurs when checks reveal defects, illegalities or health risks associated with the product and / or documentation does not meet the requirements. Ideally, all non-compliance of fisheries laws and standards should be met with some form of enforcement action or consequence. For example, if an inspection is made to verify product safety and quality at a border point and the consignment of fish is found not to be of the grade marked on the container, any inspection marks and quality designations on the container were removed or obliterated, the import /export certificate issued for such fish and fish product is deemed null and void.

Modern food inspection systems based on risk assessment establishes the precautionary principle as an option open to BFI. The precautionary principle is applied when BFI are given reasonable grounds for concern that an unacceptable level of risk to health exists but the supporting information and data may not be sufficiently complete to enable a comprehensive risk assessment to be made. When faced with these circumstances a BFI, may act to protect consumer health based on the precautionary principle, while seeking more complete scientific and other data via sampling for example. Such measures have to comply with the normal principles of non-discrimination and proportionality and should be considered as provisional until such time that more comprehensive information concerning the risk can be gathered and analyzed. Examples include the quarantine of live fish from areas of disease outbreaks e.g. *cholera*; rejection of entry of fishery products originating from countries with recent nuclear leakages; and rejection of a consignment which does not have the requisite documentation.

Faced with non-compliance, actions to take include:

- i. Issue an oral or written warning, the issuing of inspection reports with an opportunity to rectify instances of non-compliance, the imposition of conditions in new permits, amendment of a permit until such time as the applicant is in full compliance, or the cancellation of a permit or other authorization;
- ii. Seize any fish or fish product that is unfit for human consumption, diseased or otherwise contaminated; or any fish, fish product, vessel, vehicle, equipment or gear used in the commission of the offence or anything that can serve as evidence in proving the committing of the offence;
- iii. Cause arrest of any offender who contravenes the requirement for safety and quality of fish or fishery product, or any other contravention of the legislation;

- iv. Destroy or otherwise render harmless any fish or fishery product which he or she has reasonable grounds to believe is unfit for human consumption, diseased or otherwise contaminated; or, in certain circumstances, due to its perishable nature, any fish or fish product that was seized;
- v. Take samples of any fish or fishery product for purposes of verification of the products. (Suspicion, food safety alert notifications, product recalls, disease outbreaks e.g. cholera; hepatitis; radioactive contamination, chemical contamination due to mining activities, industrial waste pollution etc.);
- vi. Take appropriate samples of non-fishery items such as water, microbial swabs, ingredients to verify compliance with regulations;
- vii. Reject entry/import or exit/export of fish and fish products which they have reasonable grounds to believe is unfit for human consumption, diseased or otherwise contaminated;
- viii. Cancel a sanitary health certificate upon rejection of a consignment;
- ix. Reject entry/ export of non-conforming fish feeds and seed
- x. Alert responsible authorities and other border points;
- xi. Increase frequency of inspections of such fishery products or consignments from such country of origin;
- xii. When the product may have reached the consumer, the operator must inform the consumers of the reason for its withdrawal, and if necessary, recall from consumers products already supplied to them when other measures are not sufficient to achieve a high level of health protection.

Whatever action is taken should be documented using a Border Action Form, as given in **Annex 5**.

Simply issuing a warning is only appropriate in less serious matters. This would be where the offence is of a minor nature, posed little or no harm to the consumer, and where the perpetrator did not act intentionally or recklessly, and has clearly demonstrated the desire to comply. It can also be useful where there has been amendment in the legislation to provide a period to educate the industry about newly created obligations or offences.

Prosecution can be instituted whenever the particular action or activity must constitute an offence (the principle of legality); and there is an identified accused (or more than one); and there are sufficient, admissible and reliable evidence available to prove the charges against an accused, and therefore a realistic prospect of conviction. In the case of minor contraventions, the legislation of many countries allow for the setting of admission of guilt fines, or a compounding process. Some countries also have a compounding process for more serious offences, or a similar plea and sentence agreement (also called a plea-bargain process).The CA should have written procedures to define their role within the operation of withdrawal and recall procedures.

Withdrawal from the market requires the food business operator to:

- i. cease marketing the product or batch concerned where any affected products or batches of product held is in stock;
- ii. Inform customers of the problem so that any affected products or batches of product held in stock are not marketed.

Recall from the market requires the food business operator to:

- i. undertake the above actions as for a product withdrawal;
- ii. ensure that any products which may have reached the consumer, but have not been consumed, are not consumed, and are returned to the seller;
- iii. Provide information to consumers regarding actions to take should the product have been consumed.

In both cases there is a need for the food business operator to work under the guidance of, and in collaboration with, the CA.

The main aims of prosecution are retribution and individual and general deterrence, but in the field of environmental crime, including fisheries contraventions, progressively also to ensure that the perpetrator carries the cost of prevention and rehabilitation, and to eliminate any advantage gained by the commission of such an offence. Many countries are having already, or are in the process of, adding such additional orders that can follow on a conviction. Conviction can in some cases, also lead to the cancellation of a permit or authorization. In addition, conviction can also lead to the forfeiture of the fish or fish products confiscated, or the vessel, vehicle or equipment used in the commission of the offence.

Although criminal prosecution can be a relatively inexpensive process, some cases require intensive investigation and case development, making the process quite resource intensive. Criminal cases often take very long to conclude and involve external role players in the form of the prosecution and judiciary. The high burden of proof means that such cases are not always successful. Effective detection of offences, the initial gathering of evidence (both the task of the fisheries inspector), thorough investigation, successful prosecution and a sufficiently severe sentence, are all essential components in setting an example to would-be offenders, and therefore for the criminal enforcement process to act as an effective deterrent.

Further details of the actions to be taken to achieve compliance for violation(s) are now described.



### **3.9 Warnings**

A written warning is given when the non-compliance is not addressed, or is likely to result in significant hazard or serious harm. The significant or serious harm would include health or safety risks, or fraud. The written warning must contain the following information:

- i. the section(s) of the fish regulation and other relevant national regulations violated;
- ii. summary of the facts and a description of the violation;
- iii. the time limit within which the trader must comply with the warning;
- iv. Statement that if the warning is not heeded or there are repeated violations, alternate enforcement action will be taken.

### **4.0 RULES OF ENGAGEMENT FOR MONITORING CONTROL AND SURVEILLANCE ACTIVITIES.**

#### **4.1 Procedures to cause Arrest of Suspects/exhibits**

- i. preparation for a planned MCS with relevant interagency
- ii. Introduce oneself to the suspect by showing the Authority Card of respective Partner State;
- iii. Ask for relevant information and documentation related to the activity leading to suspected infringement for verification;
- iv. Validate the information and documentation availed (if any) against the goods, person or thing in question;
- v. if he/she refuses to give such information or fails to give such information to the satisfaction of the authorized officer; or
- vi. if the BFI has reasonable grounds for believing that unless arrested the offender may escape or cause an unreasonable amount of delay, trouble or expense in being made answerable to justice he may arrest him forthwith or cause arrest by linking with other law enforcement agencies;
- vii. if suspect resists arrest, reasonable force may be applied commensurate to the magnitude of resistance;
- viii. the BFI hands over arrested suspect along with exhibits to the nearest police station or police post and makes a statement on suspected infringement by specifying the charges;
- ix. the BFI notes down the reference number of the case being lodged;
- x. the receiving police officer acknowledges the receipt of suspect and exhibits by signing the seizure form;
- xi. In case of suspects being at large, the BFI should apply to court for a court order to dispose of impounded items.

#### **4.2 Procedure for Inspection and Search**

- i. Organize a small boarding party to approach and mount suspect vehicle or vessel, establishment, baggage etc;
- ii. Communicate intentions to inspect the said item
- iii. Boarding party team leader introduces inspection team by showing authority card;
- iv. Ask for relevant information and documentation related to suspected infringement for verification;
- v. Politely ask suspect to open baggage, package, vehicle hold, vessel hold, tent, premises or property belonging to or occupied by such person or to anyone in his employment; and
- vi. Conduct systematic search for suspected infringement based on the fisheries laws and regulations
- vii. Take sample measurements randomly to verify and cross check for non-compliance
- viii. Seizure forms applicable to the relevant laws to be issued to suspects in case of seizure of goods, fish or fishery products.
- ix. The exhibits and suspects should be handed over to the nearest police and statements made to that effect
- x. The BFI should be ready to testify in court as a technical officer
- xi. For each inspection whether compliant or not ensure you fill inspection form and submit to CA for database compilation (**Annex 5**)

#### **4.3 Procedures of Halting Vehicles**

##### **Halting Vehicles**

- i. The Authorized Officer (BFI) shall inform the Police for support to erect a roadblock after communicating the nature and gravity of suspected infringement;
- ii. In case of hot pursuit, the BFI shall seek the assistance of the nearest Police outpost or highway patrol and inform the relevant authorities
- iii. the vehicles are halted and the driver/relevant party informed of suspected liability under the Act and request for boarding the vehicle for search and inspection;
- iv. Vehicles found to have infringements are requested under escort to park at the nearest police station where court proceedings begin

#### **4.4 Procedure for Measurement and Inspection of Fish and Fishery products**

##### **Fresh/Dried/Cured Fish or Fish Product**

- i. It is mandatory that the person in charge of a consignment or batch of fresh fish should produce such fish to the authorized officer on demand;
- ii. The BFI must maintain minimum personal hygiene requirements as provided for in the fish inspectors' manual;

- iii. The BFI must utilize the Fish Inspectors Guide/Manual described under Fish (Quality Assurance) Rules to assist in the process of inspection;
- iv. Locate a clean platform for offloading fish before sample measurement or 100% measurement as deemed by the BFI;
- v. Make sure there is enough ice if fresh fish to maintain the cold chain between seizure and measurement period with the ice to be provided by the suspected party;
- vi. Use tape measures or measuring board and measure fish length from nostril to tail end for as many a sample as deemed representative (about 10% or 100%);
- vii. Fish measurements below 20 inches (Nile Perch) and below 11 inches (Tilapia) are non-conforming to the regulations.
- viii. Measurement must be concluded within a reasonable time after offloading of the fish.

#### **4.5 Procedure of Disposal of Fish and Fishery products/impounded goods**

- i. Fill disposal forms (**Annex 17 (b) & Annex 18**) with particulars of the items and submit it to the Magistrate to obtain a Court Order.
- ii. The Magistrate gives authority and specifies the manner for destroying the items by signing the inventory form, which is in effect the Court Order.
- iii. BFI disposes off items as by Court Order in the presence of the following witnesses: relevant authorities and local leadership for example: Magistrate or his representative, the Police Officer, District Fisheries Officer, area Councilors, press, or the public
- iv. Keep record of the activity and submit report to the head of competent Authority
- v. Immature Fish and fishery products can be disposed upon acquisition of a court order by burning if not fit for human consumption or distributing to the public but ensure you retain distribution forms duly stamped by the receiving institutions.
- vi. Fishing gears along the shore and on the waters, fishing boats below 28 feet can be destroyed on site by burning, cutting, disabling or as the BFI deems fit however ensure you retain photographic evidence for future reference
- vii. Fishing gears on transit can be destroyed upon acquisition of a court order

#### **4.6 Procedures of Selling Fish and Fishery products/impounded goods**

- i. Seek Court Order (except on perishables) for the disposal of the seized fish.
- ii. If perishables the BFI may sale the fish and declare the proceeds to court not less than 48 hours with clear documentary evidence
- iii. Using the established standards, the BFI separates the immature fish from mature fish.
- iv. Immature fish is given freely to public institutions e.g. schools, hospitals, barracks, prisons etc. once a Court order has been obtained for disposal and if the opinion of the BFI the fish is safe for consumption”.
- v. The BFI ensures that special forms are duly filled and signed and stamped by the recipients.

- vi. The mature fish may be sold by public auction and record proceedings of sale in official receipt and give original copy of the receipt to the offender and a copy to the purchasers.
- vii. The proceeds are receipted as government revenue and it is the receipt and funds accrued that is produced in court.
- viii. Keep records of the sales and submit report to Commissioner for Fisheries.
- ix. No immature fish is to be sold
  - x. If Court issues an order to sell immature fish, notify immediately the Commissioner to file an appeal

#### **4.7 Procedures of inspection of fishing gear imports**

- i. Fisheries border inspectors shall be required to record the type, quantity and purpose of the gears on every consignment of fishing gears entering the country and a copy submitted to CA and triplicate retained at the border
- ii. The FBIs shall not clear consignments if annual license, import permit or authorization from head CA is lacking
- iii. In case of noncompliance to fisheries regulations, the FBIs will immediately alert the head CA to provide guidance on how to proceed
- iv. The FBIs shall be required to submit the hard copies of the inspection forms and monthly report to the CA for data entry storage and analysis.

#### **4.8 Application of Court Orders**

- i. All applications for Court Orders shall be done by the head CA for Fisheries through the BFI
- ii. BFI shall seek guidance from the Head CA in applying for a Court Order.
- iii. Preferring charges shall also be guided by Head CA in applying for a Court Order

#### **Preferring Charges**

A charge is a written statement of complaint brought against an accused person in a court of law.

#### **Why do we have charges?**

To inform the accused person the nature and the particulars of the offence with which he has been charged so as to enable him prepare for his defense.

#### **Parts of a charge**

A charge consists of two parts:

- i. The statement of the offence, which states the law and particular section(s) therefore, breached.

- ii. The particulars of the offence which consist of the acts/omissions that makes up the offence. The particulars therefore contains:
  - a. The date and place where the offence was committed,
  - b. The subject matter of the charge, and
  - c. The identities of the complainant and the accused.

### **Rules for drafting charges**

- i. The charge starts with a STATEMENT OF OFFENCE, which describes shortly; in ordinary language the important parts of the offence and the section of the relevant law.

For example:

### **Charges**

- 1. *Importation of illegal fishing gears-monofilament nets Obstructing an authorized officer*
- ii. This is followed by the PARTICULARS OF THE OFFENCE, again in simple language giving only those details, which are required by the law. To follow up our example above:

### **Particulars**

*Okwonko Oaga On the 6<sup>th</sup> day of November 2016 at around 12.45 pm at Malaba border in Tororo district*

- 1. *Were found with illegal fishing gears, monofilament nets in his consignment contrary to Sec--- of the Fisheries Act Cap 197*
- 2. *You willfully obstructed an authorized officer in exercise of his duties by preventing him from inspecting your transport vehicle contrary to section --- of the Fisheries Act Cap .....*
- iii. Where the charge sheet contains more than one count, the counts must be numbered consecutively.
- iv. It is important to avoid duplicity in a charge. This means where, in the section of law, there are alternative offences, it must be stated clearly in the count, which of the alternative offences the accused is alleged to have committed so that he is able to prepare his defense properly. (See **under annex 23 for example of charge sheet**)

#### **4.9 Seizure and disposal of fish and Fishery consignments**

A BFI must be able to search, Inspect and seize products and/or exhibits in a lawful manner that does not contravene Fisheries laws and regulations. If a BFI believes, on reasonable grounds, that an offence against a regulation has been committed, the inspector may seize COSNSISGMENTS and the transport means used by the consignment A. All fish consignments seized under above conditions shall be detained for a period as provided in respective Partner State regulations. The BFI should report to head CA ON THE seizure and immediately launch court proceedings. It's upon application and acquisition of court order to release or detain the seized consignment.

#### **Quarantine consignments / release under seal (*Republic of Kenya to submit procedures*)**

Following the day of seizure, unless during that period proceedings under the law in respect of consignments are undertaken, in which case the consignment may be further detained until the proceedings are finally concluded or released. Seized fish are tagged and the tag should include:

Seizure period depends on the country law

- i. the word "held";
- ii. an identification number;
- iii. a brief description of the seized consignment detained;
- iv. the date;
- v. the signature of the inspector.

A seizure form is completed by the BFI (Annex 14) as a record of the action taken.

If a person is convicted of an offence, the fish and containers by means of or in relation to which the offence was committed in addition to any penalty imposed, may be forfeited, on the conviction, to the government and may be disposed of as deemed necessary by court. Any proceeds accruing from the sale must be paid to government accounts and become part of the consolidated revenue fund or as provided for by Partner States regulations.

If fish have been seized under stated laws or legislation and the person charged is acquitted of the charge against the person, the inspector or other person having the custody of the fish and containers seized under that law or legislation must:

- (a) Recommend to head CA to Return them to the person from whom they were seized, or;
- (b) If the fish have been disposed of by courts of law, the owner shall follow up the refund with the court.

More information on search and seizure is given in **Annex 15**.

#### **4.10 Making an arrest**

The BFI are required at times to affect a lawful arrest. To do so a BFI must be conversant with the legal provisions that empower him/her to make arrests. The object of an arrest is to secure the attendance of an individual at a trial, if the individual is to be prosecuted for the alleged commission of a criminal offence. An individual may be arrested in order to punish, scare or harass such an individual or to persuade such an individual to provide the investigation with evidence. BFI may arrest a suspect on the following grounds:

An individual may be arrested by a BFI legally empowered to affect an arrest for the following reasons, if the laws of his country empowers them:

- i. Conducting further investigation and the failure to arrest is detrimental to the investigation;
- ii. To verify a name and or address;
- iii. In order to prevent the commission of an offence;
- iv. In order to protect a suspect;
- v. In order to end the commission of an offence.

Further details on making an arrest are given in **Annex 17(a)**

Conducting further investigation or if he/she deems failure to arrest is detrimental to the investigation;

- a. To verify a name and or address;
- b. In order to prevent the commission of an offence;
- c. In order to protect a suspect;
- d. In order to end the commission of an offence.

#### **4.11 Statements**

In order to secure a successful prosecution through court proceedings, a BFI must be able to provide proper statements. A statement is a written communication of facts as observed by the deponent (e.g. BFI). It is essential that the facts be reduced to a written statement, which will be safely kept until required. A written statement ensures that a permanent and official record exists of the facts surrounding a particular event or occurrence. We are aware of how forgetful we are and in time how more forgetful we become. Empowered by the law pertaining to the relevant country, the BFI may also collect all relevant information pertaining to a case and to present it to court. This includes collecting or preparing such evidence by taking or submitting statements.

Keeping within the legal requirements, the BFI is legally appointed and empowered to enter premises and/or board vessels, to do inspections as stated in the law of the country involved, or should he/she suspect that a person who possesses information relating to an offence and is on the premises and/or on board of a vessel. He/she may, if empowered to do so by law, then

interview or interrogate the person and take a statement from him/her. Any person, who refuses to make a statement regarding information he/she might have, must be dealt with within the parameters of the law in that country that governs such refusal. The following principles must be adhered to when taking a statement:

- i. Honesty
- ii. Accuracy
- iii. Objectivity
- iv. Completeness
- v. Expansiveness
- vi. Meaning of English words
- vii. Simplicity
- viii. Comprehensibility

More information on compiling statements is given in **Annex 21**.

#### **4.12 Compiling a Case Docket**

A BFI is required to compile case dockets. A docket may be referred to as an official file or dossier containing a record of evidence of a reported crime and its investigation. It is necessary to complete all the sections of the dossier as used per country, in order to establish a proper administration system. The divisions of a docket serve as a communication tool between a BFI and their officer in charge of the investigation, disclosure officer and the department of justice. The correct procedure must be followed when a crime is registered and a docket compiled. An affidavit containing the elements of a crime must be submitted by a Law Enforcement Official/Investigator/ BFI/Witness before a case docket will be considered. Further details on compiling dockets are given in Annex 21. Information on making charges and issues to do with attending court for a prosecution is given in **Annex 23**.

### **5.0 REPORTING**

BFI should prepare and submit dated, signed and stamped reports to their supervisor and ultimately to the CA timely as per country requirement. The report should include activities during the reporting period covering:

Inspections (Number of inspections, Main findings, non-conformances);

Desegregated (Aquaculture/Capture) data on type, quantity, value and origin of fish and fishery products and inputs entering and exiting the border;

- i. Data on types, quantity, value and origin of fish feeds
- ii. Data on aquaculture inputs
- iii. Data on types, quantity and value of fishing gears
- iv. Number of fish transport vehicles, vessels, boats, motor bikes and bicycles



- v. Seizure of fish and fishery products;
- vi. Data on quantity and value of fish and fishery products rejected;
- vii. Samples taken for analysis and results;
- viii. Prosecutions made, court cases/actions;
- ix. Types of products, number of vehicles, number of inspections, seizures, samples taken
- x. Seizures, samples taken and results,
- xi. Prosecutions made, court cases/actions
- xii. Update on previous reporting period actions;
- xiii. Challenges encountered during the inspection period;
- xiv. Conclusions based on regulatory framework and Recommendations
- xv. Date of inspections and reporting period;

All inspection reports have to be registered into a secure system of documentation control. Records should be held in paper files or computerized formats for 5 years, however computerized databases provide a powerful tool for keeping a record of all official interventions and are particularly useful in ensuring that there is a proper follow-up of corrective actions requests resulting from inspections and non-compliances.

Reporting relies on access to data and information. At each Border Post, the BFI will be required to keep and maintain the following key records and data:

- i. Declaration of compliance and request for sanitary certification of fishing products for export and imports;
- ii. Certificate of origin;
- iii. Health certificate for export;
- iv. Notification of fish products detention;
- v. Notification of fish product seizure;
- vi. Form to register official sampling for analysis;
- vii. Report of sensory evaluation;
- viii. Vehicle inspection;
- ix. Asset inventory ledger;
- x. Quantity of respective consignment;
- xi. Fish Inspection forms (temperature, quantity, source, vehicle /truck registration);
- xii. List of fish traders (importers and exporters);
- xiii. Quantity of immature fish impounded;
- xiv. Court case files.

BFI should also ensure that there is a consistent document control system; to have systematic and controlled way of document issuance, distribution and revision where applicable. The objective of document control is to prove due diligence defense e.g. one is guilty until proven innocent by providing written evidence. Documents and records should be kept safely and easily accessed.

Modern food distribution systems are so extensive and rapid that the appearance of a food hazard in one area often requires control measures to be implemented in other areas.

The Rapid Alert System for Food and Feed (RASFF) is a system introduced by the European Union to provide a means of communication of information regarding food safety hazards: [http://ec.europa.eu/food/food/rapidalert/index\\_en.htm](http://ec.europa.eu/food/food/rapidalert/index_en.htm) The RASFF forms an integral part of a set of procedures for dealing with consignments of food or feed produced which represent a serious risk. In most countries this system has not yet been developed however a more simplified system is suggested. Countries designate a contact point who is obliged to immediately communicate the existence of a serious direct or indirect risk to human health deriving from food or feed. Country contact points establish a network of communication. BFI feed into the focal contact point to analyse the extent and magnitude of the risk. Likewise, BFI should receive information from focal points on required action. Alert notifications are sent when the food or feed presenting the risk is on the market and when immediate action is required. Information notifications concern a food or feed for which a risk has been identified, but for which the other members of the network do not have to take immediate action, because the product has not reached their market.

## 6.0 SOURCES OF FURTHER INFORMATION

As well as the Annexes to the guide the following are some additional sources of information on key issues.

The **Codex Alimentarius** is the organization setting global standards for food safety standards and practices. They have produced a fish and fishery products guide, as well as information on hygiene and HACCP. <http://www.codexalimentarius.org/>

**The United Nations Food and Agricultural Organization (FAO)** is an important source of information on fisheries, fish and fishery products. They also developed the Code of Conduct for Responsible Fisheries (“CCRF”) provides voluntary international policy guidance. It provides principles and standards applicable to capture, processing and trade of fish and fish products. <http://www.fao.org/fishery/en>

**Globefish** provides marketing and trade information on fish and fishery products. <http://www.globefish.org/homepage.html>

The **EU ACP Strengthening Fishery Products Programme** carried out a lot of work in Africa developing food safety systems. <http://sfp.acp.int/en/projects/activities>

The **Common Market for Eastern and Southern Africa (COMESA)** is involved in a number of trade support initiatives. <http://www.comesa.int/> As is the **East African Community (EAC)** <http://www.eac.int/> and the **Southern Africa Development Community (SADC)** <http://www.sadc.int/> and the **Intergovernmental Authority on Development** <http://igad.int/>

The **IOC SmartFish Programme** has both an MCS and trade support component <http://www.smartfish-coi.org/> . The **Indian Ocean Commission (IOC)** is particularly involved in MCS work <http://politics.ioconline.org/home.html>

The **United Nations Convention on the Law of the Sea (UNCLOS)** established a new regime for the seas and oceans to ensure the realization of a just and equitable international economic order. [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

The **Committee on Fisheries (COFI)** adopted the International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity), which is elaborated within the framework of the CCRF. <http://www.fao.org/fishery/ipoa-capacity/about/en>

EU and ACP countries established a new trade arrangement based on reciprocal trading relations in conformity with the WTO rules starting in 2008. The new arrangement is based on the Cotonou Partnership Agreement (CPA). The Economic Partnership Agreement (EPA) is seen as an instrument for realization of the objectives of the CPA. <http://www.acp-eu-trade.org/index.php?loc=epa/>

Regional Fisheries Bodies (RFB) have a key role to play in the conservation of marine species, where effective mitigation depends on collaboration between states. Examples are: **Southwest Indian Ocean Fisheries Commission (SWIOFC)** <http://www.fBFI.org/fishery/rfb/swiofc/en> and the **Indian Ocean Tuna Commission (IOTC)** <http://www.iotc.org/English/index.php>

As far as the African lakes are concerned, the **Lake Victoria and Lake Tanganyika Conventions** are of particular importance in the context of this Guide. <http://www.lvfo.org/> and <http://governance-iwlearn.org/wp-content/uploads/2012/06/Lake-Tanganyika.pdf>

The **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)** can of course not be described as a fisheries agreement, but fish and aquatic species are listed <http://www.cites.org/>

The objectives of the **Convention on Biological Diversity (CBD)** are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. <http://www.cbd.int/>

The **Convention on Wetlands of International Importance especially as Waterfowl Habitat (“the Ramsar Convention”)** [http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-home/main/ramsar/1_4000_0)

The following are useful references for more information on fish inspection, food safety, hazards and quality:

**World Health Organization (WHO) risk analysis**

[http://www.who.int/foodsafety/publications/micro/riskanalysis\\_definitions/en/](http://www.who.int/foodsafety/publications/micro/riskanalysis_definitions/en/)

**The US Food and Drug Administration fishery products hazards and control guidance**

<http://www.fda.gov/downloads/food/guidancecomplianceregulatoryinformation/guidancedocuments/seafood/ucm251970.pdf>

**Food Quality and Safety Systems - A Training Manual on Food Hygiene and the Hazard Analysis and Critical Control Point (HACCP) System**

<http://www.fBFI.org/docrep/W8088E/W8088E00.htm>

**Risk based fish inspection**

<http://www.fBFI.org/docrep/011/i0468e/i0468e00.htm>

[PS to submit laws and regulations to LVFO to upload on the web site](#)

## **ANNEX 1: FISH SAFETY AND QUALITY ASSURANCE**

Fish is an important food and highly perishable food and if not handled and/or processed properly will spoil quickly and pose a health risk to the consumer. In terms of carrying out physical checks, a BFI needs to know the indicators of poor or sub-standard quality for the products they are inspecting and how harmful fish products contravene food safety law. In terms of non-compliance, BFI are responsible for preventing such products from reaching and harming consumers through their extension role and by enforcement of the law resulting in seizure of products and prosecution of the owner.

After fish are harvested, post-mortem changes take place which affect appearance, taste, odour and ultimately quality. Chemical and microbial composition, the environment from which it is caught, the way of harvesting, processing, packaging, storage, transportation and the associated hygiene and sanitation practices all affect the quality and safety of fish.

We need to know there are two key reasons why fish spoil or go bad: the action of bacteria (germs) which are on the outside skin and surface of the fish as well as in its stomach and the action of digestive enzymes which are mainly found in the stomach.

Factors like high temperatures, rough handling and time delays give bacteria and enzymes the conditions and time they need to eat or digest the fish and spoil it. Fundamental ways in which we can control spoilage include removing bacteria by washing in clean water, removing intestines/guts and avoiding cross-contamination. Slowing down the growth of bacteria is achieved by lowering temperature through chilling using ice, freezing and removing water from fish as in drying. Very high temperatures such as those used in smoking will kill bacteria. Throwing, dropping, standing on, or mishandling fish will not only add more bacteria but also damage muscle tissue and help spread bacteria and enzymes within the flesh speeding up spoilage.

Inspectors should know the sensory indicators of fish quality and spoilage so that they can understand whether a fish is of poor quality and may potentially pose a health risk. The key sensory indicators we can use to assess fresh fish quality in a border post environment are:

- i. Smell / odour
- ii. Texture of flesh or muscle tissue
- iii. Appearance in terms of shininess and colour of the skin/muscle
- iv. Slime and mucus on skin and gills
- v. Eye colour and shape
- vi. Gill colour

For smoked and dried fish we would use colour, presence of moulds and insects as indicators of quality.

To help determine the quality and safety of fish and fishery products we make use of national or regional standards such as those of the EAC. In the absence of these then the international Codex Alimentarius Codes of Practice and other guidelines are the benchmark to use.

There are two types of bacteria of concern. Those that cause fish to spoil and those which cause food poisoning and will make the consumer ill such as: *Vibrio cholera*, *Salmonella spp*, *Listeria monocytogenes*, *Clostridium botulinum*, *Clostridium perfringens*, *Esherichia. Coli*, *Shigella spp*, *Staphylococcus aureus*, *Bacillus cereu* and *Aeromonashydrophila*

It is important to remember that bacteria which cause spoilage don't necessarily make people ill and those that lead to food borne illness don't usually contribute much to fish spoilage. Common fish specific spoilage bacteria are: *Pseudomonas spp*, *Aeromonassp*, *Alteromonassp* and *Vibrio spp*.

Sources of bacteria and in particular those that cause food poisoning include:

- i. unclean toilets, equipment, vehicles;
- ii. the air;
- iii. dirty water around the landing site;
- iv. insects such as flies and cockroaches carry bacteria on their feet, bodies and mouth;
- v. dirty equipment, containers and utensils;
- vi. dirty hands;
- vii. dirty clothes;
- viii. animals (fur, feathers, feet, mouths and beaks);
- ix. rubbish and poor environmental conditions;
- x. dirty ice, salt, packaging.

To minimize the risk of fish becoming a food safety concern we need to make sure these conditions and practices are avoided and that fish does not come into contact with any if these sources of contamination. Preventing contamination of fish with bacteria and dirt is achieved by:

- i. keeping the working environment and equipment clean;
- ii. using clean and or potable water;
- iii. maintaining a high standard of personal hygiene by handlers

We often call this Good Hygienic Practice (GHP). It should be practiced throughout the fish to consumer chain including at border inspection posts.

In terms of food safety we often talk in terms of hazards. These are things which can contaminate the fish and therefore pose a food safety risk to the consumer. Food poisoning bacteria are one

example of what we call a biological hazard. Normally we group hazards according to whether they are biological, chemical or physical.

Biological hazards include bacteria, parasites and viruses. Chemical hazards are substances such as liquids, gases or solids, which can poison or cause harm to the consumer. Chemical hazards may be present in the water in which the fish live e.g. agricultural or industrial pollutants, or be present on the boat e.g. boat fuel, oil, cleaning products. Chemical hazards can be reduced by avoiding fishing in polluted waters, and not allowing poisonous substances to come into contact with the fish. A physical hazard is an object in the fish that can harm the consumer through choking, cuts to mouth or internal bleeding. Physical hazards include metal objects, wooden splinters and broken glass. Physical hazards can be controlled by removing potentially dangerous objects from the places where fish are handled and processed.

Hazards can occur at any point from harvesting to final consumption and need to be controlled by the fishermen, processor or trader and the risk of them occurring and affecting the consumer reduced to an acceptable level. BFI's need to be able to spot hazards in consignments of fish as part of the physical checks during an inspection. This is often called quality assurance and combines pre-requisite activities such as GHP with hazard control and risk assessment. Hazard control is commonly achieved by the application of HACCP, which is a seven step food safety tool that identifies and analyses hazards and determines critical control points at a point in the chain which require specific hazard control measures which are monitored to eliminate the risk of hazards occurring.

HACCP is a risk based approach that it improves the efficient allocation of resources, allowing them to be focused where they can have more of an effect on food safety and public health.

For border inspection we classify products according to high, medium or low risk. Ideally guidelines on risk level of different products is developed by a Competent Authority, based on scientific knowledge of the hazards and local conditions. Table 1 shows different types of product according to risk and can be used as a guide by BFI.

## ANNEX 2: RISK CATEGORIZATION OF PRODUCTS

<b>Risk category</b>	<b>Extent of risk</b>	<b>Fishery product examples</b>
High risk :	Significant potential to put at risk vulnerable groups (elderly, infants, immuno-suppressed) or large numbers of consumers.	ready to eat foods, bivalve shellfish, cooked shrimp, smoked fish, canned fish, frozen fish implicated with histamine production
Medium risk:	reduced potential to put vulnerable groups at risk, where the distribution may be limited or where the product is to be cooked before consumption;	frozen fish fillets (non-histamine producers) from aquaculture or freshwater sources
Low risk:	only a minimal potential to harm consumers	frozen fish fillets and cephalopods (non-histamine producers) from marine sources

Based on the table we would expect to focus more attention at a border post inspecting high risk products. As well as product risk we should also take into account the compliance record of the individual traders who pass through the border point. If we know that certain traders tend to break rules and regulations more than others then those can be classed as high risk traders. In this case the inspector should inspect the law breaking traders' consignments more than the law abiding traders.

Food Inspection based on risk assumes that the primary operations and food processing operations have a food safety and quality assurance system in place. This is what we call a Total Quality Management Programme. It embodies a preventive (HACCP + GHP) rather than reactive approach to food safety through a continuous system of monitoring and verification. Therefore, inspection is among the official controls performed by the inspector to verify compliance with the regulations and standards. In execution of this duty, the inspector guarantees the safety and quality of the food for human consumption and facilitates trade.



### **ANNEX 3: MONITORING, CONTROL AND SURVEILLANCE**

Illegal fishing has been recognized as one of the greatest threats to marine and inland ecosystems and the communities which depend on them. Illegal fish is traded, often across borders. Fisheries Monitoring, Control and Surveillance (MCS) is a specialized component of the fisheries management process. The purpose of which is to increase compliance with fisheries rules and regulations. The absence of MCS operations renders fisheries management incomplete and ineffective.

Various international instruments have been adopted during the past decade. Many of these instruments, such as the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, identify tools states can employ to combat illegal fishing and fish trade.

Effective MCS involves a two-pronged, parallel approach, relying on both prevention and deterrence. The preventive approach encourages "voluntary compliance" through understanding and support for the management strategies, standards and legislation.

Increased compliance can be obtained through changing practices of fishers and traders. Preventive approaches do not require the use of force or the presence of security forces and, are targeted at raising awareness of fisheries rules and regulations, sensitizing people to change behaviors, providing information to the community, operationalizing processes to give fishers and traders a voice in the formulation of regulations. Approaches include educational meetings/discussions, and the use of awareness raising materials (posters, radio talk shows, paintings, print media)

Deterrent/enforcement MCS is necessary to ensure compliance by fishers who break the rules. Deterrence and enforcement include inspection, investigation, prevention and court proceedings to enforce the law.

#### **MCS tools**

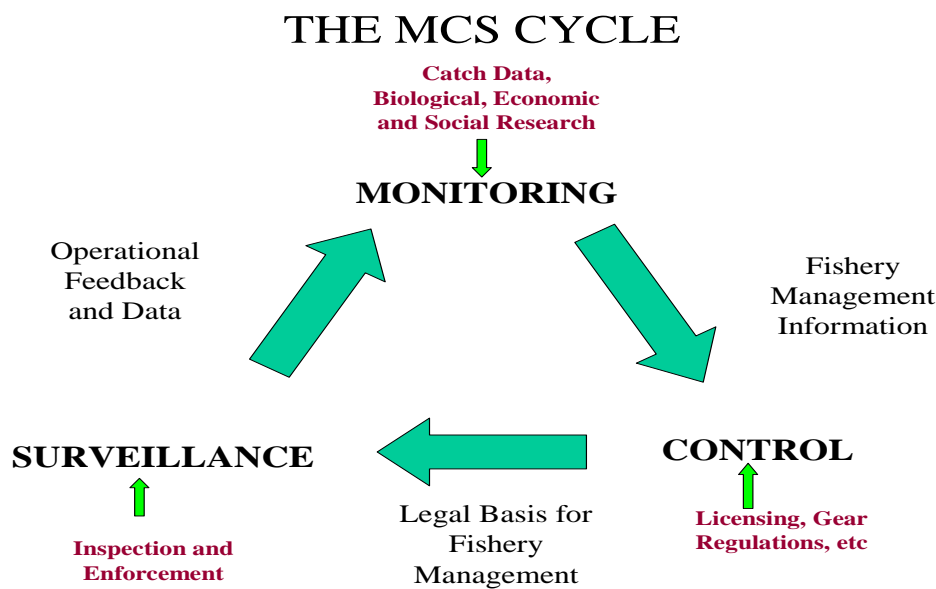
Key tools for MCS can include:

- i. an appropriate participatory management plan developed with stakeholder input;
- ii. Enforceable legislation and control mechanisms (licenses, permits, mesh sizes etc.);
- iii. data collection systems - dockside monitoring, observers, sea and port inspections, Border Post Inspections etc.;
- iv. supporting communications systems;
- v. patrol vessels and vehicles capable of extended operating to remain at sea with the fishing fleets;
- vi. aircraft available for rapid deployment to efficiently search large areas;
- vii. Use, where appropriate, of new technology (VMS, satellite, video, infra-red tracking, etc.);

- viii. linked, land-based monitoring;
- ix. support of the industry and fishers;
- x. bilateral, sub-regional and regional cooperation with other MCS components

The expense of MCS activities is often a primary concern of any government designing and implementing an MCS system. A civilian approach to deterrent fisheries enforcement has proven in many cases to be the most cost-effective and responsive to fisheries priorities. Use of civilian assets also minimizes the political sensitivity of international fisheries incidents by avoiding the use of military equipment and personnel.

For many governments, however, the military can play a significant supporting role in a strong MCS system. The key for such governments is to establish an inter-agency mechanism that enables fisheries administrators to call upon their military counterparts as and when needed. The Figure below summarizes the key elements and processes of MCS.



### **MCS spatial components**

There are three main spatial components to MCS: land, sea and air. The proper configuration varies by situation and will depend on such factors as cost, commitment, and organizational structure (national, sub-regional or regional). The land component of an MCS system serves as the base of operations, the coordinating center for all MCS activities, and entails port inspections, dockside monitoring, and the monitoring of transshipments and trade in fish products. MCS at sea includes activities undertaken in marine areas under the jurisdiction of a State and may also cover high seas areas. Technology can include radar, sonar and vessel platforms. Physical presence through at-sea patrols is a fundamental MCS component as it is necessary for arresting violators and securing evidence.

The air component covers the air and space equipment (aircraft, satellites, etc.) and the flexibility, speed and deterrence of these tools make them very popular. Recent developments in MCS have seen the growing influence of Vessel Monitoring Systems (VMS). The introduction of very reliable satellite communications systems and the complementary development of Global Positioning Systems (GPS) has enabled fishing vessels to automatically report their positions to management authorities at predetermined intervals or when requested. The initial introduction of these technologies has been directed at the enforcement role of MCS but, increasingly, scientists and managers are realizing the potential of better communications for their objectives. This increased role in almost real time information from fishing vessels of supplementary data such as catch reporting, fishing activities, analysis of catch etc. has been termed Integrated Fisheries Monitoring (IFM).

Growing concern over global security and awareness of activity in the marine environment has also influenced MCS programmes as has the increase in organized crime into fisheries.

### Monitoring

Monitoring includes the collection, measurement and analysis of fishing activity including, but not limited to: catch, species composition, fishing effort, by-catch, discards, area of operations, etc. This information is primary data that fisheries managers use to arrive at management decisions. Monitoring provides the baseline information for MCS and is the information source used to develop the control regime. Therefore BFI should collect data on all fish consignments that enter and leave border posts of their jurisdiction.

What to monitor	Why monitor	When to monitor	How to monitor
Fish products Fish size/slot size Fish quantity Fish quality Fish spp Product forms( slated, smoked, fresh, frozen) Origin of fish Fish species	Provide baseline data on : Immature fish Restricted spp Restricted water sources/ closed Endangered species	Enactment of new regulations Increase in number of fish traders Creation of new Market Seasonal variations – Peak and low Increase in market demand Closure of processing factories Lack of raw materials Particular Size of fish dominates market Outbreaks of food safety hazards	Measurement of size fish size Measurement of net mesh Taking weights of fish Physical Count of consignments number of baskets Checking documents Court/police cases Use CCTV cameras; photographs, scanners Observations GIS/GPS Satellites VMS

Documents Sanitary certificates License Permits	Compliance to requirements	Every consignment	Physical checks of documents
Gears mesh Size Prohibited gears( Monofilaments, cast nets, seine nets ) Number of panels (length) gill nets Type of gear Fishing methods ( Dynamite) Quantity of gears Number of vessels and Vehicles	Establish origin of Prohibited gears Establish quantity No. of gears to reduce overcapacity	Every consignment of gears at point of entry Increase of immature fish	Physical check of the gears Check accompanying documents Check point of destination
Key stakeholders in Monitoring			
Stakeholder	Key Role		
Bureau of statistics	National data processing and information		
Bureau of standards	Issuance of standards		
Research	To provide information e.g. number of gears, types of gears; and size of fish, quantity of fish t e.g. CAS- Catch assessment surveys – fish qty, size, spp etc.		
Revenue – Customs authorities	Data on quantity and value		
Fish traders Associations	Number of traders		
Police	Gathering of information on illegal traders		
Immigration	Travel clearance		

#### Management measures based on monitoring indicators at Border Posts

- i. Train and increase number of inspectors to collect data
- ii. Purchase more data collection tools and equipment
- iii. Liaise with national statistics and Research authorities to analysis data for planning and decision making
- iv. Develop standards for effective monitoring of fish products and gears
- v. Harmonize data collection methods

## What is Control?

Involves the specification of the terms and conditions under which resources can be harvested. These specifications are normally contained in national fisheries legislation and other arrangements that might be nationally, sub-regionally, or regionally agreed. The legislation provides the basis for which fisheries management arrangements, via MCS, are implemented. Therefore, Border Fisheries Inspectors should know regionally agreed measures – International Plan of Action (IPOA) Capacity on Illegal, Unreported and Unregulated (IUU) activities, Mesh sizes of gears for certain fish species, slot /sizes of fish, prohibited fish spp, restricted water sources.

What to control	Why control	When to control	How to control
Fish products Fish size Fish quantity Fish quality Fish species Product forms( slated, smoked, fresh, frozen Origin of fish	To ensure compliance to regulations, standards, Guidelines, Agreements, Conventions, protocols Reduce IUUs	decline in fish stocks- sustainability New instruments enacted (Permits; license, closed season etc Ratification of agreements and protocols	Enactment of laws ( regulations; by laws administrative guidelines, ordinances) Domestication of international and regional agreements Dissemination to all stakeholders Sensitization of stakeholders
Documents Sanitary certificates License Permits	Compliance to requirements	Every consignment	Physical checks of documents
Gears mesh Size Prohibited gears ( Monofilaments, cast nets, seine nets) Number of panels (length) gill nets Type of gear Fishing methods ( Dynamite) Quantity of gears Unregistered boats on the Lake	Restrict entry of Prohibited gears Restricted mesh sizes No. of gears to reduce overcapacity	Every consignment of gears at point of entry Increase of immature fish	Physical check of the gears Check accompanying documents Check point of destination

Key stakeholders in Control	
Stakeholder	Key role
Bureau of statistics	data processing and information
Bureau of standards	Issuance of standards
Research	To provide information on fishing effort , Capacity and catch eg CAS- Catch assessment surveys – fish qty, size, sppsect
Revenue – Customs authorities	Data on quantity and value
Fish traders Associations	Number of traders , supply of information on illegal traders and sense of ownership of the industry
Police	Enforcement of law
Immigration	Travel clearance
Judiciary	Legal drafting
Courts	Legal proceedings
Local Leadership	Mobilization and sense of ownership
RFMOs- IOC/RFBs- LVFO, LTA,	Ratification of agreements –e.g. IPOA- IUU capacity , immature fish ; Harmonization policies and laws.

#### Management measures based on control indicators at Border Posts

- i. Enactment of bylaws and ordinances,
- ii. Issuance of guidelines e.g. Regional Fish Trade Guidelines, administrative instruments e.g. Negative list of exports
- iii. Policy reviews
- iv. Development and or harmonization of standards
- v. Blacklist of perpetual offenders
- vi. Set up rapid testing facilities

#### **What is Surveillance?**

Involves the supervision of fishing activity to ensure that national legislation and terms, conditions of access and management measures are observed. This activity is critical to ensure that resources are not over exploited, poaching is minimized and management arrangements are implemented.

The surveillance activity feeds back information into the monitoring system which may then be used to change control component etc. – the system is cyclical.

Note: at border input controls (e.g. fishing gears, mesh size) and output controls (e.g. (size/slot of certain fish products) are enforced.

<b>What to undergo surveillance</b>	<b>Why surveillance</b>	<b>When to conduct surveillance</b>	<b>How to conduct surveillance</b>
Fish products Fish size Fish quantity Fish quality Fish spp Product forms (slated, smoked, fresh, frozen) Origin of fish	To ensure compliance to regulations, standards, Guidelines, Agreements, Conventions, protocols	decline in fish stocks- sustainability overcapacity over exploitation ratification of agreements Increase in Illegalities	Enforcement of law ( Patrols, inspections ) Seizure of consignments Arrests and prosecutions Sensitization of stakeholders Trans-boundary meetings Sharing information
Documents Sanitary certificates License Permits	Compliance to requirements	Every consignment	Physical checks of documents
Gears mesh Size Prohibited gears (Monofilaments, cast nets, seine nets ) Number of panels (length) gill nets Type of gear Fishing methods (Dynamite) Quantity of gears Unregistered boats on the Lake	Restrict entry of Prohibited gears Restricted mesh sizes No. of gears to reduce overcapacity	Every consignment of gears at point of entry Increase of immature fish	Physical check of the gears Check accompanying documents Check point of origin
<b>Key stakeholders conducting surveillance</b>			
<b>Stakeholder</b>	<b>Key role</b>		
Revenue – Customs authorities	Source of data on quantity and value		
Fish traders Associations	Number of traders and legality		
Law enforcement authorities eg Police , Maritime, Local Govt Internal security	Enforcement of law		
Immigration	Travel clearance – Foreigners		
Courts of Judicature	Legal proceedings		
Local Leadership	Mass mobilization and source of information.		

## Management measures based on surveillance

- i. Increase number of inspectors to conduct enforcement
- ii. Purchase more inspection tools and equipment
- iii. Boost mode of transportation
- iv. Undertake joint patrols with other enforcement agencies
- v. Suspend activities of border where illegalities are enormous
- vi. Sensitize courts of law and Seek for deterrent punishments
- vii. Motivate borders Fish inspectors for increased work load
- viii. Initiate bilateral or multilateral discussions thru diplomatic Missions or RFMOs/RFBs



#### **ANNEX 4: USE OF NOTEBOOKS**

The purpose of this section is to provide a guideline of the proper procedure for the use and completion of a notebook/pocketbook/diary. This applies to BFI and must be kept on a daily basis when on duty.

Notebooks/pocketbooks/diaries must be maintained by Investigators when on duty. In time our memories become more unreliable and therefore a notebook/pocketbook/diary entry ensures that a permanent and official record exists of the facts surrounding a particular event or occurrence. It serves as a reference to BFI regarding previous incidents, for example, witnesses and informers interviewed and important data that might be captured. All entries must be made with a pen and not with a pencil as soon as the need arises to do so. Notebook/pocketbook/diary entries must be made according to the sequence of events. No lines between entries may be left open. On the left-hand side of each page is a margin-line in which the time of occurrence must be recorded. The notebook/pocketbook/diary serves as a personal duty record as well as a task- or production record.

Daily, as a personal duty record the Fisheries Inspectors must enter the day and date at the top of the page. Notebook/Pocketbooks/Diaries must be maintained by all Fisheries Inspectors and they must at all times have them readily available for facilitators to read, inspect and sign.

Notebook/pocketbooks/diaries should not be used as duplication for official records or duty registers.

Occurrences during patrols or other duties for example the arrival and departure at crime scenes or sites, change of duties during a shift and when the employer needs to leave his workplace for a short period of time, must be recorded for personal duty record purposes.

Reference to arrests made and warnings issued as well as persons helped should also be documented in the notebook / pocketbook / diary.

A summary of work done must be made at the end of each shift as well as at the end of each month.

When Fisheries Inspector testifies in court the notebook / pocketbook / diary entries may be used by them to refresh his/her memory. The prosecutor, magistrate and the defense may have insight into the notebook/pocketbook/diary entries referred to. Fisheries Inspector as witness may be cross-examined regarding the notebook / pocketbook / diary entries.

An alphabetic register should be kept at each office to keep record of each notebook/pocketbook issued to each officer/inspector for example P/Book 1/2009 or 2/2009 and filed annually. The pages of a notebook/pocketbook must be numerically numbered and the officer/inspector's name, rank, number and department where deployed must be written in the front of each notebook/pocketbook.

When an officer/inspector is handed a notebook/pocketbook the officer/inspector as well as the superior must ensure that all the pages are accounted for.

When the notebook/pocketbook is full, a new notebook/pocketbook must be issued to the Fisheries Inspector and an entry must be made by his superior that the previous notebook/pocketbook was handed in and received.

If a notebook/pocketbook is lost the Fisheries Inspector must report the loss immediately and submit an affidavit to explain under which circumstances it was lost.

When a Fisheries Inspector is transferred to another department his notebook/pocketbook should be handed in, unless the two department heads agree otherwise. The notebook/pocketbook is the most important official book of an Investigator.

### Principles of entries into a notebook/pocketbook/diary

The entries in a notebook/pocketbook/diary must adhere to the following principles;

- i. Simplicity and directness,
- ii. accuracy
- iii. completeness
- iv. honesty, and
- v. neatness.

An example of typical entries made by Border Fisheries Inspector:-

Date: dd/mm/yy

Weather: Rain and overcast

06:00	Duty on and inspected by ..... (name and title of Border Fisheries Inspector).
	Posted as ..... at .....
	Signature of Border Fisheries Inspector _____
	And equipped with the following equipment:-
	1. Number of Handcuffs
	3. Torch, 2 way AAA 45 hand radio number .....
06:30	Visit..... Border Post
06:45	Observe and weigh the offloading of sardine like fish (Capenta/mukene/omena/ dagga from the Truck Registration..... 30 bags sampled were adulterated with sand. .....
10:00	Interview members of the public regarding .....
11:00	Report illegal fishing activity observed from shore to Patrol vessel.....to.....
12:00	Arrest Mr. .... at .....

	..... for the Illegal Possession of 10 immature Nile perch
12:30	Detain Mr ..... at.....Police, CAS/ SD Reference number..... and suspect handed over to Police officer named ..... Force number... ..
13:00	Back on routine patrol of Border .....
14:00	Duty off and free from injuries, inspected by .....
	All equipment handed back and the following default was reported: (1) Hand-radio nr ..... Faulty:- Low battery

### Daily Production Summary

Hours worked	8 hours
Arrest made	10 suspects SD Ref No. (CAS 16/06/2009)
Exhibits seized	20 baskets of Immature Nile Perch; 15 immature Tilapia fish 20 Fish traders without Export permits 40 bales of illegal fishing nets
Summary of other duties	
Nr .....	
Name .....	
..... Rank .....	

### End of the Month Summary

Days worked	
Days on Vacation Leave	
Days on Sick Leave	
Days Suspended	
Total Arrests made	
Total Exhibits seized	
Other duties	
Nr .....	
Name .....	
Rank .....	

**ANNEX 5: BORDER ACTION FORM**

Date of action.....

Country of origin of fish product/s.....

Name of importing country.....

Cause of action taken (e.g. chemical, microbiological, labeling, documentation, etc)  
.....

Method of production (captured/ cultured)  
.....

Fish species involved (scientific name).....

Fish product form involved (e.g. fresh, frozen, smoked, etc).....

Action taken (e.g. destruction, re-packing, re-export etc)  
.....

Quantity of consignment involved (state in words).....

Value of consignment involved (state in words).....

Signature of Official Fish Inspector

.....

Official

Stamp

Name in Capital Letters

.....

Capacity.....

**ANNEX 6: ICED FRESH FISH QUALITY ASSESSMENT**

Fresh fish stored in ice						
Grade	Skin	Gill colour	Gill odour	Eyes	Texture	Score
A; Best quality	Shiny/silver grey, scales firmly attached	Bright Red, no slime	Fresh; Aquatic weed	Very clear, ;	Firm, hard (rigor), elastic	9  8
	Slightly dull grey, darkening, scales firm	Reddish, maroon bleached patches	Neutral, fresh,	Reddish, cloudy	Firm, reduced elasticity	7  6
	Dull, few metallic patches, dark or dorsal side, yellow streaks on belly area, scales loose at belly area	Brown, bleached patches	Fishy, slightly rotten off- odors	red, milky, turbid, flat	Soft	5  4
C; Unfit for human consumption.	Dull, dark, yellow slime, scales loose	Reddish, brown, thick slime	Rotten, stinking, sulphide, strong off- odors	red, bloody, concave	Very soft, fingerprints leave impressions	3 2 1

## ANNEX 7: ASSESSMENT OF INSULATED AND REFRIGERATED VEHICLES

ASSESSMENT & VERIFICATION OF Fish transport OF VEHICLES	
Reason for inspection	
Vehicle registration no:	
Type of vehicle	
Refrigeration	
Open	
insulated	
Vehicle owner:	
Date	Name of inspector

Elements to verify	C	S	M	m	Comments
1. Structure, Equipment and Materials:					
1.1 Inside surfaces of truck smooth, durable, non-corrosive and easy to clean and disinfect?		( )			
1.2 Hygienic drainage of melt-water?		( )	( )		
1.3 Design allows temperature of FP to remain at that of melting ice for duration of FP storage and transport?			( )		
1.4 Tools for handling FP and ice made of smooth, durable, non-corrosive, and easy to clean and disinfect materials?		( )	( )		
1.5 Containers for holding FP and ice made of smooth, durable, non-corrosive, easy to clean and disinfect materials?		( )	( )		

1.6	Ice made of potable or clean water and obtained from an approved supplier?	( )	( )			
2.	FP and Ice Handling:	C	S	Mj	Mi	Comments
2.1	Adequate Icing so that FP rapidly approach and is maintained at temperature of melting ice (0-2°C)			( )		
2.3	Fuel, lubricants etc not allowed to come into contact with FP and ice?			( )		
2.4	Working temperature recording device present in FP compartment?			( )		
2.5	Temperature records available?			( )		
3.	Hygiene:	C	S	Mj	Mi	Comments
3.1	Truck general hygiene		( )	( )		
3.2	Cleaning schedule and records available?		( )	( )		
4.	Personnel	C	S	Mj	Mi	Comments
	Crew not suffering from food transmissible Infections?	( )				
4.2	Crew medical check up to date?		( )			
4.3	Crew wearing clean protective clothing?			( )	( )	
4.4	Crew trained in hazards and GHP?			( )	( )	
Totals						
Summary of defects found and correctives actions requested						
Non Compliances		Correction		Corrected		Comments

	Date limit		
Critical (C)			
Serious (S)			
Major (Mj)			
Minor (Mi)			
Observations:			
Conclusions:			
Signature of Inspector Signature of Truck Operator			
.....			
Date:		Date:	



## **ANNEX 8: SANITARY HEALTH CERTIFICATE CONTENTS AND EXAMPLE**

A sanitary health certificate should contain:

- i. Identification Number should be unique for each certificate and should be authorized by the competent authority of the exporting country. Should additional information be required on temporary basis, this may be incorporated as an addendum or an attestation. If there is an addendum, it must have the same identification number as the primary certificate and the signature of the same certifying officer signing the sanitary certificate.
- ii. Country of Dispatch for the purposes of the model certificate designates the name of the country of the competent authority which has the competence to verify and certify the conformity of the production establishments and products.
- iii. Competent authority is the competent official organization empowered to execute various functions including certification at the regional or local level.
- iv. Certifying Bodies which are official certification bodies and bodies officially recognized by the competent authority.
- v. State or type of processing describes the state in which the fish and fishery product is presented (i.e. fresh, frozen, canned, smoked, sun dried, slated, deep-fried, etc.) and/or the processing methods used i.e. smoked,
- vi. Type of packaging could be cartons, cans boxes, bags, cases, drums, barrels, pallets, etc.
- vii. Lot identifier / Date code is the lot identification system developed by a processor to account for their production of fish and fishery products thereby facilitating traceability/product tracing of the product in the event of public health investigations and recalls.
- viii. Means of transport should describe the flight/train/truck/container number, as appropriate and the name of the air carrier, vessel, vehicle etc.
- ix. Attestation is a statement confirming the product or batches of products originate from an establishment that is essentially in good regulatory standing with the Competent Authority in that country and that the products were processed and otherwise handled under a competent HACCP and sanitary programme.

**HEALTH CERTIFICATE FOR EXPORTS OF FISHERY PRODUCTS INTENDED FOR HUMAN CONSUMPTION**

COUNTRY: .....

Serial no.....

Page 1 of 1

	1.0 Competent Authority :						1.1 Local competent authority:				
	2.0 Certificate Reference Number:										
Details of consignor ; Consignee & processing plant	3.1 Name of consignor :			3.2 Address:			3.3Postal code :		3.4Tel No:		
	4.1 Name of Consignee:			4.2Address:			4.3Postal code :		4.4Tel No:		
	5.0 Country of origin		5.1 ISO Code		5.2 Place of origin: /city /town.		5.3Place of dispatch		5.4 Date of dispatch		
	6.0 Country of destination			6.2 ISO Code			6.3 Point of entry/ Border point				
	7.0 Name of processing plant			7.1 Establishment approval number			7.2 Address:		7.3 Tel:		
Product description, identification and intended purpose	8.0 Description of commodity			8.1 Commodity codes (HS/SH CODES- GN-Codes)							
				Products						Codes	
				Chilled						302	
				Frozen						303	
				Smoked						305	
				canned						1604	
				Sundried						305	
	Live fish						301				
9.0 Identification of commodities											
9.1 Species		9.2 Nature of commodity		9.3 Treatment type	9.6Type of packaging	9.5 Number of packages	9.6 Gross weight	9.7 Net Weight	Batch code		
Commodities certified for		Human consumption		Animal feeds				Others			
Mode of transport	10.0 Mode of transport										
	Transport means				Identification						
	Air										

	Road		
	Railway		
	Sea		
	11.0 Identification of container and seal numbers		
	Container number:	Seal number:	
Product temperatures	12.0 Product temperature		
	Product forms	Requisite product temperatures	
	Chilled	0±20c	
	Frozen	≥- 180c	
	Hot smoked	250c (Room Temperature)	
	Sundried	250c (Room Temperature)	
Public health attestation	Public health attestation		
	<p>I, the undersigned, declare that I am aware of the relevant provision of Regulation..... (Fishery, Food safety and Quality); and certify that the fishery products described above were produced in accordance with these requirements and in particular that they:</p> <p>Come from (an) establishment(s) implementing a programme base on the HACCP principles in accordance with Regulation..... (article, rule, schedule, annex).....</p> <p>Come from a landing site which is gazette / approved and meets the requirements of GHP in accordance with Regulation..... (article, rule, schedule, annex).....</p> <p>Have been caught and handled on board vessels, landed, handled and where appropriate prepared, processed, frozen and thawed hygienically in compliance with the requirements laid down in section.</p> <p>Satisfy the health standards laid down in regulation..... (article, rule, schedule, annex)..... and the criteria laid down in regulation..... (article, rule, schedule, annex).....on microbial criteria of food stuffs,</p> <p>Have been labeled and marked in accordance with Regulation..... (article, rule, schedule, annex).....</p> <p>The guarantees covering live animals and products thereof, if from aquaculture origin, provided by the residue monitoring plans and national control plans as foreseen in regulation..... (article, rule, schedule, annex).....</p> <p>Have satisfactorily undergone the official controls laid down in Regulation .....</p>		

Official  
certification

Name of certifying officer (in Capitals).....

Qualifications.....

Title:.....

Date:.....

Place of issuance of certificate.....

Signature:.....

Stamp:



Amount paid (local currency) ..... Amount in  
words.....

**ANNEX 9: IMPORT /EXPORT PERMIT**

TO: BFI

CC; The Collector of Customs  
 Customs and Excise Department

.....  
 (Port/Airport of Export)

1. This is to confirm that  
 (name).....

.....  
 of (address) .....

has been authorized to Import/Export \* Fish/Fish Products/Live Fish\* mentioned herein below  
 to (country of destination):

Fish/Fish Product		Quantity	Value	A-FISH AND FISH PRODUCTS	
Species	Common Name	Number	Value	Name	and address of

Consignee.....  
 .....  
 .....

Director

---

Delete inapplicable word.


NOTE: See conditions overleaf.

**VALIDITY**

The validity of this permit expires on the date specified overleaf or immediately on shipment of the consignment whichever of the two occurs earlier.

**THE FISHERIES (GENERAL) REGULATIONS**

**ANNEX 10: CERTIFICATE OF ORIGIN EXAMPLE**

EAST AFRICAN COMMUNITY CERTIFICATE OF ORIGIN HATI YA UASILI WA BIDHAA YA JUMUIYA YA AFRIKA MASHA					
1. Exporter (Name & Office address) <i>Mtengenezi (Jina na Ofisi au enchi)</i>		Serial No. <b>49840</b> Ref. No. <i>Identi au Namba</i>			
2. Consignee (Name & Office address) <i>Mtelemewa (Jina na Ofisi au enchi)</i>		 <b>EAST AFRICAN COMMUNITY</b>			
3. Particulars of Transport <i>Maelezo kuhusu Utafiti utakawawika</i>					4. For official use <i>Kwa matumizi ya Kiotaifa tu</i>
5. Marks and Numbers; number and kind of package, description of goods. <i>Ahana na Namba; namba na aina ya kifuraha, maelezo ya bidhaa</i>		6. Customs-Tariff No. <i>Nr. la adhaa ya Furoda</i>	7. Origin criterion <i>(See notes overleaf) Kigezo cha asili wa bidhaa</i>	8. Gross weight or other quantity <i>Uzito wa jumla au kiasi cha bidhaa</i>	9. Invoice No. and date <i>Namba ya Adhaa na tarehe</i>
<b>10. DECLARATION BY EXPORTER/ PRODUCER/SUPPLIER</b> <i>Taziti la Mtengenezi/ Mwaliki/ Mtelemewa</i>  I (we) ..... the undersigned, hereby declare that the above details and statements are correct; that all goods are produced in (country) .....  Place (Mahali) .....  Date (Tarehe) .....  Signature of declarant (sami) .....		<b>11. CERTIFICATION OF ORIGIN</b> <i>Cahabidho wa Uasili wa Bidhaa</i> It is hereby certified that the above mentioned goods are of ..... Origin Name (Jina) ..... Signature of Competent Authority (Sami ya Mamlaka Husika) .....  STAMP/SEAL (Mhariri/Lakeri) .....			

(See overleaf for instructions)

#### INSTRUCTIONS FOR COMPLETING THE CERTIFICATE OF ORIGIN

1. The exporter must enter on the form of the Certificate of Origin all information required in box 1 to 10 of the form, except box 4, which is reserved for official use.
2. This form may be prepared by any process provided that the entries are indelible and legible. Neither erasures nor superimpositions are allowed on the form, and any alterations must be made by striking out the erroneous entries and thereafter making or inserting any required additions. Any such alterations must be initialed by the person who completed the form and endorsed by the authority or body designated to issue the certificate.
3. Any unused spaces on the form should be crossed out in such a manner so as to prevent any subsequent addition.
4. In box 7 headed "Origin Criterion", the specific qualifying criterion under Rule 4 paragraph 1 on the EAC Rules of Origin must be entered. For this purpose, the following letters should be used against each item entered in a form, as is appropriate viz:-

- "P" for goods which are wholly produced;
- "M" for goods to which material content criterion applied;
- "V" for goods to which the value added criterion applies;
- "X" for goods which are classified or become classified under a tariff heading other than the tariff heading under which they were imported.

5. The declaration by the exporter which is to be given in box 10 of the form should contain in the space provided, immediately following words "produced in", the country where the goods have been produced.
6. Before signing the Declaration at Section 11 (section or box) of the form, the exporter should ensure that all the particulars entered by him in the form are correct. He must be prepared to furnish any additional evidence, which may be requested by the certifying authority for purposes of the issuance of the certificate, which is provided in box 11 of the form.
7. While the exporter is free to decide who will sign declarations on his behalf, it is highly desirable that the person so authorized to be an official of the exporting firm. Declarations signed by shipping or forwarding agents and the like are not acceptable.
8. Certificate of origin forms should be completed in triplicate for presentation to the certifying authority.
9. The stamp/initial of the of the certifying authority should have security elements which are recognized by EAC.

**N.B** Any person who knowingly furnishes or causes to be furnished a document which is untrue in any material particularity for the purpose of obtaining a certificate of origin or during the course of any subsequent verification of such certificate, will be guilty of an offence and liable to penalties.

#### Kiwahili

#### MAELEKEZO KUHUSU KUJAZA HATI YA UASILI

1. Msafrishaji lazima aingize kwenye formu ya Uasili taarifa inayohitajika katika kisanduku cha 1 hadi 10 cha formu, lakokwa kisanduku cha 4, ambacho kumawekwa kwa ajili ya matumizi ya ofisi.
2. Formu inaweza kutayarishwa kwa mchalelata wowote ili mrobi malingizo yaliyokosewa na ndipo kuingiza kuongeza chochote katika formu, na marekebisho lazima yafanywe kwa kukata malingizo yaliyokosewa na ndipo kuingiza nyongeza zinazohitajika. Marekebisho ya aina hiyo lazima yowe na herufi za kwanza za jina la mtu aliyeyaza formu na kuidhinishwa na mamia au chombo kilichoteuliwa kutoa hati.
3. Nafasi yoyote katika formu ambayo hajatumika ikalwe kwa matan kwa mamia ambayo hazizi kuongeza chochote.
4. Katika kisanduku cha 7 chenye kichwa cha habari "Kigezo cha Uasili wa Bidhaa" kigezo maalumu kinachostahili chini ya Kanuni ya 4 ya aya 1 ya Jumuiya ya Afrika Mashariki ya Uasili lazima kuingiwe. Kwa madhumuni haya, herufi zifuatazo lazima zitumike dhidi ya kila kipengele kilichongizwa kwenye formu, kwa jina inavyofaa yaani:-

- "P" kwa bidhaa ambazo kigezo cha uhasili timifu wa uzalishaji wa bidhaa kimetumika
- "M" kwa bidhaa ambazo kigezo cha matumizi ya mabghaji ya ndani kimetumika
- "V" kwa bidhaa ambazo kigezo cha ongezeko la thamani kimetumika
- "X" kwa bidhaa zinazoidhinishwa kwa kigezo cha kubadilika kwa utambulisho wa bidhaa tofauti na utambulisho ulio ilipingia kimetumika

5. Taarifa ya msafrishaji ambayo inapaswa kutolwa katika kisanduku cha 10 ujumuishwe katika nafasi iliyowekwa, pepo hapo kufuata maneno "liyozalishwa katika" nchi ambako bidhaa zimezalishwa.
6. Kabla ya kutoa sani taarifa katika au kisanduku cha 11 ya formu, msafrishaji anapaswa kuhakikisha kuwa maieko yote aliyongiza kwenye formu ni sahihi. Lazima awe tayari kutoa uhitibisho zaidi, ambao unaweza ukatakiwa na mamia ya uhitibisho kwa madhumuni ya kutoa hati, katika kisanduku cha 11 cha formu.
7. Wakati msafrishaji ana uhuru wa kuamua ni nani alie sahihi kwenye taarifa kwa niaba yake, inafaa kwamba mtu aliyedhinishwa kufanya hivyo awe Ofisa wa Kampuni ya Msafrishaji. Taarifa zinazotwa sani na mawakala wa mol au wa msafrishaji au wengine kama hawa hazikubaliki.
8. Formu ya hati Uasili (jazwa kabla nakala tatu kwa ajili ya kuwasitishwa kwenye mamia yanayodhinishwa
9. Muniri wa mamia yanayodhinishwa unapaswa kuwa na stama za kisulama ambazo zinatambuliwa na Jumuiya ya Afrika Mashariki.

**TANBIHI:** Mtu yeyote ambaye kwa kufhamu anotoa au kusababisha hati ambazo si sahihi kutolwa katika jambo lolote hususan kwa madhumuni ya kupata hati ya Uasili au wakati wa hati, hivyo atastahili adhabu.

## **ANNEX II: SAMPLING**

To verify a decision to reject or seize products the BFI has an option to take samples for further analyses and send these to a testing facility. Likewise, rapid test kits for some parameters, can also be used to make “on the spot” decisions. The Border Fisheries Inspectors should determine the need for sampling and testing according to the information required to verify product safety and quality.

Tests on random samples are divided into two categories: standard testing that is to be applied to all products; and specialized testing that normally depends on the safety risk implications of the product.

Standard tests include:-

- i. labeling inspection- which involves examination of the label, packaging and code markings to evaluate compliance to the requirements;
- ii. net content - examination to evaluate conformity to all weight declarations (e.g., net and/or drained weight, including fluid measure where applicable);
- iii. sensory inspection - examination to evaluate sensory and physical compliance to quality standards for taint (rancid or abnormal), decomposition, foreign matter, undesirable parts and parasites, and to evaluate conformity to all other content declarations such as style, count, composition, etc; and
- iv. Container integrity inspection to determine compliance of canned fish to the required standards for container integrity.

Specialized tests include:

- i. Composition analyses to ensure that non-permitted or non-declared ingredients or additives are not present and to determine that declared ingredients/additives do not exceed regulatory guidelines; chemical analyses to determine that chemical contaminants do not exceed regulatory limits. This would include toxic elements, pesticides, industrial chemicals and in addition to the list drug residues will be done for farmed fish ;
- ii. Natural toxin analyses to determine that natural toxins do not exceed regulatory limits. Examples would include histamine, paralytic shellfish poison, domoic acid and other biotoxins such as ciguatoxin, okadaic acid and tetramine;
- iii. Bacteriological testing to ensure absence of pathogenic organisms. Examples would include analyses for organisms such as *E. coli*, *Listeria monocytogenes*, *Salmonella sp.*, and *Staphylococcus aureus*; and
- iv. safety parameter testing to determine that fish packed in containers sealed to exclude air and which do not depend solely on heat sterilization, freezing or refrigeration for safety have adequate pH and/or water activity and/or salt content to ensure product safety.



BFI are most likely able to carry out standard test sampling. Specialized testing is done be external test facilities. The Competent Authority must designate the official laboratories which may undertake the analysis of samples for official controls.

The inspector should take the samples and arrange delivery to a laboratory. A Laboratory Submission Form as below, shall be completed and accompany the sample to the laboratory. Duration of sample delivery should not exceed 48 hrs and the results from the laboratory should be received not more than 72 hrs later. The laboratory should deliver test results to the respective office that has requested for the sample. The laboratory should show a test certificate the value of the parameter tested. The laboratory certificate should not consider compliance but indicate the reference standard for easy interpretation of the results. Judgment regarding compliance and non-compliance should be made by the inspector based on the results. Therefore the Border Fisheries Inspector must understand the technical regulations- standards which are the basis to accept or reject a consignment of fish import or export.

In the event that the Border Fisheries Inspectors is obliged to take a sample for laboratory analysis and onward objective evidence, such samples taken shall follow the sampling criteria.

**The inspectors shall:**

- i. Ensure personal hygiene to avoid cross contamination thus disinfect the hands
- ii. Clean and disinfect surfaces where fish is handled.
- iii. Ensure that the sample is kept in a clean sampling box.
- iv. Ensure the chain of custody of sample for instance in circumstances that the inspector may not physically take the sample to the testing lab, then he/she should ensure that the sampling box is secured with either padlock or seal that can only be opened by the authority of testing lab.
- v. Ensure that appropriate sampling plan is followed and random samples are taken
- vi. Ensure the sample is kept at appropriate temperature.
- vii. Ensure that samples are clearly encoded.
- viii. At the point sampling the following information is recorded:
  - ix. Physical appearance of sample
  - x. Origin of sample
  - xi. Type of sample
  - xii. Date and time of sampling
  - xiii. Site of sampling
  - xiv. Weight/volume of sample
  - xv. Condition of storage
  - xvi. Date of dispatch
  - xvii. Temperature

**Procedure for taking samples of finished (Fish boxes)**

Determine the quantity (no. of boxes) of finished product in the consignment. Determine the sample size using a standard sampling plan. Randomly pick out the number of boxes in the sample size then take a composite sample from the sampled boxes.(take a piece from each box in the sample size).

Note: Sampling should be done in a manner that it should represent the whole consignment and that it should not affect the quality and safety of the product.

**Lab. Sample analysis request form**

Establishment/Fish traders Name.....Sampling Date .....Sampling Time: .....

Nature of sample:	No.	Batch Id. No.:	Lab. Ref. No.:
Sample size:	1		
Sample type			
Details for the owner of the sample i.e contacts/ address Email			
Sampled by:	2		
Designation:	3		
Signature:	Sample Temperature (°c) at sampling time:		

Tick (√) the analytical tests requested for						Fish		
No.	Parameter	TVB-N	Swab	Water	Ice	1	2	3
	TVB-N / TMA							
	Microbiological analysis							
	Total Plate Count (TPC) at 37°C							
	Total Coliforms							
	E-coli							
	Salmonella							
	Staphylococcus aureus							
	Aerobic and Facultative Anaerobic Count at 22oc							
	Aerobic and Facultative Anaerobic Count at 37oc							
	Fecal Coliforms (Thermal							

	Tolerant E-coli)							
	Faecal Enterococci (Streptococci)							
	Sulphur Reducing Anaerobes							
	Vibrio cholera							
	Listeria monocytogens							
	Clostridium perfringens							
	Moulds ( Cured products- slated and sundried)							
	Yeasts ( Cured products salted and sundried )							
	Chemical analysis							
	Heavy Metals Analysis							
	PCB & Dioxins Analysis							
	PAH (Benzo (a) pyrene							
	Physico-Chemical Analysis							
	Effluent Water							
	Pesticide Residues							
	Others (Specify)							

Name of Official Laboratory: ..... Samples Received  
by.....  
Designation: ..... Date/Time of Sample receipt:  
.....  
Temperature of Sample on receipt: ..... Lab Stamp:  
Remarks:  
.....  
Official Laboratory

## ANNEX 12: MICROBIOLOGICAL LEVELS FOR CHILLED AND FROZEN FISH

### Microbiological limits for fresh fin fish

SL No	Micro-organisms	Max. limits	Method of test
i)	<i>Salmonella</i> per 25 g	Absent	ISO 6579
ii)	<i>E. coli</i> per gram	10	ISO 7251
v)	<i>Staphylococcus aureus</i> per gram	100	ISO 6888
vi)	<i>Clostridium perfringens</i> per gram	Absent	ISO 7937
vii)	<i>Vibrio Spp</i> per gram	Absent	ISO/TS 21872
viii)	Total viable count per gram	10 <sup>6</sup>	ISO 4833

## ANNEX 13: MICROBIOLOGICAL LIMITS FOR DRIED AND SALT-DRIED FISH

S/N o.	Type of microorganism	Maximum limit	Method of test
1	<i>Pseudomonas</i> species per gram	Absent	ISO 13720
2	<i>Salmonella</i> in 30 g	Absent	ISO 6579
3	<i>E. coli</i> per g	Absent	ISO 7251
4	Coliforms g (per 100 g)	Absent	ISO 4832
5	<i>Staphylococcus aureus</i> per 10 g	2 × 10 <sup>3</sup> g	ISO 6888
6	Total viable count	10 <sup>5</sup> /g	ISO 4833
7	<i>Clostridium perfringens</i>	Absent	ISO 7937

The flesh and the skin shall have the characteristic colour and shall not show any evidence of halophilic moulds (dun) nor visible evidence of red, halophilic bacteria (pink).

The product shall have the characteristic dried salted fish odour. It shall be free from any off-odour indicative of spoilage.

The material shall be free from artificial colouring matter and firming agents except common salt.

### Chemical Contaminants limits

Type of contaminant		Maximum limit (mg/kg)	Method of test
(i)	Arsenic	0.1	EAS 41
(iv)	Tin		
	(a) For product packed in tin plate	50.00	EAS 41
	(b) For product packed in other packing containers	250.00	EAS 41
(vi)	Lead	0.3	EAS 41
(vii)	Cadmium	0.3	EAS 41
(viii)	Methyl mercury	0.5	EAS 41

**ANNEX 14: SEIZURE FORM QUALITY ASSURANCE**

Acting Inspector / CA agent: ..... official Inspector

Confirm the seizure of:

The product identified by the marks:

Product nature: .....

Belonging to: .....

Originating from: .....

Intended destination: .....

Reason for the seizure:

Quantity seized: .....

Place of seizure: .....

Destination of seized products: .....

Alternative utilization authorized (specify): .....

Feed production (specify): .....

Denaturing / Incineration / Buried

....., le .....

OFFICIAL STAMP

OFFICIAL INSPECTOR

**ANNEX 15: FORM2: MCS SEIZURE FORM**

*This form is issued in respect of the illegal fisheries consignment seized by the BFI*

MCS Details;

Date.....District.....Area.....

(B) Details of seizure/arrest

Illegal gears seized			Vessels with immature fish/illegal nets/illegal methods			ownership
Nets			Boats/vessel/truck		Practices	Names of suspects
No	Type	Mesh size	Model/number plates or VIP	Length/colour	e.g. seining, etc	

Fish impounded immature fish, /Kgs					Suspects Arrested
Qty/fresh	Qty/Smoked	Qty/Salted	Species	Names owner	

C) Acknowledgement by suspects

Names of suspect	Sex	Age	Area of Residence	Signature	
(d) Name of Arresting Officer record no of AUTHORITY CARD	Designation		Institution	Signature	
Officer to whom Suspects/exhibits are handed over			Designation	Station/Location	Signature

*Original to suspect*

*Duplicate to magistrate/police*

*Triplicate to CA*

## **ANNEX 16: SEARCH AND SEIZE**

Border Fisheries Inspector shall adhere to the law that empowers them to search and seize in their respective Country.

- i. Which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;
- ii. Which may afford evidence of the commission or suspected commission of an offence,
- iii. Which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence;

### **Procedure of Seizure**

Once the BFI suspects that an offence has been committed or is about to be committed the following procedure will be applied:

- i. Inform the offender the breach in the law and its consequences. To cover which law has been breached, the evidence that is being gathered or seized, the process to be followed subsequently;
- ii. Take hold of the items such as any fish, fishery product, vessel, engine, net, line, basket or any appliance appearing to have been obtained or to be possessed in contravention of the relevant legislation;
- iii. Issue the Seizure form in Triplicate, the original to the suspect, a copy to the Police/ Court and a copy to the Department/ Division of Fisheries as specified in the national legislation
- iv. Take necessary measures to ensure safety of seized items
- v. For nonperishable items store in law lawful custody and log the items and have documentary proof of storage.

### **Search and seizure under search warrant**

It is International best practice that all search and seizure operations must be done under a search warrant issued by a competent authority.

- i. A search warrant legally issued shall require a Law Border Fisheries Inspector to whom the warrant was authorized, to search any person identified in the warrant, or to enter and search any premises and/or vessel and/or vehicle and/or airplane identified in the warrant and to search any person found on or at such premises and/or vessel and/or vehicle and/or airplane.
- ii. A search warrant shall always be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.
- iii. A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or if such person is not available by a person with like authority.



- iv. An official executing a warrant shall after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.
- v. It is normal and accepted practice that information on oath must be presented to obtain a search warrant. It can be in the form of a written sworn statement, or verbal evidence under oath of which record must be kept.
- vi. The information must provide a reasonable basis for the belief that an article is in the possession or under the control of a person within the area of jurisdiction of the official empowered to issue such a warrant. This may differ from country to country.

### **The search warrant affidavit**

- i. Where you need to apply for a search warrant on affidavit, that affidavit should contain:
- ii. Details of your experience and knowledge;
- iii. An explanation of relevant laws and regulations (i.e. what contravention are you investigating?);
- iv. A precise description of place(s) to be searched and things to be seized; and,
- v. Narrative of the facts (not conclusions) establishing your reasonable grounds.

### **General tips for an affidavit**

- i. The affidavit must be clear, candid, concise and complete;
- ii. Try to draft a document that any Law Enforcement Officer/Investigator/Fisheries Inspector could read and have no doubt about where to search and what to seize;
- iii. If a rural property, include driving directions from nearest city or town;
- iv. Describe as precisely as possible the actual items you hope to find, and add the phrase “together with fruits and instrumentalities of the crime and all other property constituting evidence of the crime” as a catch-all provision;
- v. DON’T hide anything relevant, be absolutely candid;
- vi. DON’T try to write persuasively or add editorial comments about what you think – just state facts;
- vii. DO describe the sources of all factual information (who saw it, who said it, who told them about it); and,

If you are relying on an informer, depending on the category of informer exercise extreme discretion as to what details you disclose. Frequently an affidavit will simply include the phrase “as a result of reliable information received from an official informer” will suffice. There are no hard and fast rules within our system at this juncture. The important point to remember is that you, the Law Enforcement Officer/Investigator/Fisheries Inspector, will sign the affidavit under oath or affirmation. By implication the Law Enforcement Officer/Investigator/Fisheries Inspector will be held responsible for having instituted the search.

## **Identification of premises / vessels / vehicles / airplanes**

If the warrant has bearing on premises/fishing vessels/vehicles/airplanes, the premises/fishing vessels/vehicles/airplanes must be identified. It will be sufficient to mention that everyone “found” “in or at” the premises/fishing vessel/vehicle/airplane may be searched without having to describe such persons more closely. An apparent connection between the person and the activity in progress on the premises must exist.

## **Circumstances in which an article may be seized without a search warrant**

Circumstances do arise when Border Fisheries Inspector may without a search warrant search any person or container or premise or fishing vessel for the purpose of seizing any article that may afford proof of the commission of a crime. **These circumstances will be covered in the legal framework of each country.**

It will be considered best practice to adhere to the following;

- i. If the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises or fishing vessel consents to such search and the seizure of the article in question or;
- ii. If Border Fisheries Inspector on reasonable grounds believes; That a search warrant will be issued to him/her if he/she applies for such warrant and; Or the delay in obtaining such warrant would defeat the object of the search.

## **Golden rules for searching vehicles, vessels**

- i. Outlined below are some methods and procedures for the purposes of conducting a search of
- ii. Premises/vehicle/airplane/vessel:
- iii. Do not work alone! Select your search team carefully. It should consist of:
- iv. Enough other Law Enforcement Officers/Investigators/Fisheries Inspectors for searching and security;
- v. Where relevant, an information technology expert;
- vi. Hazmat (hazardous materials) personnel (if necessary); and,
- vii. Wildlife handlers/ Marine Biologists (if necessary);
- viii. Photographer/Video Camera Operator
- ix. Scribe/Log Keeper
- x. Where possible, plan the search beforehand and have a pre-search planning meeting to discuss and agree:
- xi. Team organization (divide security, search, seizure, interview and logging tasks up among team members);
- xii. Entry/boarding procedures and conduct of team;
- xiii. Allow all members to read the search warrant affidavit and attachments;
- xiv. Limits on scope and area of search;

- xv. Plain-view seizure/additional warrant issues;
- xvi. Whether interview targets/subjects must be interviewed during the search;
- xvii. Handling of persons present, (especially difficult ones). For example, should those present on the premises or in the vehicle or on the vessel if at the dock, be asked to step out and wait somewhere together?
- xviii. Handling of wildlife or hazardous materials;
- xix. Where scientific samples will be taken, ensure all lab protocols for sample collection are understood by those who will be taking them;
- xx. Media/defense lawyer inquiry protocols;
- xxi. What people are to do when their tasks are complete; and,
- xxii. The exit strategy.

### **Golden rules for searching a person**

- i. Keep control of the arrested person (position and movement) at all times;
- ii. Remember that a man can only be searched by a man and a female only by a female
- iii. Hold the arrested person with one hand and search with the other;
- iv. Be alert for any suspicious movements of the arrested person;
- v. If you discover that the arrested person is armed, immediately alert the rest of your team and call for assistance;
- vi. Be extremely thorough in your search especially if it is found that the arrested person is armed;
- vii. Be constantly aware and extremely cautious about the position of all weapons – your own and the arrested person’s; and
- viii. Keep all evidence safely.
- ix. Record information in your pocketbook and process it as soon as possible.

### **Golden rules when executing the warrant:**

- i. Announce yourself, show your Law Enforcement Officer/Investigator/Fisheries Inspector ID Cards, explain what you are there to do, give a copy of the warrant and ask for co-operation;
- ii. Strive to carry out the search in the presence of the occupier or someone linked to the occupier - e.g. another resident.
- iii. Particularly when searching residential premises, consider asking one resident to collect all cash and jewelry and put on kitchen table. At end of search, ask that person to confirm before two officials that none of these has been removed – this just eliminates any allegations later on;
- iv. If necessary, locate all weapons, ensure that they are safe;
- v. Put one officer in charge of collecting and logging in evidence found by other searchers, and prepare a receipt for each and every item;
- vi. Each officer must record all findings in his or her Pocketbook;

- vii. If you have the equipment, photograph or videotape the search (sound off). Assume everything you say during search will be recorded and played back in court;
- viii. If defense lawyers arrive, give them a copy of the warrant and refer them to the prosecutor;
- ix. At the end of the search give the receipt to the resident (or leave on premises).
- x. Try to obtain a signature from the occupier for any items seized and removed from the premises. If this is not possible have someone witness and sign in your Pocketbook;
- xi. Put together all the evidence at the end of the search (cataloguing) and follow proper procedures for safekeeping and storage.
- xii. Keep chains of custody short and strong
- xiii. It is usually better at this stage not to make statements to the media.

### **Seizure, and care of seized articles**

Remember that as stated at the outset of this unit, the reason why articles are seized is to provide material proof, or hard evidence, that an offence was committed by the accused. Great care should, therefore, be taken of the articles seized. Handle every article in such a way that fingerprints (where relevant), are kept intact. Keep a detailed record (photographic if possible) of all articles or specimens seized. It must be given a distinctive identification mark and retained in custody as set out in the legal framework of the relevant country.

## **ANNEX 17 (a): MAKING AN ARREST**

For an arrest to be Lawful it must be in accordance with the legal framework of the relevant country and while making an arrest, the BFI should ensure that a suspect is not punished, scared or harassed so as to provide the investigation with evidence.

A suspect may be arrested by a BFI legally empowered to affect an arrest for the following reasons:

- i. To conduct further investigation where failure to arrest is detrimental to the investigation;
- ii. To verify a name and or address;
- iii. In order To prevent the commission of an offence;
- iv. In order To protect a suspect;
- v. In order To end the commission of an offence.

It is best practice that the following four (4) requirements must be complied with;

- i. The arrest (with or without a warrant) must have been authorized by a statutory provision;
- ii. The person who effects the arrest must exercise physical control over the person arrested;
- iii. The arrested person must be informed of the reason for his / her arrest and of their rights according to the provisions of the legal framework of the relevant country.
- iv. The arrested person must be brought to an appropriate place of detention such as a Police Station as soon as possible.

### **Procedures for Arrest of Suspects**

- i. Introduce oneself to the suspect by showing the Authority Card;
- ii. Politely demand the name and address of the suspect;
- iii. Ask for relevant information and documentation related to the activity leading to suspected infringement for verification;
- iv. Validate the information and documentation availed (if any) against the goods, person or thing in question;
- v. If he/she refuses to give such information or fails to give such information to the satisfaction of the authorized officer; or if the BFI has reasonable grounds for believing that unless arrested the offender may escape or cause an unreasonable amount of delay, trouble or expense in being made answerable to justice he may arrest him forthwith or cause arrest by linking with other law enforcement agencies;
- vi. If suspect resists arrest, reasonable force may be applied commensurate to the magnitude of resistance;
- vii. r all people arrested are only suspects so no torture should be meted to them
- viii. The BFIBFI hands over arrested suspect along with exhibits to the nearest police station or police post and makes a statement on suspected infringement by specifying the charges;

- ix. The BFI notes down the reference number of the case being lodged;
- x. The receiving police officer acknowledges the receipt of suspect and exhibits by signing the seizure form;
- xi. The BFI to ensure availability of witnesses to testify in the court;
- xii. The BFI follows the case up to its logical conclusion;
- xiii. Keep proper inventory of all the proceedings.

### **Rights of an arrested person**

The arrested person must be informed immediately after his /her arrest of the following rights:

- i. The reason of the arrest;
- ii. The right to remain silent and not to be compelled to make any confession or admission that could be used as evidence against him/her;
- iii. Of the fact that anything that he/she says may be written down and will be used as evidence against him/her;
- iv. The right to consult with a Legal Practitioner (Lawyer) of choice, and if he/she cannot afford a Legal Practitioner that one can be assigned by the State at the state expense (Legal Aid);
- v. That he or she has the right to apply to be released on bail.

### **Arrest with or without a warrant of arrest**

Arrest with or without a warrant must be governed by the legal framework of the relevant country. In most other African Countries it is governed by the Criminal Procedure Act. The grounds for arrest without a warrant of arrest must be clearly set out by the legal framework of the country involved.

### **Execution of an arrest**

The legal framework of the relevant country must determine that unless the individual that is to be arrested submits to custody, an arrest is effected by actually touching his or her person, or if the circumstances so require by forcibly confining his or her person.

### **Amount of force which may be used in effecting arrest**

When necessary for the use of force during the arrest of an individual, the arresting officer should take care to use the minimum force necessary to arrest and detain the individual. When the arresting officer breaches these boundaries, he transgresses the law and becomes criminally liable. No justification exists for beating, kicking or ill-treating an arrested person. The Law Enforcement Officer/Investigator/Fisheries Inspector must look toward the legal framework of their country that provides for circumstances where the use of force towards a person, who is resisting arrest or fleeing from arrest, may be justified.

### **Hint of best practice**

For the purposes of this section:-

(a)“arrestor” means any person authorized under this Act to arrest or to assist in arresting a suspect; and

(b)“suspect” means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonable necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing. Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds:-

- i. that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;
- ii. that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or
- iii. (that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

Warning to an arrested individual, the following warning, informing an individual of his rights, must be furnished to a person at the time of, or immediately after his or her arrest:

- i. The reason for his or her arrest;
- ii. The right to remain silent and that anything he or she says may be used as evidence against him or her in a court of Law;
- iii. That he / she has the right to consult with a legal practitioner of his / her choice or they may apply to the Legal Aid Board to have a legal practitioner assigned to the case at State expense; and
- iv. That he or she has the right to apply to be released on bail.
- v. It is a requirement that the person who affects an arrest must at the time of effecting the arrest or immediately thereafter, inform the person who has been arrested, of the reason for his or her arrest.
- vi. The arrested person must be communicated with in the Language, which he or she understands.

### **Injuries sustained prior to or during arrest**

The safety of the arrested person must be ensured at all times by the person conducting the arrest. Should the arrested person show any signs that he or she is ill or injured, it must be reported to

the detaining official (medical treatment should be arranged immediately in the case of serious injuries or illness).

### **Search of arrested person**

An arrested person must be searched for dangerous weapons and or exhibits. It must be done within the legal framework of the relevant country. An arrested person must be brought before a Court as soon as reasonably possible. In most cases not later than 48hrs after arrest. The search of an arrested person must be undertaken in a decent manner, which displays respect for the inherent dignity of the person. The golden rule that a person may only be searched by a person of the same gender must be adhered to.

### **The use of restraining measures**

In order to prevent an arrested person from escaping handcuffs or leg-irons may be used (if necessary). Irrespective of whether restraining measures are used or not the Law Enforcement Officer/Investigator/Fisheries Inspector must always remain alert until such person is safely placed in a cell or in a place of detention.

### **Securing the attendance of an accused at a trial by other means than arrest**

Depending on the country and their legal framework other methods to secure an accused's attendance at court may be used. There are various methods by which an accused's attendance at a trial may be secured. Arrest is one of these methods and because it constitutes one of the most drastic infringements of the rights of an individual, it should therefore be regarded as a last resort.



**ANNEX 17 (b): FISH DISPOSAL-BUYING FORM**

*This form shall be filled by the BFI for selling fish after getting a court order*

MCS Details:

Date..... Area.....  
District.....

No	Details of Fish	
1	Court Order Number	
2	Name of Company/Individual	
3	Fish Species	
4	Form of Fish	
5	Estimated amount of Fish in Kgs	
6	Value of Fish	

I do agree with the details above and promise not to add any other consignment and will meet all the regulations as stated in the Fish Act Cap 197.

Name of buyer  
.....  
Signature  
.....

Name of Issuing Officer  
.....  
Signature  
.....

**ANNEX 18: DISPOSAL-DISTRIBUTION FORM**

*This form shall be filled by the BFI for distributing fish after getting a court order*

MCS Detail:

Date..... Area.....  
 District.....

No	Details of Fish	
1	Court Order Number	
2	Name of Institution/Individual	
3	Fish Species	
4	Form of Fish	
5	Estimated amount of Fish in Kgs	

I confirm that I have requested for the fish I am taking, I do agree with the details given above and that the fish I am taking is for human consumption by myself or/and my institution and is not for sale. I will not breach any regulations in the Fish Act.

Name of Receiver  
 .....

Signature  
 .....

Name of Issuing Officer  
 .....

Signature  
 .....

**ANNEX 19: PROSECUTION FORM**

*This form shall be filled by the BFI to follow up prosecution cases*

MCS Details;

Date..... Area.....  
 District.....

Prosecution details	Report Details
Name/s of suspect	The full name of the suspect apprehended
Date apprehended	The date the suspect was apprehended
Police case reference number	Police reference number
Seizure form (serial number)	Seizure serial number
Court case number	Court case number
Court/case where the suspect was charged	Offense and court where suspect was charged
Status/Verdict of case	The status of the case at the time of the form being filled and should select from the following:  Completed/awaiting trial/pending/delayed  Imprisoned – how long in months?  Released without charge  Fine paid – how much in Shillings  Other-specify
Sign by BFI following prosecution	Names Sign. Designation

## **ANNEX 20: EXHIBIT**

### **What is an exhibit?**

An exhibit is evidence in the form of any object that will be able to be placed before Court, which will help prove the commission of a crime, or which will link the arrested person with the commission of that crime.

Remember that every exhibit must be submitted with the statement of the person who seized or collected it.

### **Handling and collection of exhibits**

General note: Incident/crime scene management and collection of forensic samples as evidence is a sophisticated field of work. Most Border Fisheries Inspectors have not received the requisite training to conduct this kind of evidence collection, nor will they have the necessary equipment to do so.

Law Enforcement Officers/Investigators/Fisheries Inspectors have two options in this regard:

Call in the forensic experts. This may take some time, which is not suitable where evidence is likely to deteriorate; or,

Instead of losing the evidence, take such evidence as you can use the principles below, supplemented by common sense!

The collection of evidence can be aided following the principles outlined in procedures. The steps are iterative and should be revisited as new information becomes available. It provides a systematic approach for defining the requirements that a field investigation will attempt to fulfill.

### **Documents as exhibits**

Documents seized as evidence during an investigation, should be carefully handled by the very edge of the piece of paper if such documents are going to be checked for fingerprints. Any document seized as evidence should not be defaced in any way. This includes any form of writing on the document or punching the document for filing. The document can be placed in a plastic sleeve with a sticky tag placed on the outside of the sleeve to record the necessary information. The plastic of the sleeve above the top edge of the paper can be stapled closed. The seizure of any documents should be entered into the Law Enforcement Officer/Investigator/Fisheries Inspector's pocketbook. Remember the chain of custody in the handling of documents.

Documents collected during an inspection should similarly not be defaced in any way as these may be later used in an investigation, and would then have reduced evidentiary value.

### **Packaging, identification and marking of exhibits**

Exhibits should not be marked on the object itself. The writing on, scratching or painting on exhibits can reduce their evidential value. It is, however, equally important that every exhibit is correctly marked at the time of its collection. It is preferable that only the Law Enforcement

Officer/Investigator/Fisheries Inspector touch the exhibits, even though somebody else may have pointed out the object to her/him. The information needed and correct marking and packaging techniques will now be discussed.

### **Necessary information**

Each exhibit is collected and marked separately, from a point on the crime scene where it was observed, numbered, photographed and recorded by the Law Enforcement Officer/Investigator/Fisheries Inspector. The following information must accompany each exhibit individually:

- i. The date, time and place where the exhibit was found;
- ii. The number of the point at which it was located on the crime scene;
- iii. The name of the person who found it there; and,
- iv. A short description of what the object appears to be.

When samples are collected from objects which can be moved/removed, the object must be marked with the field investigation and sample number for future identification using an indelible marker (e.g., paint stick or spray paint). Object and sample numbers, as well as any physical evidence (markings and manufacturers information on containers or individual characteristics such as scar and tears on carcasses/plants), must be recorded in the pocketbook. Each exhibit should have a simple and consistent reference (e.g. Investigation number, Law Enforcement Officer/Investigator/Fisheries Inspector's initials and then a number. This exhibit can then be referred by this reference throughout the proceedings and by all who to refer to that exhibit in their own evidence.

### **Photograph, digital still image and video identification**

Note: The following material is based on proven field experience and best practice accepted. It does not necessarily reflect the most modern options that are open to Law Enforcement Officer/Investigator/Fisheries Inspector.

Photographs can replace physical evidence when it is impractical to introduce into evidence the actual object for any reason including its size, weight, degradability, or unavailability. Provided that the process is adequately documented, the photo is admissible into evidence in place and to the same extent as the object itself.

### **Photographs and digital still images**

When photographs or digital images are taken a record of each exposure or image shall be recorded and entered into a pocketbook. The following information shall be recorded in the logbook and/or pocketbook:

- i. A basic description of what the photograph or image shows, including the name of the vessel, make model and registration number of transport, facility or site and the specific project name and project number;

- ii. The type of digital camera, video camera and disc or tape used;
- iii. The experience of the Law Enforcement Officer/Investigator/Fisheries Inspector in photography and the compilation of the photograph album, must be documented and included in the statement of the Law Enforcement Officer/Investigator/Fisheries Inspector;
- iv. The date and time that the photograph or image was taken;
- v. The name of the individual who took the photograph or digital image; and,
- vi. The GPS or other descriptive position of where the photograph was taken.
- vii. When photographs are used the memory card must be copied and then sealed and handed into an evidence locker, so as to preserve the integrity of the card and it can always afford proof of the fact that the evidence has not been tampered with.

## **Video**

When a video tape is made for use as evidence in an enforcement case, the following information should be recorded in a field logbook and/or pocketbook:

- i. The date and time that the video was recorded;
- ii. A brief description of the subject of the video tape; and,
- iii. The person recording the video.
- iv. Video records shall include a visual notation (placard) at the beginning of the video with the appropriate information (i.e., location, date, time).
- v. Tip, a dated newspaper could be used for this purpose.
- vi. An audio record may also be included in the video tape with the above logistical information as well as a narrated description of the video record.

When video is used the memory card or original tape must be copied and then sealed and handed into an evidence locker, so as to preserve the integrity of the card and it can always afford proof of the fact that the evidence has not been tampered with. The copy becomes the investigators working copy.

## **Chain of custody**

The proof of “who” had “what” in their possession “when”, are questions which have to be clearly explained to the Court. The custody of exhibits is a crucial part of any investigation, requiring chain of custody procedures that ensure a traceable record of evidence/sample security. Chain of custody procedures are comprised of the following elements:

- i. Maintaining custody of samples or other evidence; and,
- ii. Documentation of the chain of custody for evidence.

To document the chain of custody, an accurate record must be maintained to trace the possession of each sample, or other evidence, from the moment of collection to its introduction into evidence and signature.

**Chain of custody record**

Chain of custody records document the transfer of custody from one secure custodian to another and on to a laboratory or secure storage. The chain of custody record is used to record the custody of all samples or other physical evidence collected and maintained by investigators. All physical evidence or sample sets shall at all times be accompanied by a chain of custody record. To simplify the chain of custody record and eliminate potential litigation problems, as few people as possible should have custody of the samples or physical evidence during the investigation.

## **ANNEX 21: WRITTEN STATEMENT GUIDELINES**

A statement is a written communication of facts as observed by the deponent (e.g. BFI). To secure a successful prosecution through court proceedings, a BFI must be able to provide proper statements. It is essential that the facts be reduced to a written statement, which will be safely kept until required. A written statement ensures that a permanent and official record exists of the facts surrounding a particular event or occurrence. In addition to a written statement, the BFI may also collect all legally bidding relevant information pertaining to a case and to present it in the court. .

Collecting legally bidding relevant information, an appointed BFI can access any premises and /or vessel to interview or interrogate a suspect.

A statement consists of a preamble, the contents and the ending. Before writing a statement make sure that sufficient detail has been obtained. A statement is divided into paragraphs. Each paragraph is numbered in the center of the page. This constructs a statement and allows an individual to refer to certain parts or paragraphs within a statement. Lines may not be left open between paragraphs or sentences. This is to prevent any person from making additions to the statement. When Border Fisheries Inspector needs to write out a statement it will help him/her to first draw up a framework of all the detail before writing the statement.

### **Preamble**

The purpose of the preamble is to identify the deponent. The following information must appear in the preamble:-

- i. Full names and surname of the deponent;
- ii. Whether the statement is sworn to, or affirmed;
- iii. Gender;
- iv. Identity number/date of birth;
- v. Age;
- vi. Full residential address;
- vii. Home telephone number;
- viii. Cellular phone number;
- ix. Occupation;
- x. Business address;
- xi. Business telephone number

When taking a statement from a member of the public it is advisable to add the following information:-

Name of mother, father, wife, kraal head, captain, chief or Village Chairman with contact details;

District in which residence is located.

Example:



..... (name) states under oath in English.

I am a male ID ....., years old, residing at ..... Street, .....city, .....Country , with home telephone number .....and ..... I am employed as a Border Fisheries inspector in the Ministry of ..... Department/division of ..... and responsible for ..... Border Post, ....., work telephone .....

If a statement is affirmed, the words “states under oath” must be replaced with “solemnly declares”.

**Contents**

The contents of the statement begin with the figure 2 in the center of the page. The sequence of the incident or facts must be written down in logical order for example:-

On Monday the 1st of January 2013 at 08:00 I was on duty and I was doing a routine inspection of the Trucks , Vehicle , registration, ..... Arrived. The vehicle is legally licensed for the Transportation of fish and fishery products of ..... or for example I was instructed by my supervisor to .....

This is the easiest paragraph but also very important for evidential value if presented during a court case.

**EXAMPLE OF COMPLETED CHARGE SHEET**

1.

**CHARGE:**

**Ref. No. SD01/02/11**

**Date: .....**

**THE REPUBLIC OF .....**

**Vs**

**Makyozi**

**Makyozi a ..... citizen, Male adult of ..... years, ID No....., a resident of ....., City, a ..... by tribe and fisherman of ..... BMU.**

**Statement of Offence**

**Using a Seine net in the waters of ..... (Country) contrary to Rule 4(2)(a) of SI No. 33 of 2010 and Section 33 of the Fisheries Act, Cap 197.**

**Particulars of Offence**

**Makyozi Abudall and others at large on the 10<sup>th</sup> day of January 2011 at around 02:00 p.m. at ..... Border Post found.....sub county, ..... district were found in possession of .**

**Officer Preferring charge**

**Magistrate**

.....

.....

## **Requirements for the offence or criminal act**

The information provided in this paragraph will identify the crime or offence referred to by the deponent. The Prosecutor will be able to formulate a criminal charge if the information provided covers the elements of a crime.

## **Evidence of occurrence**

It is very important to cover the following questions to ensure the completeness of a statement:- Who, What, Where, When, Why and How.

When dealing with a statement regarding a crime scene relating to fishery offences, the following questions must be covered.

- i. Description of mode of transport/vessel/boat/skiff/individual fishing from land or transporting fish, and fishing gear, that relates to the criminal activity;
- ii. Description of licensing that authorizes activity if necessary,
- iii. Description of suspect;
- iv. Behavioral characteristics of suspects;
- v. Description of fish/fish product including scientific name;
- vi. Description of seized exhibits/evidence, Weather conditions,
- vii. Right or permission and whether investigation is required.

## **Sworn statements (affidavits)**

The following information is relevant to commissioning statements.. However the manner in which statements are commissioned will differ from Country to Country. The Law Enforcement Officer/Investigator/Fisheries Inspector must here adhere to the rule of law as per the country involved, or if there is no applicable law or best practice the modus operandi set out infra can be accepted as best practice.

Note: Statements can only be commissioned by a Commissioner of Oaths and a Law Enforcement Officer Fisheries Inspector can only commission the statement if they are appointed as a Commissioner of Oaths by law in the relevant country they are appointed in.

If the deponent is satisfied that the statement is complete, he/she must be placed under oath.

Questions are put to the deponent, but they are not written down in the statement. The replies however are noted in full sentences.

The following questions are directed at the deponent;-

- i. Do you know and understand the content of this statement?
- ii. Do you have any objection to taking the prescribed oath?
- iii. Do you consider the prescribed oath to be binding on your conscience?

The deponent has to answer yes, no and yes respectively to the three questions, or it would not be a sworn statement. However the replies are written down in full sentences.

- i. I know and understand the contents of this statement.
- ii. I have no objection to taking the prescribed oath.
- iii. I consider the prescribed oath to be binding on my conscience.

The oath can only be administered after the three questions have been answered and the commissioner of oath is satisfied. The deponent must say the following words out loudly so as to be clearly audible. The oath needs to be written in words when taking down the statement. “I swear that the contents of this statement are true, so help me GOD”.

The statement is lawfully sworn to only if the three questions were asked, the answers noted down and the desired words uttered audible to the deponent.

Once the oath has been administered, the deponent is requested to sign the statement on the first or second line after the third answer. If the statement consists of more than one page, the deponent must initial, at the bottom of every page. The statement must then be certified by the commissioner of oaths.

Note: If there are any documents added to the statement as annexures the deponent must initial the bottom of every page of the annexures

**Example:-**

I certify that the above statement was taken down by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to before me and the deponent’s signature was placed thereon in my presence at .....(place) on ..... (date) at ..... time

Immediately after the above, the commissioner of oaths, must identify himself/herself. This is also done in accordance with the prescribed provisions. The following particulars must be noted in capital letter on the next line, after the certification on the right-hand side of the page.

SIGNATURE

\_\_\_\_\_

SERVICE NUMBER AND RANK

-----

COMMISSIONER OF OATHS

\_\_\_\_\_

FULL NAME AND SURENAME

\_\_\_\_\_

FULL STREET ADDRESS

\_\_\_\_\_

*Note:* The certification must be learnt by heart to ensure that a sworn statement can be taken down under all circumstances.

**Affirmation**

An affirmation differs only academically from a sworn statement. The three questions are as follows:-

- i. Do you know and understand the contents of this statement?
- ii. Do you have any objection to taking the prescribed oath?
- iii. Do you consider the prescribed oath to be binding on my conscience?

The respective replies will be “Yes”, “Yes” and “No”. In the statement the answers will be written as follows:-

- i. I know and understand the contents of this statement.
- ii. I have objections to taking the prescribed oath.
- iii. I do not consider the prescribed oath to be binding on my conscience.

The words to be uttered are as follows:- “I truly affirm that the contents of this statement are true”. The same rule that applies to the writing of this sentence applies to the sworn statement. The deponent then signs the statement and directly thereafter, the commissioner of oaths notes the following certification and particulars.

I certify that the above statement was taken down by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was affirmed before me and the deponent’s signature was placed thereon in my presence at .....(place) on .....(date) at .....(Time)

SIGNATURE

\_\_\_\_\_

SERVICE NUMBER AND RANK

\_\_\_\_\_

COMMISSIONER OF OATHS

\_\_\_\_\_

FULL NAME AND SURENAME

\_\_\_\_\_

FULL STREET ADDRESS

\_\_\_\_\_

### **Illiterate deponent**

The statement must be read to the illiterate deponent. If the deponent agrees with the contents of the statement he/she will apply his mark or thumb print on the statement, instead of a signature. Two witnesses must sign as proof of their presence at the time the print was made and that they will be able to identify the deponent.

### **Correction of errors**

Correction of an error shall be done as follows:-

- i. Draw a neat line through the error (word or figure);
- ii. The incorrect word or figure must still be legible;
- iii. The correct word or figure is entered either next to, or above the correction or in the margin;
- iv. The deponent must initial and date the corrected error in the margin. If the statement was not written by the deponent, the person taking down the statement, must also initial and date the corrected error in the margin.
- v. If an interpreter is used he/she must also initial the statement.

### **Statements of children**

A parent or guardian needs to be present while taking down the statement of a child under the age of 16 or under the age whereby an individual is considered a minor in the relevant country. The child's mental capability and if he/she is able to understand the prescribed oath is very important.

The help of a social worker or professional should be requested.

If the child prefers the parent or guardian not to be present the statement can still be taken from the child, but the parent or guardian may read the statement before it is commissioned (unless the statement reports a crime where the parent or guardian is the suspect). Then the child must be protected and the State will normally act as guardian on behalf of the child. Best Practice applicable to the country involved must however be implemented in the above mentioned circumstances.

### **Interpreter**

An interpreter should be appointed to translate the deponent's statement from the language used, to any one of the official languages. The official taking down the statement must write the statement in the official language used by the interpreter.

The interpreter must certify the translation between the commissioner of oaths and the signature of the deponent in the following manner: "Translated from ..... (Local Language) into English". The certification must then be signed by the interpreter.

### **Appropriate adult**

When a mentally disordered or handicapped person as well as an emancipated juvenile is interviewed to obtain a statement, the question should be asked if the individual qualifies as an appropriate adult and therefore whether he/she is a competent witness or not.

### **Importance of well-taken statements**

Border Fisheries Inspector should realize the importance of taking a good statement because not only do poorly taken statements damage the image of their department, but also impair the smooth running of the administration of Justice.

### **Honesty**

Although somebody might be incriminated the Law Enforcement Officer/Investigator/Fisheries Inspector must always be honest when obtaining and/or writing a statement. When compiling statements remember the following principles:

### **Accuracy**

To ensure accuracy, a distinction must be drawn between:-

- i. Facts and hearsay (supplied by 3rd party);
- ii. Facts seen and heard;
- iii. Facts and opinions;
- iv. Facts based on actual occurrences and facts not borne out by actual occurrences.
- v. Factors such as fear, tension, political convictions and age can influence the observational ability of the person making the statement.

### **Objectivity**

The deponent or Law Enforcement Officer/Investigator/Fisheries Inspector taking or deposing to the statement must not allow his/her emotions to affect the content of the statement. The deponent must place himself/herself on an imaginary platform and re-enact the actions on which to testify.

### **Completeness**

The following questions can be used to ensure completeness of any statement (evaluate the facts):-

- WHO
- WHAT
- WHEN
- WHY
- WHERE
- HOW

**Expansiveness**

Without using telegram style written skills, all the facts that the deponent knows must be included in the statement, in as few words as possible.

**Meaning of English words/Home Languages**

The influence of different languages may cause confusion between certain words for example lends/borrows. We know that there is a difference in meaning but if the words are used in the wrong context it will influence the meaning of a sentence. It is always best to write the statement in the relevant official language and if possible in the deponent's home language.

## **ANNEX 22: COMPILING A CASE DOCKET**

Case docket may be referred to as an official file or dossier containing a record of evidence of a reported crime and its investigation. It is the responsibility of the BFI to compile a case docket

Depending on the Country, in the situation, where there is a combination of crimes involved in a particular case (i.e. other types of crimes in addition to a fishery related), or where the crime(s) are of an organized nature, the case will be investigated by relevant appointed authority, i.e. the Police with the assistance of the Fisheries Inspector. It is International best practice that a Task Team existing of Law Enforcement Agencies with different specialties be established to address these crimes, each addressing its own field of expertise.

### **Sections of a case docket**

It is Ideal if a case docket exists of the following six (6) pages (single file). It has been found by International Law Enforcement Agencies to accommodate all needs. If however the relevant Country has a different formal case docket the practice of dividing a case docket into an A, B and C section as explained below should or could be adopted. The use and importance of each section is explained.

#### **Page 1 – COVER**

The correct information requested on the cover must be fully furnished if provided and used by your Country specific judicial system. The information must correspond with the information given in the docket. The officer in charge of the investigation, his/her officer in charge and the prosecutor must be able to find the correct and relevant information with ease. The affidavit setting out the alleged offence must contain sufficient particularity for a case to be registered. In the case of a statutory crime the sections and acts contravened must be entered on the cover for registration purposes.

#### **Page 2 –SECTION A**

The following evidentiary documents must also be filed in the A clip:-

- First report of a crime and all statements made by complainants and witnesses;
- Application for a warrant;
- Warrants of arrest;
- Search warrants;
- Copies of warrants (telegrams, faxes etc.);
- Plan, photographs of crime scene etc.
- Fingerprint archive sheet;
- Positive fingerprint report;
- Withdrawal statements;
- Reports, Scientists, Marine Biologists and/or other specialists;
- Any document that may assist the prosecutor in conducting the case;



- Should there be more accused than provided on the docket cover, their full particulars will be filed under clip A;
- Should there be more offences than are provided for on the case docket cover the particulars of the other offences shall be filed under clip A.
- Exhibit details

The documents are marked chronologically on the top right hand corner of the page starting at A1. The name of the Police District or Police Station in which area the crime was committed and registered as well as the registered case number must appear at the TOP of the page.

### **Page 3 – SECTION B**

The following documents are filed under this section:-

- Correspondence relating to this case;
- A record of the Investigator/detective's sleuthing work;
- Negative fingerprint reports
- Correspondence from other Police Stations/DPP/other Law Enforcement Agencies (letters, faxes etc.);
- Newspaper clippings;
- Correctional Services reports;
- Documents relating to circulation of items and/or persons

All Pages must be numbered on the TOP right hand corner for example B1, B2, B3, etc.

### **SECTION C**

The investigation diary must contain a complete record of all work expended on the case. It must serve as an index to all the documents contained in the case docket. The officer in charge of the investigation must be able to follow the course of the investigation without difficulty and be satisfied that all steps have been taken to bring the case to a successful conclusion.

#### **Procedure of registration of a docket**

After completion of the relevant first affidavits containing the elements of a criminal activity and filing same under the A section of the docket as well as the completion of an investigation diary and the securing and safeguarding of all exhibits, the docket will be registered. Each country will have their own procedure of registration of criminal dossiers.

After registration the case will be allocated to an investigator for further investigation purposes. Official record is always kept of the allocated investigator, so as to ensure complete governance of Law Enforcement.

## **ANNEX 23: CHARGES AND ATTENDING COURT**

A charge, or count, is a written statement of complaint brought against an accused person in a court of law. While there are differences between countries and legal systems, the following principles will generally apply to criminal litigation. The purpose of the charge is to inform the accused person the nature and the particulars of the offence with which he or she has been charged so as to enable him or her to prepare for his or her defense.

### **A charge consists of two parts:**

The statement of the offence, which states the law and particular section(s) of legislation that was/were breached, as well as a short definition of the offence, e.g. “Export of fish without a permit”.

The particulars of the offence which consist of the elements that make up the offence. The particulars therefore contains:

- i. The date and place where the offence was committed,
- ii. The jurisdictional area (e.g. in the magisterial district of .....)
- iii. That the action was unlawful (this can be described as an action against the public norms, as in some cases an action which is in contravention of a law, can still be lawful, e.g. “assaulting” a person in self-defense, or exceeding the speed limit to take a seriously injured person to the hospital, therefore acting in a situation of necessity or emergency- these type of situations will be uncommon in fishing related offences).
- iv. That there was fault on the side of the accused in that the accused acted intentionally. In the case of some offences, negligence can be sufficient to prove guilt.
- v. The elements of the offence, in other words the conduct of the accused that was in contravention of the prescription in the legislation (e.g. “transporting of fish in unhygienic conditions”, or “exporting fish without a permit”, or “interfering with a fisheries inspector in the execution of his/her duties”)

### **Rules for drafting charges**

The charge starts with a STATEMENT OF OFFENCE, which describes shortly; in ordinary language the important parts of the offence and the section of the relevant law.

This is followed by the PARTICULARS OF THE OFFENCE, again in simple language giving only those details, which are required by the law.

Where the charge sheet contains more than one count, the counts must be numbered consecutively.

It is important to avoid duplicity in a charge. This means where, in the section of law, there are alternative offences, it must be stated clearly in the count, which of the alternative offences the accused is alleged to have committed so that he is able to prepare his defense properly.

The description of property should be in ordinary language showing with reasonable clarity, the property referred to. It is not necessary to name the owner of the property nor the value of the property in the charge sheet unless the offence itself depends upon such information (for example a case of stealing in a dwelling house where the value of the property must be over 100Euros, stealing by a servant where the owner and his master/servant relationship are essential ingredients).

If the property is owned by more than one person, it is enough to write the name of one owner and add the words and another or and others e.g. the property of .....(name) and another. If it is the property of a club or company, it is sufficient to say so without naming any individual person e.g. the property of ..... fisher Traders Association.

Property belonging to a public service (e.g. government property) is normally referred to in a charge sheet as the property of the .....Government.

Coins and bank notes may be described as money followed by the value, e.g. “.....stole money to the value of Euros 100,000

The description of the accused or other person mentioned in a charge should be enough to identify him even though his correct name or address or job is not known. If a person's name is not known at all, a description may be given or if that is not available he may be referred to as a person unknown.

Any document referred to may be called by its usual name without writing out a copy of it in the charge. For example you can refer to a driving license, a university degree certificate, an authorization letter, etc.

Figures and abbreviations may be used for expressing anything which is usually expressed in that way, for instance, USD (United States dollars). Insp. (Inspector), 16th (sixteenth) etc.

## **EXAMPLE OF A CHARGE SHEET:**

Possession of Immature Nile Perch

Case Number: 69/2012

THE REPUBLIC OF AFRICA

vs

Zukulu Magambo

Contravention of section 45 of the African Freshwater Fish Act, Act 77 of 2009, read with section 93 of the same Act.

In that the accused

on 12 September 2013

and at or near the Victoriana border post

in the magisterial district of Victoriana

unlawfully and intentionally

was in possession of 211 specimens of immature Nile Perch, being below the prescribed size of 20 inches.

Penalty provision:

Section 93: A maximum penalty of 10 000 AFRIS or 3 years imprisonment, or both.

### **A few notes on charging an accused:**

If there is more than one accused that was involved in the offence, they can be charged together.

A legal person, e.g. a fish processing or transporting company, can also be charged. Such a legal person will be represented in court by a natural person, e.g. a director of the company. Of course a legal person cannot be sent to jail, but it can receive a fine. It is important to charge such a legal person, who is kept responsible for the actions of its employees while such employees are acting on behalf of the company, as the company will probably have the money to pay a bigger fine. The shame of being convicted of a criminal offence also helps to serve as a deterrent for companies not to get involved in illegal behaviour.

Where the charge sheet contains more than one count, the counts must be numbered consecutively.

It is important to avoid duplicity in a charge. This means where, in the section of law, there are alternative offences, it must be stated clearly in the court, which of the alternative offences the accused is alleged to have committed so that he is able to prepare his defense properly.

It is good practice to also add the penalty provision to the charge sheet, as in the example above.

### **And a few notes on presenting evidence:**

The most common form of evidence is oral evidence, and you may be required to give evidence under oath in a court. Real evidence (e.g. the illegal net or the undersized fish) or documentary evidence (e.g. a statement by an expert) can also be presented to court. Some evidence may be

inadmissible, e.g. hearsay evidence, or evidence obtained in violation of a constitutional right, e.g. searching a person's home where you legislation prescribes that you should have a search warrant to do so. While there are differences in the prescriptions and approach of the different countries, a prosecutor will usually be in charge of the prosecution and lead the evidence. The accused may be represented by a lawyer, and a magistrate or judge will preside in court and make the verdict at the conclusion of the case. Testifying in court may be an intimidating experience, but keep in mind that it is not your duty to get a conviction against the accused at all costs, but to provide the court with an honest and accurate account of your observations.

**A few tips on testifying in court**

Irrespective of who asks you a question, look at the magistrate or judge when you answer the question and address your answers to the magistrate or judge.

Speak clearly and audibly.

Allow enough time for the magistrate/judge, prosecutor and defense lawyer to make notes of your answers.

Listen carefully to the question, and answer the question.

If you do not understand a question, say so.

If you cannot answer a question, say so.

When you are being cross-examined by the accused, or the accused's lawyer, do not engage in any argument with them. Your duty is simply to answer the question.

Above all: Speak the truth!

## **ANNEX 24: COMPETENT AUTHORITIES FOR FISHERIES AND AQUACULTURE IN EAC PARTNER STATES**

### **REPUBLIC OF UGANDA**

Directorate of Fisheries Resources

P.O box 4, Entebbe.

Tel: .....

Email:.....

#### **Other key Institutions**

- i. Uganda National Bureau of Standards (UNBS)**
- ii. The UNBS is the national apex body on standards formulation
- iii. Ministry of Health (MOH)**  
The MOH enforces the Foods and Drugs Act, Cap. 278, Laws of Uganda. It is an Act that provides for the prevention of adulteration of food and drugs (**imports of Hormones and Aquaculture drugs**)
- iv. National Water and Sewerage Corporation (NWSC)**  
It is the agency that provides potable water to the public including majority
- v. Department of Live Stock Health and Entomology**  
The Department administers the Animal Diseases Act, Cap. 38 Laws of Uganda that provides for powers to contain animal diseases and is relevant to fish of aquaculture origin
- vi. Courts of judicature**
- vii. Uganda Police Force- Enforcement of the Law**

### **THE REPUBLIC OF RWANDA.**

#### **The Competent Authority:**

Ministry of Agriculture and Animal Resources

Department of Agriculture and Livestock Inspection and  
Certification Services.

Contact person: Ms Beatrice UWUMUKIZA

Email: [buwumukiza@minagri.gov.rw](mailto:buwumukiza@minagri.gov.rw),

Tel : +250 788848410

#### **1. KEY STAKEHOLDERS IN FISH AND FISHERY PRODUCTS INSPECTION:**

- i. Animal Resources Department, Rwanda Standards Board,
- ii. Ministry of Health, Ministry of Internal Security (Rwanda National Police)
- iii. Ministry of Local Government (District Veterinary officers)
- iv. Ministry of Justice the Public Prosecution Department.

**Republic of Kenya**

Competent Authority  
State Department of Fisheries and Blue Economy,  
Ministry of Agriculture Livestock and Fisheries,  
P.O. Box 58187-00200,  
NAIROBI, KENYA

**Other collaborating agencies**

Director of Veterinary Services  
State Department of Livestock,  
Ministry of Agriculture Livestock and Fisheries  
Private Bag,  
KABETE, KENYA

Commissioner General  
Kenya Revenue Authority,  
P.O. Box 48240 – 00100,  
NAIROBI, KENYA  
Telephone: 020-3310900, 020-2810000

Inspector-General of Police  
Kenya Police Service,  
P.O. Box 30083, 00100,  
Nairobi, Kenya.  
Telephone: (020) 341411/6/8

Ministry of Health,  
Afya House, Cathedral Road,  
P.O. Box 30016–00100,  
Nairobi, Kenya.  
Telephone: +254-20-271707

Ministry of Labour and East African Affairs,  
P.O. Box 8846-00200,  
NAIROBI, KENYA  
Telephone: +254-20-2245741

Director of Immigration and Registration of Persons,  
P.O. Box 30395-00100,  
NAIROBI, KENYA  
Telephone: +254-20-2222022

**ANNEX 25: MAJOR BORDER POSTS HANDLING FISHERY & AQUACULTURE PRODUCTS**

No	Country	Border Posts	Neighbouring Partner States	GPS	Main exports Products	Main Import products	Other key institutions