

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

IN EXERCISE of the powers conferred by section 33 (3) of the Wildlife Conservation and Management Act, 2013, the Cabinet Secretary for Environment and Natural Resources, makes the following Regulations:-

**WILDLIFE CONSERVATION AND MANAGEMENT (PROTECTED
WETLANDS) REGULATIONS, 2016**

PART 1- PRELIMINARY

Short title and commencement

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

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

Definitions

2. In these Regulations, unless the context otherwise requires

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

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

"community" means a group of individuals or families who share a common heritage, interest, or stake in unidentifiable land, land based resources or benefits that may derived therefrom;

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

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

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

“Institute” means the Wildlife Research Training Institute established under section 50 of the Act;

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

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

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

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

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

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

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

PART II- DECLARATION OF PROTECTED WETLANDS

Declaration of protected wetland areas

3. (1) The Cabinet Secretary shall, on recommendation of the Service, in consultation with the National Land Commission, and following the procedure set herein, by notice in the Gazette declare a wetland that is an important habitat or ecosystem for wildlife conservation a protected wetland.

(2) A declaration of a protected wetland shall be made only after the Service has conducted appropriate public participation consultations within the affected community through-

- (a) County steering committees;
- (b) Sub county steering committees; and
- (c) Village Barazas.

(3) After a declaration of a protected wetland the Service shall, in collaboration with the person or community holding a legal or communal interest in the wetland and the relevant lead agencies, prepare an Integrated Wetland Management Plan for the conservation and management of the protected wetland through a public consultative process.

(4) A declaration made under sub-regulation (1) shall state whether a wetland is a –

- (a) fully protected wetland;
- (b) partially protected wetland; or
- (c) is subject to conservation by the local community.

(5) A wetland declared under sub-regulation (4) (a) shall be any area rich in biological diversity and holding ecological importance, landscape, natural heritage or a tourist attraction in which the following activities may, on application to the Service through Form A prescribed in the First Schedule herein and upon issue of a permit, be allowed –

- (a) research;
- (b) tourism; and
- (c) restoration of the wetland.

(6) A permit issued under these Regulations shall be in Form B of the prescribed in the First Schedule.

(7) A wetland declared under sub-regulation (4) (b) shall be an area in which only recreation and tourism activities shall be permitted.

(8) A wetland declared under sub-regulation (4) (c) shall be an area in which a person or community holding property rights in the land may carry out the following traditional activities subject to such restrictions as may be imposed by the Service-

- i. harvesting of papyrus, medicinal plants, trees and reeds;

- ii. any cultivation where the cultivated area is not more than 25% of the total area of the wetland;
- iii. fishing using traps, spears and baskets or other method other than weirs; and
- iv. collection of water for domestic use.

(9) The wetlands specified in the Third Schedule to these Regulations are declared to be wetlands of international and national importance.

Procedure for identification of protected wetlands

4. (1) The Service shall, within a period of one year from the commencement of these Regulations prepare and send to the Cabinet Secretary a proposed catalogue identifying and classifying proposed protected wetlands within the Republic of Kenya.

(2) The catalogue identifying and classifying proposed protected wetlands shall be accompanied with the following information:

- (a) a broad geographic description and delimitation of each of the proposed protected wetlands;
- (b) its zone of influence along with a map (accurate and to scale);
- (c) the size of the wetland; and
- (d) an account of pre-existing rights and privileges, consistent with the ecological health of the wetland.

(3) On receipt of the list of proposed protected wetlands and documents in sub-regulation (2) the Cabinet Secretary shall forward the list to the Wildlife Research and Training Institute who shall within a period of six months conduct a survey of the proposed protected wetlands and submit a report to the Cabinet Secretary either in support or objection to the proposals.

(4) Upon receipt of the report the Cabinet Secretary shall within thirty days gazette and notify residents of the areas recommended as protected wetlands and invite objections and submissions thereto, if at all.

(5) Objections to any area being declared a wetland shall be lodged with the Cabinet Secretary within thirty days of gazetement and notification and shall be heard and determined within sixty days of receipt.

(6) The Cabinet Secretary shall within a period of thirty days thereafter arrive at a decision on the areas to be declared protected wetlands and shall accordingly gazette them.

(7) The Cabinet Secretary shall cause to be published and significantly displayed notifications identifying protected wetlands within the areas of concern, in both English and swahili languages.

(8) The Cabinet Secretary may without an application from any party or upon application, review any decision under these Regulations or issue direction for inclusion of any protected wetland under these Regulations.

Categories of protected wetlands

5. The following shall be regarded as protected wetlands under section 33(3) of the Act and shall be gazetted as protected wetlands that require special safeguard-

- (1) wetlands declared as such by the Cabinet Secretary under section 33 (1) of the Act in accordance with the procedure set down in Regulation 4 herein;
- (2) any area or land declared as an important wetland under the Convention of Wetlands of International Importance, 1971;
- (3) wetlands recognized as or lying within a UNESCO World Heritage Site;
- (4) gazetted Wetlands in areas that are ecologically sensitive and important such as national parks, national reserves, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, coral reefs, areas of outstanding natural beauty or historical or heritage areas rich in genetic diversity; and
- (5) any other wetland as so identified by the Service and thereafter notified by the Cabinet Secretary under the provisions of the Act for the purpose of these Regulations.

PART III- MANAGEMENT OF PROTECTED WETLANDS

Management of protected wetlands

6. (1) These Regulations shall apply to all protected wetlands in Kenya whether in public, community or private land.

(2) Neither the national government, county governments or communities shall lease or otherwise alienate any protected wetland.

(3) The Polluter Pays Principle shall be strictly applied in regards to payment of compensation for pollution of protected wetland areas.

(4) The Service may claim and any Polluter shall pay an amount of money required to restore any wetland contaminated in violation of the Act and these regulations.

Community involvement

7. The Service shall manage the protected wetlands in consultation with the person or community who hold a legal or communal interest in the wetland and the relevant lead agencies in accordance with the Integrated Wetland Management Plan

Service to maintain inventory of protected wetlands

8. (1) The Service shall, in consultation with the Cabinet Secretary, maintain an inventory of all protected wetlands.

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

- (a) location of the wetland;
- (b) type of fauna and flora;
- (c) the soil and hydrological characteristics;
- (d) the discharge and composition of water;
- (e) the volume, flow and quality of water where possible;
- (f) the existing uses;
- (g) the density of population in the wetland catchment drawing attention especially those most dependent on the wetland;
- (h) conservation status;
- (i) the area of the wetland, and
- (j) any other factor relevant to the wetland.

Restricted activities

9. No person shall, without a written permission from the Service, undertake any of the following activities within protected wetland areas-

- (a) reclamation, recovery or repossession of wetland areas;
- (b) withdrawal of water or the impoundment, diversion or interruption of water sources within the local catchment area of the wetland ecosystem;
- (c) any form of alteration, interference or modification of wetlands;
- (d) manufacture or handling or storage or disposal of any hazardous substances ;
- (e) any construction of a permanent nature except for boat jetties; and

- (f) any action that may have an adverse impact on the ecosystem of the wetland. provided that the existing practices, if any, existed before the commencement of these Regulations shall be phased out within a period not exceeding six months from the date of commencement of these Regulations;

Prohibited activities

10. (1) The following activities shall not be undertaken in any protected wetland area-

- (a) activities prohibited in a terrestrial park;
- (b) operation of industries;
- (c) solid waste disposal;
- (d) discharge of untreated effluent from industries, towns, cities or any human settlement;
- (e) harvesting of living and non- living organisms which changes the character of the wetland;
- (f) dredging, unless the wetland is only impacted by siltation;
- (g) activities within the zone of influence, as per the definitions of wetlands that may directly affect the ecological character of the wetland;
- (h) aquaculture, agriculture and horticulture activities within the wetlands; and
- (i) any other activity to be identified by the Service.

(2) Notwithstanding anything in the sub-regulation (1) the Cabinet Secretary may on the recommendation of the Service and upon receipt of a favorable detailed Environmental Impact Assessment permit any of the prohibited activities or non-wetland use in the protected wetlands areas.

(3) No wetland shall be converted into a non-wetland use unless the Cabinet Secretary is satisfied on the recommendation of the Service that it is expedient and in the public interest to do so and reasons justifying the decision recorded.

Cabinet secretary to issue directions and review

11. (1) The Cabinet Secretary may issue directions, necessary for the conservation, preservation and prudent use of wetlands.

(2) The Cabinet Secretary shall following the procedure set down under these Regulations periodically review the list of protected wetlands and the details of prohibited and restricted activities under these Regulations.

PART IV-FINAL PART

Appeals against the decision of Cabinet Secretary

- 12.** Any person aggrieved by the decision of the Service may prefer an appeal to the Tribunal within a period of sixty days from the date of such decision:

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

Complementing legislation

- 13.** These regulations shall be applied in consonance with regulations on wetlands, lakes, riverbanks and oceans under the Environmental Management and Conservation Act, the Water Act and the Kenya Maritime Act.

Offences

- 14.** Any person who contravenes any provision of these Regulations commits an offence and shall be liable on conviction to such penalty as is provided for in the Act.

FIRST SCHEDULE

FORMS FOR APPLICATION

FORM A (To be completed in Triplicate)

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

Wildlife Conservation and Management (Protected Wetlands) Regulations, 2015

Regulation 3(4)

APPLICATION FOR A PERMIT TO CARRY OUT A REGULATED ACTIVITY IN A
PROTECTED WETLAND

PART I- DETAILS OF APPLICANT

INDIVIDUAL APPLICANTS

NAME OF APPLICANT _____

SEX M F (First) (Middle) (Surname)

ID NUMBER/ _____

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

COUNTY _____

CORPORATE APPLICANTS

NAME OF APPLICANT _____

REGISTRATION NUMBER _____

(Attach copy of certificate of registration)

PIN NO. _____

ADDRESS _____ POSTAL CODE _____

TEL. NUMBER _____

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

FOR ALL APPLICANTS

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

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

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

Yes No

If yes, explain _____

PART II- DETAILS OF ACTIVITY

TYPE OF ACTIVITY TO BE CARRIED OUT _____

ESTIMATED PERIOD FOR WHICH THE ACTIVITY WILL TAKE _____

PROPOSED ACREAGE/AREA ON WHICH THE ABOVE ACTIVITY IS TO BE CARRIED OUT _____

EXECUTIVE SUMMARY OF ENVIRONMENTAL IMPACT ASSESSMENT REPORT *(Please attach where necessary)* _____

(Attach a map and detailed information showing area directly or indirectly affected by proposed activity.)

ANY OTHER INFORMATION _____

PART III-FINAL

OTHER DOCUMENTS (Check if attached)

- Payment of prescribed fee;
- Personal qualifications to perform activity;
- Location(s) where the activity is to be carried out;
- Proposed number of field research assistants and technicians;
- Environment Impact Assessment Report;
- Environment Impact Assessment License

SIGNATURE OF APPLICANT _____ DATE _____

OFFICIAL USE ONLY

NAME OF RECEIVING OFFICER _____

DESIGNATION/TITLE _____

STATION _____

DATE _____

COMMENTS OF THE COUNTY ENVIRONMENT OFFICER _____

PERMIT APPROVED DECLINED

If declined, reason _____

Fee paid Shs. _____

FORM B

THE REPUBLIC OF KENYA

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

Wildlife Conservation and Management (Protected Wetlands) Regulations, 2015

Regulation 3 (6)

**PERMIT TO CARRY OUT A REGULATED ACTIVITY IN
A PROTETCED WETLAND**



Original



Not Transferable

Permit No. _____

This permit is granted to _____

of ID/ REG NO. _____ and address _____

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

(insert reason for permit)

at _____

(insert Location and County)

The Permit is subject to the following conditions *(Please attach on separate sheet where necessary)*

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

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

Issued on _____

Valid until _____

SIGNED _____

DATE _____

CHAIRPERSON
COUNTY WILDLIFE CONSERVATION COMMITTEE

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SECOND SCHEDULE

WETLANDS OF INTERNATIONAL AND NATIONAL IMPORTANCE

The following sites are recognized as protected wetland areas under Article 2.1 of the Convention on Wetlands (Ramsar, Iran, 1971), which reads: “Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, hereinafter referred to as “the List” which is maintained by the bureau [secretariat of the Convention] established under Article 8.

1. Lake Baringo
2. Lake Bogoria
3. Lake Elmenteita
4. Lake Naivasha
5. Lake Nakuru
6. Tana River Delta

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