



**CONSULTANCY SERVICES FOR LEGAL AND REGULATORY GAP/NEEDS
ANALYSIS FOR FEDERAL MEMBER STATES AND FEDERAL
GOVERNMENT OF SOMALIA**

**FOR THE MINISTRY OF FISHERIES AND BLUE ECONOMY, FEDERAL
REPUBLIC OF SOMALIA, MOGADISHU, SOMALIA**

GAP ANALYSIS REPORT

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Table of Contents

A. INTRODUCTION.....	3
1. The Consultancy.....	3
2. The Client	3
3. The Consultant.....	4
4. Objectives	4
5. Scope of the Consultancy	4
6. Deliverables/Outputs.....	5
B. GAP ANALYSIS	6
C. BRIEF BACKGROUND OF LEGISLATIVE LANDSCAPE.....	6
D. COMPLIANCE OF THE FGS LAW WITH INTERNATIONAL INSTRUMENTS.....	6
E. SOMALI MARITIME CODE OF 1959.....	8
LAW OF FISHERIES MANAGEMENT AND DEVELOPMENT	13
JUBALAND STATE FISHERIES LAW.....	16
Gap analysis.....	16
Recommendations.....	20
Conclusion	21
PUNTLAND FISHERIES LAW.....	22
Gap Analysis.....	22
Recommendations.....	25
Conclusion	27
GALMUDUG FISHERIES LAW	28
Gap analysis.....	28
Recommendations.....	32
Conclusion	33
HIRSHABELLE FISHERIES LAW.....	34
Gap Analysis.....	34
Recommendations.....	38
Conclusion	39
SOUTHWEST STATE FISHERIES LAW	41
Gap analysis.....	41
Recommendations.....	45
Conclusion	46

A. INTRODUCTION

1. The Consultancy

Vide tender number SO-MFBE-403516-CS-CQS, Ministry of Fisheries and Blue Economy, Federal Republic of Somalia, Mogadishu, Somalia invited bids for the provision of Consultancy Services for Legal and regulatory gap/needs analysis for Federal Member States and Federal Government of Somalia (*hereinafter 'the Client'*).

Initiative Development Vision (*hereinafter 'the Consultant'*) submitted a bid and was notified of success of the bid **27th April 2024** and notice of intention to award on **3rd June, 2024**.

The Consultant and Client have both executed the Contract Agreement for the Provision of Legal and regulatory gap/needs analysis for Federal Member States and Federal Government of Somalia.

The Consultant and the Client held an Inception Meeting on **6th June, 2024** to establish the modalities of the conduct of the Consultancy and subsequently formulate and agree on a Work Plan within which the services will be rendered to the Client in an efficient and appropriate manner.

2. The Client

The Ministry of Fisheries and Blue Economy in Somalia is the government institution responsible for the sustainable management, development, and conservation of the country's marine and aquatic resources. Tasked with spearheading efforts to harness the potential of Somalia's extensive coastline and rich maritime resources, the Ministry plays a pivotal role in promoting economic growth, food security, and livelihoods for coastal communities.

Key functions of the Ministry include the formulation and implementation of policies, regulations, internationally accepted best practices and strategic plans that guide the exploitation and preservation of fisheries resources. It also oversees the development of infrastructure and capacity building within the fisheries sector, encourages private sector participation, and ensures compliance with regional and international maritime standards and environmental protocols. Through its initiatives, the Ministry aims to foster a balanced and equitable approach to harnessing the blue economy, promoting sustainability while bolstering Somalia's economic resilience and diversification.

In collaboration with the Ministry, other stakeholders and players such as the Director General (DG), Fisheries Advisory Council (FAC), Fisheries Management Development Council (FMDC), ministry officials, representatives from related sectors such as ports and marine transport, the coast guard, planning and economic development, research, and representatives from the fishing industry play a pivotal role in promoting economic growth, food security, and livelihoods for coastal communities.

By leveraging Somalia's marine wealth, the Ministry of Fisheries and Blue Economy envisions a thriving, sustainable, and inclusive blue economy that contributes to national development goals, enhances biodiversity conservation, and supports the well-being of its people.

3. The Consultant

Initiative Development Vision (IDV) is a prominent consultancy firm with offices strategically located in Mogadishu, Somalia, and Nairobi, Kenya. Specializing in a diverse array of services, IDV is committed to fostering sustainable development and positive societal impact.

The firm's comprehensive offerings include:

- Research
- Environmental Impact Assessment (EIA) & Climate Change
- Legal Review and Analysis
- Policy Analysis
- Advisories on various aspect including but not limited to Communication.

IDV provides client-centric with data-driven insights. IDV excels in third-party monitoring, ensuring transparency and accountability in various projects. The firm conducts baseline labour market assessments, offering valuable insights into workforce dynamics and skills gaps. With a focus on institutional capacity development, IDV provides tailored training programs to enhance organizational capabilities.

4. Objectives

The objective of carrying out the Legal and regulatory gap/needs analysis is to determine whether, the existing legal and policy frameworks and assess the alignment of the current laws and regulations with the federal fisheries law and the relevant international treaties such as the United Nations Convention on the Law of the Sea.

5. Scope of the Consultancy

The Consultant will work within the Terms of Reference and the Contracts to deliver quality output in accordance with the objectives of the assignment as listed herein under:

a) Review of Existing Legal and Regulatory Frameworks for fisheries:

The consultant/team will review the existing policy, legal and regulatory framework in the Ministries of Fisheries in the Federal Government of Somalia(FGS) and s Federal Member States (FMS). This will include national laws, regulations, policies, and regional and international standards (e.g. Indian Ocean Tuna Commission (IOTC) Conservation and Management Measures, United Nations Convention on the Law of the Sea (UNCLOS), Food

and Agriculture Organization's Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO PSMA)).

b) Identification of Gaps and Needs:

Based on the review and assessment, the consultant/team will identify any gaps or deficiencies in our current practices and their alignment with legal and regulatory requirements. This will include identifying areas where the legal and regulatory framework is not adequately addressed or implemented.

c) Development of Recommendations:

The consultant/team will develop actionable recommendations to bridge the identified gaps and enhance compliance with legal and regulatory requirements. The recommendations will be practical, feasible, and tailored to the project's specific needs and context. This will include a comprehensive list of policies, laws and regulations that needs to be adopted or updated.

6. Deliverables/Outputs

The consultant/team will be responsible for producing the following deliverables:

a) Inception Report:

An inception report outlining the proposed methodology, approach, and work plan for conducting the analysis. This report should be submitted for review and approval before commencing the analysis.

b) Gap/Needs Analysis Report:

A comprehensive report documenting the findings of the analysis, including an assessment of the existing legal, policy, and regulatory framework, identified gaps and needs, analysis of current practices, and recommendations for improvement. The report should be well-structured, clearly presented, and supported by evidence and references.

c) Presentation of Findings and Recommendations:

A presentation of the analysis findings and recommendations to relevant stakeholders within the organization. This presentation should allow for discussion, clarification, and feedback to ensure a shared understanding of the findings and recommendations.

B. GAP ANALYSIS

The Terms of Reference of this Consultancy *inter alia* provide that the Consultant shall review the laws in question, identify the gaps then prepare and present a gap analysis report. The Consultant hereby presents the Gap Analysis Report in the following sequence:

- The Federal Law of Fisheries Management and Development No. 008 2023.
- Jubbaland Fisheries Law.
- Puntland Fisheries law.
- Galmudug Fisheries law.
- Hirshabelle Fisheries law.
- South west Fisheries law.

C. BRIEF BACKGROUND OF LEGISLATIVE LANDSCAPE

Somalia's fisheries laws are shaped by a fragmented legal landscape due to the existence of federal and regional systems. While the 2012 Provisional Constitution grants the federal government authority over natural resources, including fisheries, there has been an attempt to develop and to make the legal framework more consistent and contemporary with the evolving socio-economic and legal needs of the country. The Fisheries Law No. 008 of 2023, which was recently enacted became a game changer and a commendable improvement of Law No. 29 of 2014 as it brings in the much needed changes into the Fisheries sector in Somalia.

Regional states such as Jubbaland, Puntland, Hirshabelle, South West, and Galmuduug on the other hand have developed their own Fisheries Laws which mirrored the repealed Somali's Fisheries Law No. 29 of 2014, focusing on sustainable practices and combating illegal fishing. Being a member of various International Bodies, Somalia also adheres to international agreements such as the United Nations Convention on the Law of the Sea (UNCLOS) and the Indian Ocean Tuna Commission (IOTC).

D. COMPLIANCE OF THE FGS LAW WITH INTERNATIONAL INSTRUMENTS

Key International Instruments for Analysis:

1. **UNCLOS (United Nations Convention on the Law of the Sea):** Provides comprehensive regulations on maritime zones, resource conservation, and sustainable development.

2. **FAO Code of Conduct for Responsible Fisheries:** Offers guidance for sustainable fishing and aquaculture practices.
3. **United Nations Fish Stocks Agreement (UNFSA):** Focuses on the conservation and management of straddling and highly migratory fish stocks.
4. **Convention on Biological Diversity (CBD):** Stresses biodiversity conservation, including marine ecosystems.

Analysis of Compliance with UNCLOS and related instruments:

1. Maritime Zones and Jurisdiction

- **Compliance:** The Fisheries Law defines zones such as the Fisheries Restricted Zone (12 nm), Fisheries Protection Zone (24 nm), and Fisheries Exclusive Economic Zone (EEZ up to 200 nm), aligning with UNCLOS Articles 56 and 57. The law also respects Somalia's sovereign rights over its EEZ for resource exploitation and conservation.
- **Gaps:** The law does not detail procedures for boundary disputes or overlaps in the EEZ with neighboring states, which UNCLOS encourages resolving amicably (Articles 58, 59, 74 and 83).

2. Conservation and Management of Resources

- **Compliance:** Conservation measures include species-specific protections, restrictions on harmful fishing methods (e.g., explosives, large-scale driftnets), and adherence to international conservation measures (e.g., FAO guidelines). These align with UNCLOS Articles 61-62 and the FAO Code of Conduct.
- **Gaps:** While there are provisions for endangered species and bycatch, enforcement mechanisms, such as monitoring and penalties for non-compliance with regional fisheries management organizations (RFMOs), need elaboration.

3. Sustainability and Ecosystem Approach

- **Compliance:** The law emphasizes sustainable use and ecosystem-based management, as required by UNCLOS Article 119 and the CBD. It prohibits the destruction of critical habitats such as mangroves and coral reefs.
- **Gaps:** Implementation frameworks for addressing climate change impacts on fisheries and integrating local communities in decision-making need strengthening, as emphasized in the FAO Code and CBD.

4. **Illegal, Unreported, and Unregulated (IUU) Fishing**

- **Compliance:** Provisions align with the FAO International Plan of Action against IUU fishing and include measures such as vessel monitoring systems, port state controls, and penalties for non-compliance with RFMO regulations.
- **Gaps:** Detailed protocols for regional cooperation and data sharing with neighboring states and RFMOs under UNCLOS Article 118 and 200 are absent.

5. **Research and Data Sharing**

- **Compliance:** Research provisions ensure the collection and sharing of data on fisheries and ecosystems, consistent with UNCLOS Article 200 and the FAO guidelines.
- **Gaps:** Mechanisms for data sharing with international bodies and stakeholders are underdeveloped and not clearly discussed.

Recommendations:

1. **Enhance Regional Cooperation:** Strengthen collaboration with neighboring states and RFMOs for managing shared stocks and addressing IUU fishing.
2. **Develop Climate Adaptation Strategies:** Include provisions for mitigating the impacts of climate change on fisheries and coastal communities.
3. **Improve Enforcement Mechanisms:** Establish clearer penalties, increase surveillance capacity, and enhance the role of the Somali Navy and Coast Guard.
4. **Integrate Stakeholders:** Promote co-management with local communities and ensure stakeholder participation in decision-making.

E. SOMALI MARITIME CODE OF 1959

The compliance analysis of Somalia's Fisheries Law No. 008 of 2023 (hereinafter *Fisheries Law*) with the Somali Maritime Code of 1959 will focus on areas of potential alignment and divergence, particularly in terms of jurisdiction, governance, resource management, and enforcement.

From the onset, we wish to clarify that there is a Draft Somali Maritime Code 2015 Volume 1 which we have not considered since it is not an instrument that is operational. We understand that the Somali Maritime Code of 1959 is currently the code that is operational. It is therefore proper to consider the current as opposed to that which is in draft.

OVERVIEW OF THE SOMALI MARITIME CODE OF 1959

The Somali Maritime Code of 1959 establishes Somalia's legal framework for maritime governance, including issues of navigation, shipping, safety, and jurisdiction. It sets rules for the regulation of vessels, licensing, maritime zones, and obligations under international maritime law. While largely focused on shipping and trade, it has sections that influence marine resource governance.

COMPLIANCE ANALYSIS

1. Jurisdiction over Maritime Zones

- **Alignment:**
 - The Fisheries Law mirrors the Somali Maritime Code's recognition of Somalia's sovereignty over territorial waters and jurisdiction over the Exclusive Economic Zone (EEZ). The Fisheries Law also defines the Fisheries Restricted Zone (0-12 nautical miles) and Fisheries Protected Zone (12-24 nautical miles), in line with the Somali Maritime Code's framework for maritime jurisdiction.
 - Both laws are consistent with UNCLOS principles, which the Somali Maritime Code anticipates in defining Somalia's rights over maritime zones.
- **Potential Divergence:**
 - The Fisheries Law extends specific fisheries-related rights and duties in the EEZ that are not explicitly detailed in the Somali Maritime Code, such as licensing and management of fishing activities. This reflects a sector-specific focus absent in the broader Maritime Code.

2. Licensing and Regulation of Vessels

- **Alignment:**
 - The Somali Maritime Code requires registration and licensing of all vessels operating in Somali waters. The Fisheries Law builds on this by specifically requiring licenses for fishing vessels, setting additional criteria for semi-industrial and industrial fishing vessels.
- **Potential Divergence:**
 - While the Maritime Code emphasizes vessel registration and ownership requirements, the Fisheries Law introduces fisheries-specific conditions such as

quotas, bycatch management, and adherence to international conservation measures. This could create overlaps or gaps if not harmonized.

- The Fisheries Law's prohibition on foreign vessels fishing without specific authorization strengthens the Maritime Code's general rules on foreign vessel operation but introduces stricter conditions.

3. Safety and Labor Standards

- **Alignment:**

- The Maritime Code includes general provisions for the safety of vessels and crew. Section 51 of the Fisheries Law complements this by requiring specific labor conditions for personnel aboard fishing vessels.

- **Potential Divergence:**

- The Fisheries Law does not fully integrate the Maritime Code's broader safety provisions, such as requirements for seaworthiness, which could lead to inconsistencies in enforcement. Coordination between the Fisheries and Maritime authorities will be essential.

4. Conservation and Environmental Protection

- **Alignment:**

- The Fisheries Law introduces prohibitions against destructive fishing practices, pollution, and habitat destruction, aligning indirectly with the Maritime Code's provisions on preventing pollution and maintaining maritime safety.
- Both laws recognize the importance of sustainable use of marine resources and align with Somalia's obligations under international law.

- **Potential Divergence:**

- The Maritime Code does not have explicit provisions for fisheries conservation or biodiversity protection, while the Fisheries Law incorporates modern principles such as the ecosystem approach and precautionary measures.

5. Enforcement Mechanisms

- **Alignment:**
 - The Maritime Code and Fisheries Law both grant enforcement powers to Somali authorities, including inspections, vessel seizures, and penalties for violations.
 - The Fisheries Law reinforces the role of the Somali Navy and Coast Guard in enforcing fisheries-related provisions, consistent with the Maritime Code's general enforcement framework.
- **Potential Divergence:**
 - The Fisheries Law expands enforcement to include monitoring systems like Vessel Monitoring Systems (VMS) and automatic identification systems (AIS), which are not addressed in the Maritime Code.
 - Coordination mechanisms between enforcement bodies under both laws need clearer articulation to avoid jurisdictional overlaps.

6. Trade and Ports

- **Alignment:**
 - The Maritime Code regulates port use and trade, while the Fisheries Law includes provisions for port state measures, transshipment, and landing of fish products, ensuring compliance with international standards.
- **Potential Divergence:**
 - The Fisheries Law introduces detailed measures for controlling fish trade and ensuring sustainability, which the Maritime Code does not explicitly address. This reflects the Fisheries Law's focus on resource management over trade facilitation.

7. Dispute Resolution

- **Alignment:**
 - Both laws include provisions for resolving disputes, though the Maritime Code focuses more broadly on maritime conflicts, while the Fisheries Law addresses fisheries-specific disputes.

- **Potential Divergence:**
 - The Fisheries Law does not specify whether maritime disputes related to fishing would be resolved under the Maritime Code’s framework or through a fisheries-specific process. Clarification is needed to harmonize the two frameworks.

Gaps and Recommendations

1. **Harmonization of Licensing:** Develop a unified licensing framework that aligns the registration requirements under the Maritime Code with the fisheries-specific licensing conditions in the Fisheries Law.
2. **Coordination in Enforcement:** Establish clear protocols for cooperation between agencies enforcing the Maritime Code and the Fisheries Law, especially the Somali Navy and Coast Guard.
3. **Safety and Seaworthiness:** Integrate the Maritime Code’s seaworthiness and safety standards into the Fisheries Law to ensure uniform standards for all vessels.
4. **Data Sharing and Governance:** Create mechanisms for sharing data and aligning conservation and enforcement policies between maritime and fisheries authorities.
5. **Comprehensive Review:** Conduct a legal review to identify specific conflicts or overlaps between the two laws and develop harmonizing regulations.



The Federal Republic of Somalia

Ministry of Fisheries and Marine Resources

Fishery Law of Somalia

LAW OF FISHERIES MANAGEMENT AND DEVELOPMENT

The Law of Fisheries Management and Development - No. 008 of 2023 (*hereinafter the 'FGS Fisheries Law'*) was enacted in April, 2023. The FGS Fisheries Law repealed the Somali Fisheries Law No. 29 of 2014 and all other law or regulation incompatible with it.

The FGS Fisheries law is a game changer and a commendable improvement of Law No. 29 of 2014 as it brings in the much needed changes into the Fisheries sector in Somalia. Compared to her regional peers, the FGS Fisheries Law has entrenched in law elaborate and progressive provisions that are alive to the changing societal behaviors, needs and values such as conflict of interest, stakeholder engagement and data protection. Some of the notable changes and key provisions include:

- a) **Clear Objectives:** the FGS Law provides with clarity its objectives. This is in line with best practice.
- b) **Defined territorial jurisdiction:** the FGS Law has clearly defined the territorial jurisdiction of both the FGS and the FMS.
- c) **Protection of Somali Citizens:** under the FGS Law, the Fisheries Restricted Zone and Fisheries Protection Zone have been reserved exclusively for Somali citizens and Somali vessels.
- d) **Principles of Fisheries Management:** A comprehensive list of principles guiding all stakeholders in the fisheries sector has been provided. The said principles are aligned to principles regionally and internationally.
- e) **Mandate of FGS and FMS:** the FGS law provides for clear functions of the FGS and FMS thus enhancing a collaborative approach of both levels of government.

- f) **Institutional Arrangement:** The FGS Law has put in place a good structure with various institutions including the Ministry, the Fisheries Management Development Council (FMDC), the Director General with clear responsibilities for each of them.
- g) **Information Management and Data Protection:** the law provides for the purpose of collection, processing, use and sharing of information. Further, it seeks to protect personal information of all players in the fisheries sector.
- h) **Fair Administrative action:** The Law provides for fair administrative action including appeal mechanisms for decisions made in accordance with the FGS Law. This is in line with the provisions of Article 33 of the Federal Constitution of Somalia which provides that *“every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.”*
- i) **Conflict of Interest:** The Law defines circumstances where conflict of interest arises when a person is discharging responsibilities placed on them by the Law and provides for how the same should be treated.
- j) **Stakeholder Engagement:** The FGS Law provides for stakeholder inclusion and engagement which ensures that all players collaborate towards success of the fisheries sector.

Gap Analysis

Section 84 and 135 provide for appeals wherein the Minister shall appoint an Appeals Committee of not more than three persons having knowledge of

fisheries or legal matters which shall include, **where possible**, at least one government official and one person from the civil society. The *‘where possible’* leaves it to the discretion of the appointing authority. If the intention of the law is to have a government official and a person from civil society, then it should state so in mandatory terms.

Further, the section provides for that the Appeals Committee shall determine its own procedures. The procedures should be codified in law through regulations and be available to the public like any other law.

Finally, the law provides that the Appeals Committee will determine whether its decision is final. This issue should be an express and certain provision of the law rather than be left to the Committee to decide. The decisions of the Committee should be subjected to appeal in the judicial system.

Recommendation

Streamline the Appeal Mechanism: The procedures for the Appeals Committee should be codified into law. The law should also provide for appeals for decisions of the Committee.

Conclusion

The FGS Fisheries Law is a progressive law within the East Africa Region and Africa at large. However, there is need to enhance fair administration action by ensuring that the composition and procedures of the Appeals Committee are certain and that their decisions are subject to appeal. This can be achieved through amendment of the law.

Jubaland State of Somalia

Ministry of Fisheries and Marine Resources

Fisheries Law #005/2021



JUBALAND STATE FISHERIES LAW

Jubaland State Fisheries Law (*hereinafter the 'FMS Law'*) was passed in the year 2017, prior to the enactment of the Federal Republic of Somalia Law of Fisheries Management and Development - No. 008 2023 (*hereinafter the 'FGS Fisheries Law'*). The FGS Fisheries Law has revolutionized the fisheries legal and regulatory framework in the Republic of Somalia. Owing to the international and regional developments as well as the enactment of the FGS Fisheries Law, there is need to review the Jubaland State Fisheries Law to align it with these developments.

Gap analysis

A review of the Jubaland State Fisheries Law reveals various gaps which have been analyzed below:

a) Objectives

The FMS Law does not provide its objectives. Best practice requires that any law sets out its objectives. The FGS law has clearly defined its objectives.

b) Responsibilities of the Ministry

The FMS Law broadly outlines the responsibilities of the Ministry, which may lead to ambiguity in some areas. Article 3 of the Jubaland Fisheries Law tasks the Ministry with the management and development of fisheries resources in Jubaland and the administration of the regulation. While this provision establishes a general mandate, it does not provide a detailed framework for the Ministry's roles and responsibilities.

Section 10 of the FGS Law offers a more comprehensive structure, clearly outlining the duties of Federal Member States, including sustainable resource management, licensing, and oversight of fisheries activities. To ensure clarity, alignment with national standards, and effective governance, the Jubaland Fisheries Law should expand its provisions to reflect the framework outlined in Section 10 of the FGS Law.

c) Institutional Arrangements.

The FMS Law provides for limited institutional arrangements for the management of fisheries, leaving the sector in Jubaland State to be primarily managed by the Ministry. Article 27 authorizes the Minister to appoint public officers as authorized officers to enforce the regulation. Further, Article 28 establishes a Fisheries Advisory Council mandated to advise on the management and development of fisheries and carry out specific responsibilities outlined in the regulation. The council comprises key stakeholders, including ministry officials, representatives from related sectors such as ports and marine transport, the coast guard, planning and economic development, research, and representatives from the fishing industry.

The FGS Law, on the other hand, introduces a comprehensive framework, including the Fisheries Management Development Council (FMDC) and the Office of the Director General, with clearly defined responsibilities for each. To ensure sustainable and effective fisheries management, Jubaland should strengthen its institutional arrangements by adopting similar structures. Establishing a dedicated Office of the Director General with defined roles to work in collaboration with the already existing Fisheries Advisory Council and the Ministry. The mandate of the Ministry, the Fisheries Advisory Council and the Office of the Director General to ensure effective and efficient administration of the fisheries sector in Jubaland.

d) Foreign Fishing Licence

Article 16 of this FMS Law provide for the validity of Foreign Fishing Licenses.

Under Section 10 of the FGS Act (*mandate, responsibilities and duties of the Federal Member States*), the Federal Member states have full responsibility for managing and licensing fisheries and related activities in the Fisheries Restricted Zone provided that the licenses or other permissions are issued only to Somali citizens or vessels that are wholly owned by Somali citizens for fishing or related activities in the Fisheries Restricted Zone or Fisheries Protected Zone.

Section 4 (1) (a) of the FGS Law defines the **Fisheries Restricted Zone** as reserved exclusively for artisanal fishing and related activities by Somalia Citizens and Somali Vessels of up to 12 Meters in length overall that are wholly owned by Somali Citizens. The FMS shall have the right to manage the fisheries resources and issue licenses in relation to this zone.

Section 4 (1) (b) of the FGS Act defines the **Fisheries Protection Zone** as reserved exclusively for fishing and related activities by Somali citizens and Somali vessels of up to 24 meters in length that are wholly owned by Somali citizens or any legal person established in Somalia that is wholly owned and controlled by Somali citizens. The FMS shall have the right to issue licenses in relation to this zone after consultation and approval from the FGS Ministry.

Section 4 (1) (c) of the FGS Act defines the **Fisheries Exclusive Economic Zone**, being that part of the Exclusive Economic Zone that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles wherein licensed fishing and related activities shall be permitted in accordance with this Act and the **FGS Ministry shall have the exclusive right to manage the fisheries resources and issue licenses** in relation to this Zone.

The implication of the above provision is that the FMS has the right to issue licenses **only** within the Fisheries Restricted Zone and Fisheries Protection Zone which are a reserve of Somali citizens. These provisions expressly exclude operation of foreign persons and vessels within the zone thus the FMS **CANNOT** issue foreign licenses.

The FMS do not have authority to issue foreign licenses.

Article 25 of the Jubaland Fisheries Law on the issuance and validity of Foreign Fishing Licenses are contradictory and counterproductive to the FGS law.

e) Fair administrative action.

The Law does not provide for fair administrative action including appeal mechanisms for decisions made in accordance with the FMS Law. This is contrary to the provisions of Article 33 of the Federal Constitution of Somalia which provides that *“every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.”*

All decisions should be made after affording the subjects (*who will be affected by the decision*) an opportunity to be heard. Further, the said subjects should be given an opportunity to appeal.

The FMS Law should establish an Appeals Committee to hear and determine appeals from decisions made under this Law. It should also provide for an appeal mechanism to court for some decisions of the Appeals Committee.

f) Fisheries Management Principles

Article 4 of the Jubaland Fisheries Law emphasizes sustainable management and conservation of aquatic and coastal resources by ensuring living resources are not endangered, promoting optimal sustainable yields, and considering environmental, economic, and social factors. It also mandates the Ministry to regulate access by foreign states and ensure that the Total Allowable Catch (TAC) is based on scientific evidence.

However, these principles are primarily directed at the Ministry, with limited inclusivity for other stakeholders. Fisheries management principles should govern and be binding on all stakeholders, including domestic and foreign fishing vessels, policymakers, and industry participants.

Section 6 of the FGS Law provides a broader and more inclusive framework of principles that govern the functions and responsibilities of all actors in the fisheries sector. To ensure consistency and sustainable fisheries practices, the Jubaland Fisheries Law should align with these principles, making them applicable to all stakeholders while distinguishing them from the specific roles and obligations of the Ministry.

g) Fisheries Information and Dissemination.

The Jubaland State FMS Law obligates the Ministry to collect statistical data and manage public information related to fishing activities within the state, as outlined under Article 8. However, the law does not comprehensively define the purpose and objectives of data collection, storage, management, and dissemination, nor does it address the restrictions and limitations on information sharing.

Further, the FMS Law lacks provisions for the confidentiality of information. With the global emphasis on data protection, highlighted by the recent enactment of the Somalia Data Protection Act, Law No. 003 of 2023, and the confidentiality provisions in Sections 68 and 69 of the FGS Law, it is evident that these elements are crucial. To align with modern standards and national regulations, the Jubaland State Fisheries Law should explicitly address data confidentiality, restrictions on sharing, and detailed guidelines for managing fisheries information. This will ensure that the handling of information is both secure and aligned with national and international data protection practices.

h) Enforcement of FMS

The Jubaland State Fisheries Law, under Article 31 grants authorized Inspectors powers to enforce regulations, including inspecting premises, taking samples, seizing unfit products, controlling prohibited imports, and boarding vessels. Inspectors can also seize equipment or vessels involved in offenses and must bring arrested individuals to court while presenting proper identification when exercising their authority. However, functions and powers of an authorized officer are not defined.

Section 89 of the FGS Law provides for the appointment of Authorized Fisheries Officers, Section 90 for the appointment of Inspectors, and Section 91 for the appointment of Observers, detailing their powers and responsibilities comprehensively. To enhance enforcement mechanisms, the Jubaland State Fisheries Law should mirror these provisions, clearly defining the roles, powers and functions of Authorized Fisheries Officers, Inspectors,

and Observers. This alignment will ensure effective enforcement and oversight within the fisheries sector while promoting consistency with national standards.

i) Definitions.

There is need to harmonize definition to reflect with the FGS Law. Further some of the words defined are not used in the Act; the same should be deleted. In addition, the words defined under the Act should be arranged alphabetically to align with modern Bill drafting.

Recommendations

The analysis above highlights significant gaps in the current Jubaland State Fisheries Law (FMS Law). The following recommendations address these gaps and propose a review to align the FMS Law with the FGS Fisheries Law and modern legal practices:

- 1. Define Objectives:** The FMS Law should clearly outline its objectives to align with best practices and provide a clear direction for its implementation.
- 2. Clarify Ministry Responsibilities:** The responsibilities of the Ministry should be expanded and aligned with Section 10 of the FGS Law to ensure clarity, coherence, and effective governance.
- 3. Strengthen Institutional Arrangements:** Jubaland should enhance its institutional framework by establishing the Office of the Director General with clearly defined roles. In doing so, the law should clearly delineate the mandate of the Ministry, the Fisheries Advisory Council and the Office of the Director General.
- 4. Align Provisions on Foreign Licenses:** The FMS does not have power to issue foreign licenses. The FMS Law therefore should be free from any provisions on foreign fishing licenses.
- 5. Introduce Fair Administrative Action:** The law should establish an Appeals Committee to handle disputes and provide mechanisms for further appeal to the judiciary to ensure lawful and procedurally fair decisions.
- 6. Adopt Comprehensive Fisheries Principles:** The FMS Law should align its fisheries management principles with Section 6 of the FGS Law, ensuring they govern all stakeholders and promote sustainability, inclusivity and accountability.
- 7. Improve Fisheries Information Management:** The law should include detailed provisions on data collection, storage, confidentiality, and dissemination, in line with the Somalia Data Protection Act, Law No. 003 of 2023, and Sections 68 and 69 of the FGS Law.

8. **Strengthen Enforcement Mechanisms:** The FMS Law should mirror the enforcement provisions of the FGS Law, defining the roles, powers, and responsibilities of Authorized Fisheries Officers, Inspectors, and Observers to enhance oversight and compliance.
9. **Harmonize Definitions:** Definitions in the FMS Law should align with those in the FGS Law, unused terms should be removed, and defined terms should be arranged alphabetically for clarity and consistency with modern legislative drafting standards.

Conclusion

Taking into consideration the gaps identified, the Jubaland State Fisheries Law requires a comprehensive review to align it with the FGS Fisheries Law and modern legislative standards. By addressing these gaps, the law will provide a robust framework for sustainable fisheries management, enhance governance, and ensure consistency with national and international practices. This alignment is essential for effective regulation, protection of resources, and equitable benefits for all stakeholders.

The Government of Puntland

Ministry of Fisheries and Marine Resources

Fisheries Law #005/2021



PUNTLAND FISHERIES LAW

Puntland Fisheries Law (*hereinafter the ‘FMS Law’*) was passed prior to the enactment of the Federal Republic of Somalia Law of Fisheries Management and Development - No. 008 2023 (*hereinafter the ‘FGS Fisheries Law’*). The FGS Fisheries Law has revolutionized the fisheries legal and regulatory framework in the Republic of Somalia. Owing to the international and regional developments as well as the enactment of the FGS Fisheries Law, there is need to review the Puntland Fisheries Law to align it with these developments.

Gap Analysis

A review of the Puntland Fisheries Law reveals various gaps which have been analyzed below:

a) Objectives

The FMS Law does not provide its objectives. Best practice requires that any law sets out its objectives. The FGS law has clearly defined its objectives.

b) Responsibilities of the Ministry

This Act provides for the responsibility of the Ministry in very broad terms, in some instances may be ambiguous. The Responsibility of the Ministry has been provided for in Section 10 of the FGS Law has not been captured. The provision should be aligned with FGS Law.

c) Institutional Arrangements.

The FMS Law does not provide a sufficient institutional arrangement for efficient management of fisheries. Article 28 of the Act however provides for Fisheries Advisory Council (FAC) whose roles are broadly captured.

The FGS Law has put in place a good structure with various institutions including the Ministry, the Fisheries Management Development Council (FMDC), the Director General with clear responsibilities for each of them. Puntland should employ the same approach by creating establishing the Office of the Director General and Fisheries Advisory Council with clear roles for each.

d) Foreign Fishing License.

Article 15 and 16 of this FMS Law provide for the issuance and validity of Foreign Fishing Licenses.

Under Section 10 of the FGS Act (*mandate, responsibilities and duties of the Federal Member States*), the Federal Member states have full responsibility for managing and licensing fisheries and related activities in the Fisheries Restricted Zone provided that the licenses or other permissions are issued only to Somali citizens or vessels that are wholly owned by Somali citizens for fishing or related activities in the Fisheries Restricted Zone or Fisheries Protected Zone.

Section 4 (1) (a) of the FGS Law defines the **Fisheries Restricted Zone** as reserved exclusively for artisanal fishing and related activities by Somalia Citizens and Somali Vessels of up to 12 Meters in length overall that are wholly owned by Somali Citizens. The FMS shall have the right to manage the fisheries resources and issue licenses in relation to this zone.

Section 4 (1) (b) of the FGS Act defines the **Fisheries Protection Zone** as reserved exclusively for fishing and related activities by Somali citizens and Somali vessels of up to 24 meters in length that are wholly owned by Somali citizens or any legal person established in Somalia that is wholly owned and controlled by Somali citizens. The FMS shall have the right to issue licenses in relation to this zone after consultation and approval from the FGS Ministry.

Section 4 (1) (c) of the FGS Act defines the **Fisheries Exclusive Economic Zone**, being that part of the Exclusive Economic Zone that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles wherein licensed fishing and related activities shall be permitted in accordance with this Act and the **FGS Ministry shall have the**

exclusive right to manage the fisheries resources and issue licenses in relation to this Zone.

The implication of the above provision is that the FMS has the right to issue licenses **only** within the Fisheries Restricted Zone and Fisheries Protection Zone which are a reserve of Somali citizens. These provisions expressly exclude operation of foreign persons and vessels within the zone thus the FMS **CANNOT** issue foreign licenses.

The FMS do not have authority to issue foreign licenses.

Article 15 and 16 of the Puntland Fisheries Law on the issuance and validity of Foreign Fishing Licenses are contradictory and counterproductive to the FGS law.

e) Fair administrative action.

The Law does not provide for fair administrative action including appeal mechanisms for decisions made in accordance with the FMS Law. This is contrary to the provisions of Article 33 of the Federal Constitution of Somalia which provides that *“every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.”*

All decisions should be made after affording the subjects (*who will be affected by the decision*) an opportunity to be heard. Further, the said subjects should be given an opportunity to appeal.

The FMS Law should establish an Appeals Committee to hear and determine appeals from decisions made under this Law. It should also provide for an appeal mechanism to court for some decisions of the Appeals Committee.

f) Fisheries Management Principles

Article 4 of the Puntland Fisheries Law provide for Fisheries Management Principles. However, the principles listed therein are not exhaustive. Further, from the wording of the principles in this provision, it appears that the principles are directed to the Ministry as opposed to all stakeholders within the fisheries sector. The principles govern and are binding to all players and stakeholders in the fisheries sector. Therefore, the principles should be separated from the roles or obligations of the Ministry.

Section 6 of the FGS Law provides for a comprehensive list of the principles that govern the functions, duties and responsibilities of various organs. This should be mirrored in the Puntland Law.

g) Fisheries Data, Information and Confidentiality

The Puntland's Fisheries Law does not provide comprehensively on collection and storage of data and information. Further, the Law does not provide comprehensively the purpose and objectives of the collection, storage, management and sharing and the restrictions and limitations involved.

The FMS Law also does not provide for confidentiality of information. In the recent past, there has been tremendous development in data protection laws globally. The Republic of Somalia has recently enacted the Data Protection Act, Law No. 003 of 2023. Additionally, Section 68 & 69 of the FGS Law provides for confidentiality of information.

This shows the emphasis and significance placed on how information should be handled.

h) Enforcement of FMS

In terms of enforcement, Puntland Fisheries Law provides for Authorised officer and their powers under Article 27 and 31 respectively. However, in the text of the provisions, reference is made to and inspector/Authorized officer. There is no clarity on the authorized officer, inspector and observer and their respective roles and powers. Questions would as to whether an authorized officer is an inspector, an observer is an inspector and the extent of their powers. This may cause an overlap in roles and powers resulting in chaotic administration, detrimental to the management of the fisheries sector.

Section 89 of the FGS Law provides for the appointment of Authorised Fisheries Officers, Section 90 provides for Appointment of Inspectors and further Section 91 provides for Appointment of observers. The Act further provides comprehensive powers and functions of the said officers. Puntland law should mirror the provisions of the FGS Fisheries Law and comprehensively provide for the powers and functions of the Authorised Fisheries Officers, inspectors and observers.

i) Definitions.

There is need to harmonize definition to reflect with the FGS Law. Further some of the words defined are not used in the Act; the same should be deleted. In addition, the words defined under the Act should be arranged alphabetically to align with modern Bill drafting.

Recommendations

As evident in the analysis above, various gaps exist the current FMS Law. The FMS Law should be reviewed to align it with the FGS Law, other legislations, the Constitution of the Federal Republic of Somalia and regional and international law as follows:

1. **Define Objectives:** The FMS law should state its objectives and provide clarity and purpose in its application.
2. **Clarify Ministry Responsibilities:** The FMS Law should clearly outline the responsibilities of the Ministry, aligning with Section 10 of the FGS Law to ensure effective governance.
3. **Anchor the Office of the Director General:** The Office of the Director General should be anchored in the law.
4. **Establish a Fisheries Advisory Council:** Fisheries Advisory Council should be established to *inter alia* advise the Ministry on matters fisheries.
5. **Define Powers and Functions:** The powers and functions of the Minister, the Director General and the Fisheries Advisory Council should be clearly defined to avoid overlap.
6. **Eliminate Provisions on Foreign Licenses:** All provisions on foreign licenses should be deleted from the FMS Law.
7. **Introduce an Appeals Committee:** The FMS Law should establish an Appeals Committee to hear and determine appeals from decisions made under this Law. It should also provide for an appeal mechanism to court for some decisions of the Appeals Committee.
8. **Adopt Comprehensive Fisheries Principles:** The Principles of Fisheries Management as provided for in Section 6 of the FGS Act should be incorporated in the FMS Act.
9. **Enhance Data Protection:** Provisions on data confidentiality and protection should be included, reflecting the Somalia Data Protection Act and Sections 68 and 69 of the FGS Law.
10. **Strengthen Enforcement Mechanisms:** Puntland law should clearly provide for the powers and functions of authorized officers, inspectors and observers. This may be borrowed from section 89, 90 and 91 of the FGS Law.
11. **Harmonize Definitions:** The definitions in the FMS law should be aligned to the definitions in the FGS Law to avoid conflict in interpretation. Further, the definitions section should be updated to remove terms not used in the body of the law and define

other necessary terms. For ease of reference the definitions should be aligned in alphabetical order.

Conclusion

Globally, legislation evolve over time to respond to new trends in the society. In this instance, Fisheries industry has and continues to evolve as is evident from the enactment of the Federal Republic of Somalia Law Fisheries Management and Development - No. 008 2023. There is need to review the law to address the new developments.

In light of the gaps established in this report, it is recommended that the entire FMS Law be redrafted taking into consideration the findings herein.

Galmudug State of Somalia

Ministry of Fisheries and Marine Resources

Fisheries Law #005/2021



GALMUDUG FISHERIES LAW

Galmudug Fisheries Law (*hereinafter the 'FMS Law'*) was passed prior to the enactment of the Federal Republic of Somalia Law of Fisheries Management and Development - No. 008 2023 (*hereinafter the 'FGS Fisheries Law'*). The FGS Fisheries Law has revolutionized the fisheries legal and regulatory framework in the Republic of Somalia. Owing to the international and regional developments as well as the enactment of the FGS Fisheries Law, there is need to review the Galmudug Fisheries Law to align it with these developments.

Gap analysis

A review of the Galmudug Fisheries Law reveals various gaps which have been analysed below:

a) Objectives

The FMS Law does not provide its objectives. Best practice requires that any law sets out its objectives. The FGS law has clearly defined its objectives.

b) Responsibilities of the Ministry

The FMS Law provides for the responsibility of the Ministry in very broad terms, in some instances may be ambiguous. The Responsibility of the Ministry has been provided for in Section 10 of the FGS Law has not been captured. The provision should be aligned with FGS Law.

c) Institutional Arrangements.

The FMS Law does not provide a sufficient institutional arrangement for efficient management of fisheries. As it is, the Fisheries sector in Galmudug is managed entirely by the Ministry.

The FGS Law has put in place a good structure with various institutions including the Ministry, the Fisheries Management Development Council (FMDC), the Director General with clear responsibilities for each of them. Galmudug should employ the same approach by creating establishing the Office of the Director General and Fisheries Advisory Council with clear roles for each.

d) Foreign Fishing License.

Article 16 and 17 of this FMS Law provide for the issuance and validity of Foreign Fishing Licenses.

Under Section 10 of the FGS Act (*mandate, responsibilities and duties of the Federal Member States*), the Federal Member states have full responsibility for managing and licensing fisheries and related activities in the Fisheries Restricted Zone provided that the licenses or other permissions are issued only to Somali citizens or vessels that are wholly owned by Somali citizens for fishing or related activities in the Fisheries Restricted Zone or Fisheries Protected Zone.

Section 4 (1) (a) of the FGS Law defines the **Fisheries Restricted Zone** as reserved exclusively for artisanal fishing and related activities by Somalia Citizens and Somali Vessels of up to 12 Meters in length overall that are wholly owned by Somali Citizens. The FMS shall have the right to manage the fisheries resources and issue licenses in relation to this zone.

Section 4 (1) (b) of the FGS Act defines the **Fisheries Protection Zone** as reserved exclusively for fishing and related activities by Somali citizens and Somali vessels of up to 24 meters in length that are wholly owned by Somali citizens or any legal person established in Somalia that is wholly owned and controlled by Somali citizens. The FMS shall have the right to issue licenses in relation to this zone after consultation and approval from the FGS Ministry.

Section 4 (1) (c) of the FGS Act defines the **Fisheries Exclusive Economic Zone**, being that part of the Exclusive Economic Zone that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles wherein licensed fishing and related activities shall be permitted in accordance with this Act and the **FGS Ministry shall have the exclusive right to manage the fisheries resources and issue licenses** in relation to this Zone.

The implication of the above provision is that the FMS has the right to issue licenses **only** within the Fisheries Restricted Zone and Fisheries Protection Zone which are a reserve of Somali citizens. These provisions expressly exclude operation of foreign persons and vessels within the zone thus the FMS **CANNOT** issue foreign licenses.

The FMS do not have authority to issue foreign licenses.

Article 16 and 17 of the Galmudug Fisheries Law on the issuance and validity of Foreign Fishing Licenses are contradictory and counterproductive to the FGS law.

e) Fair administrative action.

The Law does not provide for fair administrative action including appeal mechanisms for decisions made in accordance with the FMS Law. This is contrary to the provisions of Article 33 of the Federal Constitution of Somalia which provides that *“every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.”*

All decisions should be made after affording the subjects (*who will be affected by the decision*) an opportunity to be heard. Further, the said subjects should be given an opportunity to appeal.

The FMS Law should establish an Appeals Committee to hear and determine appeals from decisions made under this Law. It should also provide for an appeal mechanism to court for some decisions of the Appeals Committee.

f) Fisheries Management Principles

Article 4 of the Galmudug Fisheries Law provide for Fisheries Management Principles. However, the principles listed therein are not exhaustive. Further, from the wording of the principles in this provision, it appears that the principles are directed to the Ministry as opposed to all stakeholders within the fisheries sector. The principles govern and are binding to all players and stakeholders in the fisheries sector. Therefore, the principles should be separated from the roles or obligations of the Ministry.

Section 6 of the FGS Law provides for a comprehensive list of the principles that govern the functions, duties and responsibilities of various organs. This should be mirrored in the Galmudug Law.

g) Responsibility of the FMS in Aquaculture

Galmudug Fisheries Law is silent on aquaculture.

Section 10 of the FGS Law provides for the mandate, responsibilities and duties of Federal Member States which include ***‘responsibility for managing and licensing fisheries and aquaculture in freshwater and riverine systems’***. Further, Section 46 provides for the

responsibilities of FMS for aquaculture management. Despite being mandated by the FGS Law, Galmudug FMS Law does not provide for Aquaculture Management. Galmudug law should provide for the responsibility of the Ministry and other organs with respect to Aquaculture Management.

h) Fisheries Data, Information and Confidentiality

Galmudug FMS Law as it is, obligates the Ministry to collect statistical data and manage public information concerning fishing activities in Galmudug. However, the Act does not provide comprehensively the purpose and objectives of the collection, storage, management and sharing and the restrictions and limitations involved.

Further the FMS Law does not provide for confidentiality of information. In the recent past, there has been tremendous development in data protection laws globally. The Republic of Somalia has recently enacted the Data Protection Act, Law No. 003 of 2023. Additionally, Section 68 & 69 of the FGS Law provides for confidentiality of information.

This shows the emphasis and significance placed on how information should be handled.

i) Enforcement of FMS

In terms of enforcement, Galmudug Fisheries Law provides for Authorised officer and their powers under Article 25 and 26 respectively. However, in the text of the provisions, reference is made to and inspector/observer. There is no clarity on the authorized officer, inspector and observer and their respective roles and powers. Questions would as to whether an authorized officer is an inspector, an observer is an inspector and the extent of their powers. This may cause an overlap in roles and powers resulting in chaotic administration, detrimental to the management of the fisheries sector.

Section 89 of the FGS Law provides for the appointment of Authorised Fisheries Officers, Section 90 provides for Appointment of Inspectors and further Section 91 provides for Appointment of observers. The Act further provides comprehensive powers and functions of the said officers. Galmudug law should mirror the provisions of the FGS Fisheries Law and comprehensively provide for the powers and functions of the Authorised Fisheries Officers, inspectors and observers.

j) Definitions

There is need to harmonize definition to reflect with the FGS Law. Further some of the words defined are not used in the Act; the same should be deleted. In addition, the words defined under the Act should be arranged alphabetically to align with modern Bill drafting.

Recommendations

As evident in the analysis above, various gaps exist the current FMS Law. The FMS Law should be reviewed to align it with the FGS Law, other legislations, the Constitution of the Federal Republic of Somalia and regional and international law as follows:

1. **Define Objectives:** The FMS law should provide its objectives.
2. **Clarify Ministry Responsibilities:** The FMS law should provide a clear and detailed responsibility of the Ministry as provided for in Section 10 of the FGS Law.
3. **Anchor the Office of the Director General:** The Office of the Director General should be anchored in the law.
4. **Establish a Fisheries Advisory Council:** A Fisheries Advisory Council should be established to *inter alia* advise the Ministry on matters fisheries.
5. **Define Powers and Functions:** The powers and functions of the Minister, the Director General and the Fisheries Advisory Council should be clearly defined to avoid overlap.
6. **Eliminate Provisions on Foreign Licenses:** All provisions on foreign licenses should be deleted from the FMS Law.
7. **Introduce an Appeals Committee:** The FMS Law should establish an Appeals Committee to hear and determine appeals from decisions made under this Law. It should also provide for an appeal mechanism to court for some decisions of the Appeals Committee.
8. **Adopt Comprehensive Fisheries Principles:** The Principles of Fisheries Management as provided for in Section 6 of the FGS Act should be incorporated in the FMS Act.
9. **Address Aquaculture Management:** Galmudug Fisheries Law, should provide for the responsibility of the Ministry and other organs with respect to Aquaculture Management.
10. **Enhance Data Protection:** Data protection and confidentiality of information should be entrenched into the Law.

11. **Strengthen Enforcement Mechanisms:** Galmudug law clearly provides for the powers and functions of authorized officers, inspectors and observers. This may be borrowed from section 89, 90 and 91 of the FGS Law.
12. **Harmonize Definitions** The definitions in the FMS law should be aligned to the definitions in the FGS Law to avoid conflict in interpretation. Further, the definitions section should be updated to remove terms not used in the body of the law and define other necessary terms. For ease of reference the definitions should be aligned in alphabetical order.

Conclusion

Globally, legislation evolve over time to respond to new trends in the society. In this instance, Fisheries industry has and continues to evolve as is evident from the enactment of the Federal Republic of Somalia Law Fisheries Management and Development - No. 008 2023. There is need to review the law to address the new developments.

In light of the gaps established in this report, it is recommended that the entire FMS Law be redrafted taking into consideration the findings herein.

Hirshabelle State of Somalia

Ministry of Fisheries and Marine Resources

Fisheries Law #005/2021



HIRSHABELLE FISHERIES LAW

Hirshabelle Fisheries Law (*hereinafter the 'FMS Law'*) was passed prior to the enactment of the Federal Republic of Somalia Law of Fisheries Management and Development - No. 008 2023 (*hereinafter the 'FGS Fisheries Law'*). The FGS Fisheries Law has revolutionized the fisheries legal and regulatory framework in the Republic of Somalia. Owing to the international and regional developments as well as the enactment of the FGS Fisheries Law, there is need to review the Hirshabelle Fisheries Law to align it with these developments.

Gap Analysis

A review of the Hirshabelle Fisheries Law reveals various gaps which have been enumerated below:

a) Objectives

The FMS Law does not provide its objectives. Best practice requires that any law sets out its objectives. The FGS law has clearly defined its objectives.

b) Territorial Waters of Hirshabelle State.

The FMS Law does not provide for define the Territorial Waters of Hirshabelle State clearly.

The FMS Law at Article 3, describes the coastline of Hirshabelle State which as 335km long with a maritime boundary extending 200 nautical miles. It further describes a zone exclusive to local fishermen, prohibiting foreign vessels extends to 12 nautical miles and licensed and that licensed vessels are permitted to fish from 24 nautical miles to 200 nautical miles offshore.

Section 4 (1) (a) of the FGS Law defines the **Fisheries Restricted Zone** as reserved exclusively for artisanal fishing and related activities by Somalia Citizens and Somali Vessels

of up to 12 Meters in length overall that are wholly owned by Somali Citizens. *The FMS shall have the right to manage the fisheries resources and issue licenses in relation to this zone.*

Section 4 (1) (b) of the FGS Act defines the **Fisheries Protection Zone** as reserved exclusively for fishing and related activities by Somali citizens and Somali vessels of up to 24 meters in length that are wholly owned by Somali citizens or any legal person established in Somalia that is wholly owned and controlled by Somali citizens. *The FMS shall have the right to issue licenses in relation to this zone after consultation and approval from the FGS Ministry.*

Section 4 (1) (c) of the FGS Act defines the **Fisheries Exclusive Economic Zone**, being that part of the Exclusive Economic Zone that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles wherein licensed fishing and related activities shall be permitted in accordance with this Act and the **FGS Ministry shall have the exclusive right to manage the fisheries resources and issue licenses** in relation to this Zone.

From the above, the Territorial Waters of Hirshabelle State extend to 24 nautical miles which include the Fisheries Restriction Zone and Fisheries Protection Zone.

c) Responsibilities of the Ministry

The FMS Law provides for the responsibility of the Ministry under Article 4 in very broad terms, which, in some instances, may be ambiguous. Article 4 outlines the Ministry's mandate to manage, protect, and develop the marine resources of Hirshabelle State. It further emphasizes the Ministry's role in overseeing activities, data collection, and storage related to fisheries and marine resources, as well as implementing agreements aimed at fostering the development of these resources.

The responsibility of the Ministry has been provided for in Section 10 of the FGS Law. The responsibilities stated therein are not mirrored in the FMS Law, creating potential inconsistencies in roles and functions. To ensure coherence and effective governance, this provision should be aligned with the FGS Law.

d) Institutional Arrangements.

The FMS Law does not provide sufficient institutional arrangements for effective fisheries management, as the sector in Hirshabelle is currently legally overseen solely by the Ministry. While the law empowers the Ministry to appoint enforcement officers under Article 27 and grants Inspector broad powers to ensure compliance under Article 28, such as inspecting facilities, confiscating unfit fish, and boarding vessels, these measures focus primarily on enforcement rather than strategic management and development. This limited framework does not address the need for broader institutional support or collaborative governance structures.

The FGS Law has put in place a good structure with various institutions including the Ministry, the Fisheries Management Development Council (FMDC), the Director General with clear responsibilities for each of them. Hirshabelle should employ the same approach by creating establishing the Office of the Director General and Fisheries Advisory Council with clear roles for each.

e) Foreign Fishing License.

Article 16 of this FMS Law provide for the issuance and validity of Foreign Fishing Licenses.

Under Section 10 of the FGS Act (*mandate, responsibilities and duties of the Federal Member States*), the Federal Member states have full responsibility for managing and licensing fisheries and related activities in the Fisheries Restricted Zone provided that the licenses or other permissions are issued only to Somali citizens or vessels that are wholly owned by Somali citizens for fishing or related activities in the Fisheries Restricted Zone or Fisheries Protected Zone.

Section 4 (1) (a) of the FGS Law defines the **Fisheries Restricted Zone** as reserved exclusively for artisanal fishing and related activities by Somalia Citizens and Somali Vessels of up to 12 Meters in length overall that are wholly owned by Somali Citizens. The FMS shall have the right to manage the fisheries resources and issue licenses in relation to this zone.

Section 4 (1) (b) of the FGS Act defines the **Fisheries Protection Zone** as reserved exclusively for fishing and related activities by Somali citizens and Somali vessels of up to 24 meters in length that are wholly owned by Somali citizens or any legal person established in Somalia that is wholly owned and controlled by Somali citizens. The FMS shall have the right to issue licenses in relation to this zone after consultation and approval from the FGS Ministry.

Section 4 (1) (c) of the FGS Act defines the **Fisheries Exclusive Economic Zone**, being that part of the Exclusive Economic Zone that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles wherein licensed fishing and related activities shall be permitted in accordance with this Act and the **FGS Ministry shall have the exclusive right to manage the fisheries resources and issue licenses** in relation to this Zone.

The implication of the above provision is that the FMS has the right to issue licenses **only** within the Fisheries Restricted Zone and Fisheries Protection Zone which are a reserve of Somali citizens. These provisions expressly exclude operation of foreign persons and vessels within the zone thus the FMS **CANNOT** issue foreign licenses.

The FMS does not have authority to issue foreign licenses.

Article 16 of the Hirshabelle Fisheries Law on the issuance and validity of Foreign Fishing Licenses is contradictory and counterproductive to the FGS law.

f) Fair Administrative Action.

The Law does not provide for fair administrative action including appeal mechanisms for decisions made in accordance with the FMS Law. This is contrary to the provisions of Article 33 of the Federal Constitution of Somalia which provides that *“every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.”*

All decisions should be made after affording the subjects (*who will be affected by the decision*) an opportunity to be heard. Further, the said subjects should be given an opportunity to appeal.

The FMS Law should establish an Appeals Committee to hear and determine appeals from decisions made under this Law. It should also provide for an appeal mechanism to court for some decisions of the Appeals Committee.

g) Principles of Fisheries Management

Article 5 of the Hirshabelle Fisheries Law outlines principles of fisheries management but is neither comprehensive nor inclusive of all stakeholders within the fisheries sector. The current wording directs the principles primarily to the Ministry, which creates ambiguity regarding the responsibilities and principles guiding other stakeholders. Fisheries Management Principles govern and are binding to all players thus should be separated from the Ministry's specific roles and obligations.

Section 6 of the FGS Law provides a more detailed and inclusive framework, addressing environmental, economic, and social sustainability, as well as collaboration with various stakeholders through training, research, and infrastructure development. Hirshabelle should adopt a similar approach by expanding and clarifying its principles to cover all stakeholders.

h) Responsibility of the FMS in Aquaculture

The Hirshabelle Fisheries Law does not address aquaculture, leaving a significant gap in its provisions.

Section 10 of the FGS Law explicitly outlines the mandate, responsibilities, and duties of Federal Member States, which include ***responsibility for managing and licensing fisheries and aquaculture in freshwater and riverine systems***. Further, Section 46 of the FGS Law specifies the responsibilities of Federal Member States concerning aquaculture management. Despite these clear mandates, the Hirshabelle Fisheries Law remains silent on this critical area. It is imperative that the Hirshabelle Fisheries Law includes provisions assigning responsibilities to the Ministry and other relevant organs for aquaculture management, in alignment with the FGS Law.

i) Fisheries Data, Information and Confidentiality.

The Hirshabelle FMS Law, as it stands, obligates the Ministry to collect statistical data and manage public information concerning fishing activities within Hirshabelle. Article 9 provides for information and data management, including the Ministry's responsibility to conduct surveys, produce statistics, and collaborate with regional entities. However, the Act does not comprehensively outline the purpose and objectives of collecting, storing, managing, and sharing this data, nor does it address restrictions, limitations, or the confidentiality of the information collected.

This omission is significant, especially given the recent developments in global data protection laws. The Republic of Somalia's Data Protection Act, Law No. 003 of 2023, and Sections 68 and 69 of the FGS Law emphasize the importance of confidentiality and proper handling of information. These provisions underscore the need for the Hirshabelle Fisheries Law to explicitly incorporate confidentiality safeguards, as well as clear guidelines on data management practices, to align with national and international standards on data protection.

j) Enforcement

The Hirshabelle Fisheries Law provides for the enforcement authority under Article 41, designating the coast guard and police of Hirshabelle Regional State as responsible entities. However, the roles and powers outlined in the law are not conclusive.

Section 89 of the FGS Law provides for the appointment of Authorized Fisheries Officers, Section 90 for the Appointment of Inspectors, and Section 91 for the Appointment of Observers, with comprehensive provisions detailing their powers and functions. To align with the FGS Fisheries Law, the Hirshabelle Fisheries Law should include similar provisions, clearly defining the powers and functions of Authorized Fisheries Officers, Inspectors, and Observers, ensuring more robust enforcement and oversight within the fisheries sector.

k) Definitions.

There is need to harmonize definition to reflect with the FGS Law. Further some of the words defined are not used in the Act; the same should be deleted. In addition, the words defined under the Act should be arranged alphabetically to align with modern Bill drafting.

Recommendations

The analysis above highlights significant gaps in the current **Hirshabelle Fisheries Law** (FMS Law). The following recommendations address these gaps and propose a review to align the FMS Law with the **FGS Fisheries Law** and modern legal practices.

1. **Define Objectives:** The FMS Law should clearly outline its objectives to align with best practices, ensuring clarity and purpose in its implementation.
2. **Clarify Ministry Responsibilities:** The responsibilities of the Ministry should be detailed in alignment with Section 10 of the FGS Law to ensure coherence and avoid ambiguity.
3. **Establish Key Institutions:** Hirshabelle should consider establishing the Office of the Director General and a Fisheries Advisory Council with clearly defined roles, similar to the institutional framework provided in the FGS Law.
4. **Delete Provisions on Foreign Licenses:** Provisions related to foreign fishing licenses should be deleted since the Hirshabelle Territorial waters is exclusively reserved for Somali citizens and Somali-owned vessels.
5. **Ensure Fair Administrative Action:** The FMS Law should provide mechanisms for fair administrative action, including establishing an Appeals Committee to hear disputes and mechanisms for further appeal to courts where necessary.
6. **Adopt Comprehensive Principles of Fisheries Management:** The principles of fisheries management should reflect those outlined in Section 6 of the FGS Law, ensuring inclusivity of all stakeholders and addressing environmental, economic, and social sustainability.
7. **Include Aquaculture Management:** The law should outline the responsibilities of the Ministry and other relevant organs in aquaculture management, consistent with Sections 10 and 46 of the FGS Law.
8. **Enhance Data Protection:** Provisions should ensure the confidentiality of information and proper data management, reflecting the Somalia Data Protection Act, Law No. 003 of 2023, and Sections 68 and 69 of the FGS Law.
9. **Strengthen Enforcement Mechanisms:** The FMS Law should provide comprehensive powers and functions for Authorized Fisheries Officers, Inspectors, and Observers, similar to the provisions in the FGS Fisheries Law, to enhance enforcement capabilities.
10. **Harmonize Definitions:** Definitions should be aligned with those in the FGS Law, unused terms removed, and defined terms arranged alphabetically for clarity and consistency with modern legislative drafting standards.

Conclusion

The Hirshabelle Fisheries Law plays a critical role in the sustainable management and development of the fisheries sector within the state. The Law should be reviewed to address

gaps, inconsistencies, and omissions in light of developments in the Federal Republic of Somalia and emerging global standards. A review of the FMS Law, guided by these recommendations, will ensure alignment with the FGS Law, foster sustainable fisheries management, and enhance institutional effectiveness.

Southwest State of Somalia

Ministry of Fisheries and Marine Resources

Fisheries Law #005/2021



SOUTHWEST STATE FISHERIES LAW

Southwest State Fisheries Law (*hereinafter the 'FMS Law'*) was passed in the year 2020 prior to the enactment of the Federal Republic of Somalia Law of Fisheries Management and Development - No. 008 2023 (*hereinafter the 'FGS Fisheries Law'*). The FGS Fisheries Law has revolutionized the fisheries legal and regulatory framework in the Republic of Somalia. Owing to the international and regional developments as well as the enactment of the FGS Fisheries Law, there is need to review the Southwest State Fisheries Law to align it with these developments.

Gap analysis

A review of the Southwest State Fisheries Law reveals various gaps which have been analyzed below:

a) Objectives

The FMS Law does not provide its objectives. Best practice requires that any law sets out its objectives. The FGS law has clearly defined its objectives.

b) Responsibilities of the Ministry

The FMS Law broadly outlines the responsibilities of the Ministry, which may lead to ambiguity in some areas. Article 6 highlights key duties, including the management and development of marine and aquatic resources, data collection, resource conservation, promotion of sustainable fishing practices, and encouraging foreign investment and inland fish farming.

However, these provisions are not fully aligned with Section 10 of the FGS Law, which provides a more comprehensive framework for the Ministry's roles. To ensure clarity and consistency, the Southwest Fisheries Law should incorporate and align its provisions with Section 10 of the FGS Law.

c) Institutional Arrangements

The FMS Law does not establish a sufficient institutional arrangement for the efficient management of fisheries, leaving the sector in Southwest State to be managed solely by the Ministry. Articles 29 and 30 empower the Ministry to appoint investigators or inspectors tasked with enforcement, such as monitoring, investigating violations, inspecting facilities, boarding vessels, and collecting scientific data on fisheries. While these enforcement roles are crucial, they focus narrowly on compliance rather than broader institutional development or strategic governance.

The FGS Law establishes a more comprehensive framework, including the Ministry, the Fisheries Management Development Council (FMDC), and the Office of the Director General, each with clear responsibilities. To ensure sustainable and effective fisheries management, Southwest State should adopt a similar approach by establishing institutions like the Office of the Director General and a Fisheries Advisory Council, each with distinct and defined roles to enhance oversight, collaboration, and strategic management of the fisheries sector.

Foreign Fishing Licence

Article 18 of this FMS Law provide for the issuance of licenses to foreign fishing vessels. Further, Article 21 provides for the duration of validity of foreign fishing licenses.

Under Section 10 of the FGS Act (*mandate, responsibilities and duties of the Federal Member States*), the Federal Member states have full responsibility for managing and licensing fisheries and related activities in the Fisheries Restricted Zone provided that the licenses or other permissions are issued only to Somali citizens or vessels that are wholly owned by Somali citizens for fishing or related activities in the Fisheries Restricted Zone or Fisheries Protected Zone.

Section 4 (1) (a) of the FGS Law defines the **Fisheries Restricted Zone** as reserved exclusively for artisanal fishing and related activities by Somalia Citizens and Somali Vessels of up to 12 Meters in length overall that are wholly owned by Somali Citizens. The FMS shall have the right to manage the fisheries resources and issue licenses in relation to this zone.

Section 4 (1) (b) of the FGS Act defines the **Fisheries Protection Zone** as reserved exclusively for fishing and related activities by Somali citizens and Somali vessels of up to 24

meters in length that are wholly owned by Somali citizens or any legal person established in Somalia that is wholly owned and controlled by Somali citizens. The FMS shall have the right to issue licenses in relation to this zone after consultation and approval from the FGS Ministry.

Section 4 (1) (c) of the FGS Act defines the **Fisheries Exclusive Economic Zone**, being that part of the Exclusive Economic Zone that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles wherein licensed fishing and related activities shall be permitted in accordance with this Act and the **FGS Ministry shall have the exclusive right to manage the fisheries resources and issue licenses** in relation to this Zone.

The implication of the above provision is that the FMS has the right to issue licenses **only** within the Fisheries Restricted Zone and Fisheries Protection Zone which are a reserve of Somali citizens. These provisions expressly exclude operation of foreign persons and vessels within the zone thus the FMS **CANNOT** issue foreign licenses.

The FMS do not have authority to issue foreign licenses.

Article 18 and 21 of the Southwest State Fisheries Law on Foreign Fishing Licenses are contradictory and counterproductive to the FGS law.

Fair administrative action.

The Law does not provide for fair administrative action including appeal mechanisms for decisions made in accordance with the FMS Law. This is contrary to the provisions of Article 33 of the Federal Constitution of Somalia which provides that *“every person has the right to administrative decisions that are lawful, reasonable and conducted in a procedurally fair manner.”*

All decisions should be made after affording the subjects (*who will be affected by the decision*) an opportunity to be heard. Further, the said subjects should be given an opportunity to appeal.

The FMS Law should establish an Appeals Committee to hear and determine appeals from decisions made under this Law. It should also provide for an appeal mechanism to court for some decisions of the Appeals Committee.

Fisheries Management Principles

Article 7 of the Southwest State Fisheries Law outlines principles for fisheries management and conservation, emphasizing the protection of marine life, sustainable use of resources, and the regulation of fishing activities. These principles, aimed at ensuring that living marine resources are not endangered, promoting sustainable exploitation, and regulating tuna catches, are critical for responsible fisheries management. However, the principles listed are not exhaustive and appear to be directed primarily at the Ministry rather than all stakeholders in the fisheries sector.

Fisheries management principles should govern and be binding on all stakeholders, including domestic, policymakers, and industry participants. To ensure inclusivity, these principles should be distinct from the Ministry's specific roles and obligations.

Section 6 of the FGS Law provides a comprehensive and inclusive framework of principles that govern the functions, duties, and responsibilities of all stakeholders. The Southwest State Fisheries Law should align with these principles to ensure consistency, inclusivity, and sustainable fisheries management practices.

Responsibility of the FMS in Aquaculture

The Southwest State Fisheries Law does not address aquaculture, leaving a critical gap in its provisions.

Section 10 of the FGS Law explicitly outlines the mandate, responsibilities, and duties of Federal Member States, including ***‘the management and licensing of fisheries and aquaculture in freshwater and riverine systems’***. Further, Section 46 of the FGS Law further specifies the responsibilities of Federal Member States concerning aquaculture management.

Despite this clear mandate under the FGS Law, the Southwest State Fisheries Law remains silent on aquaculture management. To align with the FGS Law and address this omission, the Southwest State Fisheries Law should outline the responsibilities of the Ministry and other relevant organs in managing aquaculture activities, ensuring sustainable development and regulation of this vital sector.

Fisheries Information and Dissemination.

The Southwest State FMS Law obligates the Ministry to collect statistical data and manage public information related to fishing activities within the state (*Article 11*). However, the law does not comprehensively define the purpose and objectives of data collection, storage, management, and dissemination, nor does it address the restrictions and limitations on information sharing.

Further, the FMS Law lacks provisions for the confidentiality of information. With the global emphasis on data protection, highlighted by the recent enactment of the Somalia Data Protection Act, Law No. 003 of 2023, and the confidentiality provisions in Sections 68 and 69 of the FGS Law, it is evident that these elements are crucial. To align with modern standards and national regulations, the Southwest State Fisheries Law should explicitly address data confidentiality, restrictions on sharing, and detailed guidelines for managing fisheries information. This will ensure that the handling of information is both secure and aligned with national and international data protection practices.

Enforcement of FMS

The Southwest State Fisheries Law provides for enforcement under Article 44, designating the Ministry to collaborate with various agencies within the Southwest Regional Government for fisheries management and related processes. However, the roles and powers of authorized officers under this provision are not conclusive.

Section 89 of the FGS Law provides for the appointment of Authorized Fisheries Officers, Section 90 for the appointment of Inspectors, and Section 91 for the appointment of Observers, detailing their powers and responsibilities comprehensively. To enhance enforcement mechanisms, the Southwest State Fisheries Law should mirror these provisions, clearly defining the roles, powers, and functions of Authorized Fisheries Officers, Inspectors, and Observers. This alignment will ensure effective enforcement and oversight within the fisheries sector while promoting consistency with national standards.

Definitions.

There is need to harmonize definition to reflect with the FGS Law. Further some of the words defined are not used in the Act; the same should be deleted. In addition, the words defined under the Act should be arranged alphabetically to align with modern Bill drafting.

Recommendations

The analysis above highlights significant gaps in the current Southwest State Fisheries Law (FMS Law). The following recommendations address these gaps and propose a review to align the FMS Law with the Constitution of the Federal Republic of Somalia, FGS Fisheries Law and modern legal practices:

- 1. Define Objectives:** The FMS Law should explicitly provide its objectives to align with best practices, ensuring clarity and purpose in its application.
- 2. Clarify Ministry Responsibilities:** The responsibilities of the Ministry should be clearly detailed and aligned with Section 10 of the FGS Law to avoid ambiguities and ensure coherence in governance.
- 3. Establish Key Institutions:** Southwest State should establish the Office of the Director General and a Fisheries Advisory Council with clearly defined roles, similar to the institutional framework in the FGS Law.
- 4. Align Provisions on Foreign Licenses:** FMS has no power to issue foreign licenses therefore there is need to remove all provisions relating to foreign licenses.

5. **Introduce Fair Administrative Action:** The law should provide for an Appeals Committee to address disputes under the FMS Law and mechanisms for further appeal to courts where necessary.
6. **Adopt Comprehensive Principles:** The principles of fisheries management should reflect those outlined in Section 6 of the FGS Law to ensure inclusivity, environmental sustainability, and alignment with national standards.
7. **Address Aquaculture Management:** The law should define the responsibilities of the Ministry and other relevant organs in aquaculture management, consistent with Sections 10 and 46 of the FGS Law.
8. **Enhance Data Protection:** Provisions on data management and confidentiality should be included, reflecting the Somalia Data Protection Act, Law No. 003 of 2023, and Sections 68 and 69 of the FGS Law.
9. **Strengthen Enforcement Mechanisms:** The law should clearly define the powers and functions of Authorized Fisheries Officers, Inspectors, and Observers, as outlined in the FGS Law, to strengthen enforcement mechanisms.
10. **Harmonize Definitions:** Definitions should align with those in the FGS Law, unused terms should be removed, and terms should be arranged alphabetically for clarity and consistency with modern legislative drafting standards.

Conclusion

Taking into consideration the findings herein, the Southwest State Fisheries Law provides a basic framework for fisheries management but requires a comprehensive review to address its gaps and align it with the Federal Fisheries Law. Harmonizing the law with the FGS Fisheries Law and modern legislative practices will ensure clarity, robust governance structures, and consistency in legal standards.

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