

REPUBLIC OF SOUTH AFRICA

**MARINE LIVING RESOURCES
BILL**

(As introduced)

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM):

[B 94—97]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP LEWENDE
MARIENE HULPBRONNE**

(Soos ingedien)

(MINISTER VAN OMGEWINGSAKE EN TOERISME)

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BILL

To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa; and to provide for matters connected therewith.

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SCHEDULE 1

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER I

INTRODUCTORY PROVISIONS

Definitions

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1. In this Act, unless the context indicates otherwise—
 - (i) "aircraft" means any craft capable of self-sustained movement through the atmosphere and includes a hovercraft; (ix)

- (ii) “allowable commercial catch” means that part of the total allowable catch available annually for rights of access in terms of section 22(1); (xliii)
- (iii) “aquatic plant” means any kind of plant, algae or other plant organism found in the sea and in or on the seashore; (lxiv)
- (iv) “commercial fishing” means fishing for any of the species which have been determined by the Minister in terms of Part 3 of Chapter 3 to be subject to the allowable commercial catch or total applied effort, or parts of both; (xx)
- (v) “Company” means the Company established in terms of section 27(1); (xxi)
- (vi) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (XV) 10
- (vii) “court” means a competent court of law; (xvii)
- (viii) “Department” means the Department of Environmental Affairs and Tourism; (v)
- (ix) “Director-General” means the Director-General of the Department; (vi)
- (x) “driftnet” means a gillnet or other net or a combination of nets, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water, irrespective of whether it is used or intended to be used while attached to any point of land or the seabed or to any vessel; (vii) 15
- (xi) “driftnet fishing activities” means fishing with the use of a driftnet and includes any related activities, including transporting, transshipping and processing any driftnet catch, and the provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing; (viii) 20
- (xii) “exclusive economic zone” means the exclusive economic zone as defined in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994); (x) 25
- (xiii) “fish” means the living resources of the sea and the seashore, including any aquatic plant or animal whether piscine *or not*, and any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile and marine mammal, and includes their eggs, larvae and all juvenile stages, but does not include sea birds and seals; (xlix)
- (xiv) “fish aggregating device” means an artificially made or partially artificially made floating, submerged or semi-submerged device, whether anchored or not, intended to aggregate fish, including any natural floating object on which a device has been placed to facilitate its location; (lvi) 30
- (xv) “fisheries management area” means a fisheries management area declared in terms of section 15(1); (Iv) 35
- (xvii) “fishery” means one or more stock or stocks of fish or any fishing operations based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic and other relevant characteristics; (liii)
- (xvii) “fishery control officer” means any person appointed as a fishery control officer in terms of section 9; (liv) 40
- (xviii) “fishing” means—
 - (a) searching for, catching, taking or harvesting fish or an attempt to any such activity;
 - (b) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish; 45
 - (c) placing, searching for or recovering any fish aggregating device or associated gear, including radio beacons;
 - (d) any operation in support or in preparation of any activity described in this definition; or 50
 - (e) the use of an aircraft in relation to any activity described in this definition; (lviii)
- (xix) “fishing harbour” means a declared fishing harbour contemplated in section 40(1); (lii)
- [xx] “fishing vessel” means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities, and includes all gear, equipment, stores, cargo and fuel on board the vessel; (li) 55
- (xxi) “fish processing establishment” means any vehicle, vessel, premises or place where any substance or article is produced from fish by any method, including the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving of fish, or where fish are canned, packed, dried, gutted, 60

- salted, iced, chilled, frozen or otherwise processed for sale in or outside the territory of the Republic; (lix)
- (xxii) “fish product” means any product, whether in a processed form or not, wholly or partially derived from fish; (1)
- (xxiii) “foreign fishing vessel” means any fishing vessel other than a local fishing vessel; (iii) 5
- (xxiv) “foreign fishing vessel licence” means a licence issued in terms of section 43(2); (iv)
- (xxv) “Forum” means the Consultative Advisory Forum for Marine Living Resources established under section 5; (xii) 10
- (xxvi) “Fund” means the Marine Living Resources Fund referred to in section 10(1); (xi)
- (xxvii) “gear” means, in relation to fishing, any equipment, implement or other object that can be used in fishing, including any net, rope, line, float, trap, hook, winch, aircraft, boat or craft carried on board a vessel, aircraft or other craft; (lvii) 15
- (xxviii) “high seas” means the waters beyond South African waters, but does not include waters subject to the particular jurisdiction of another state; (xxv)
- (xxix) “high seas fishing vessel” means a vessel in respect of which a high seas fishing vessel licence has been issued in terms of section 45(1); (xxvi) 20
- (xxx) “high seas fishing vessel licence” means a licence issued in terms of section 45(1); (xxvii)
- (xxxi) “internal waters” means the internal waters as defined in section 3 of the Maritime Zones Act, 1994; (ii)
- (xxxii) “international conservation and management measures” means measures to 25
conserve or manage one or more species of marine living resources contained in international conventions, treaties or agreements, or that are adopted or applied in accordance with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea, whether by global, regional or subregional fishery organisations and which measures are binding 30
on the Republic in terms of international law; (xviii)
- (xxxiii) “local fishing vessel” means any fishing vessel registered in the Republic which is—
(a) wholly owned and controlled by one or more South African persons;
(b) wholly owned by the State; 35
(c) wholly owned and controlled by any body corporate, society or other association of persons incorporated or established under the laws of the Republic and in which the majority of the shares and the voting rights are held and controlled by South African persons; or
(d) wholly owned by a body corporate designated as an authorised body 40
corporate by the Minister; (xxxix)
- (xxxiv) “local fishing vessel licence” means a licence issued in terms of section 25(1); (xxXii)
- (xxXv) “mariculture” means the culture or husbandry of fish in sea water; (xxii)
- (xxxvi) “master” means, in relation to a vessel, aircraft or other craft, the person 45
having lawful command or charge, or for the time being in charge, of the vessel, aircraft or other craft, as the case may be, including a person who has principal responsibility for fishing on board, but does not include a pilot aboard a fishing vessel solely for the purpose of providing navigational assistance; (xxxvi) 50
- (xxxvii) “Minister” means the Minister responsible for the Department; (xxiii)
- (xxxviii) “nautical mile” means the international nautical mile of 1852 meters; (xxxv)
- (xxxix) “net” means a fabric of rope, cord, twine or other material knotted or woven into meshes by which fish can be taken; (xxiv)
- (xl) “observation device” means any device or machine placed on a fishing vessel 55
in terms of this Act as a condition of its licence which transmits, whether in conjunction with other machines elsewhere or not, information or data concerning the position and fishing activities of the vessel; (lxiii)
- (xli) “observer” means any person authorised in writing by the Director-General in terms of section 54 to perform scientific, compliance, monitoring and other 60
similar observation duties on board a fishing vessel in accordance with this Act; (lxii)

- (xlii) “organ of state” means an organ of state as defined in section 239 of the Constitution; (xxxviii)
- (xliii) “owner” means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his or her own behalf or on behalf of another, including a person who is the owner jointly with one or more other persons and the manager, director, secretary, or other similar officer or any person purporting to act in such a capacity, of any body corporate or company which is an owner; (ix)
- (xliv) “permit” means a permit contemplated in section 3; (xxix) 10
- (xlv) “person” includes a trust; (xxx)
- (xlvi) “prescribe” means to prescribe by regulation; (lxi)
- (xlvii) “recreational fishing” means, any fishing done for leisure or sport and not for sale, barter, earnings or gain; (xxxvii)
- (xlviii) “regulation” means a regulation made and includes a notice issued under this Act; (xxxiii) 15
- (xlix) “related activities” include—
- (a) storing, buying, selling, transshipping, processing or transporting of fish or any fish product taken from South African waters up to the time it is first landed or in the course of high seas fishing; 20
- (b) on-shore storing, buying, selling or processing of fish or any fish product from the time it is first landed;
- (c) refueling or supplying fishing vessels, selling or supplying fishing equipment or performing any other act in support of fishing;
- (d) exporting and importing fish or any fish product; or 25
- (e) engaging in the business of providing agency, consultancy or other similar services for and in relation to fishing or a related activity; (xlvi)
- (l) “right of access” means a right of access to commercial fishing granted in terms of Part 3 of Chapter 3; (xlii)
- (li) “scashore” means the sea-shore as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935); (xxxix) 30
- (lii) “sedentary species” means organisms which, at the harvestable stage, either are immobile on or under the seabed, or are unable to move except in constant physical contact with the seabed or the subsoil; (xxxiv)
- (liii) “South African person” means— 35
- (a) a South African-citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
- (b) a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), of which the majority of shareholders, as prescribed by the Minister, are South African persons; 40
- (c) a close corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984), of which the majority of members are South African persons; or
- (d) a trust in which—
- (i) the majority of trustees having the controlling power at any given time are South African citizens; or 45
- (ii) a majority of the beneficial interests are held by South African citizens; (xl)
- (liv) “South African waters” means the seashore, internal waters, territorial waters, the exclusive economic zone, and in relation to the sedentary species as defined in Article 77 of the United Nations Convention on the Law of the Sea, the continental shelf as defined in section 7 of the Maritime Zones Act, 1994, and such waters include tidal lagoons and tidal rivers in which a rise and fall of the water level takes place as a result of the tides; (xli) 50
- (lv) “subsistence fisher” means a natural person who regularly catches fish for personal consumption or for the consumption of his or her dependants, including one who engages from time to time in the local sale or barter of excess catch, but does not include a person who engages on a substantial scale in the sale of fish on a commercial basis; (i) 55
- (lvi) “territorial waters” means the territorial waters as defined in section 4 of the Maritime Zones Act, 1994; (xiv) 60
- (lvii) “this Act” includes any regulation or notice made or issued under this Act; (xvi)

- (lviii) “total allowable catch” means the maximum quantity of fish of individual species or groups of species made available annually, or during such other period of time as may be prescribed, for combined recreational, subsistence, commercial and foreign fishing in terms of Chapter 2; (xlv)
- (lix) “total applied effort” means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish individual species or groups of species; (xliv) 5 10
- (lx) “transship” means transferring fish or gear from one vessel to another; (xxviii)
- (lxi) “trap” means an enclosure, not being a net, that may be used to take fish; (xiii)
- (lxii) “United Nations Convention on the Law of the Sea” means the United Nations Convention on the Law of the Sea, 1982, adopted at Montego Bay on 10 December 1982; (xlvii) 15
- (lxiii) “vessel” includes any canoe, lighter, floating platform, decked boat, carrier vessel, vessel equipped with an inboard or outboard motor or any other craft, whether a surface craft or submarine; (xlvii)
- (lxiv) “year” means any period extending from a day in one year to a day preceding the day corresponding numerically to that day and month in the following year, both days inclusive. (xix) 20

objectives and principles

2. The Minister shall in exercising any power under this Act, have regard to the following objectives and principles: 25
- (a) The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;
- (b) the need to conserve marine living resources for both present and future generations;
- (c) the need to apply precautionary approaches in respect of the management and development of marine living resources; 30
- (d) the need to utilise marine living resources to achieve economic growth, human resource development, employment creation and a sound ecological balance consistent with the development objectives of the national government; 35
- (e) the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;
- (f) the need to preserve marine biodiversity;
- (g) the need to minimise marine pollution;
- (h) the need to achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act; and 40
- (i) any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law.

Application of Act

3. (1) Unless the context indicates otherwise, this Act shall apply— 45
- (a) to all persons, whether or not South African persons, and to all fishing vessels and aircraft, including foreign fishing vessels and aircraft, on, in or in the airspace above South African waters;

- (b) to fishing activities carried out by means of local fishing vessels or South African aircraft in, on, or in the airspace above waters outside South African waters, including waters under the particular jurisdiction of another state; and
- (c) to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948), and any reference in this Act to the 5 Republic shall include a reference to those Islands.

(2) This Act, including any applicable regulation, shall have extraterritorial application.

(3) This Act shall not apply in respect of—

- (a) fish found in water which does not at any time form part of the sea; or 10
- (b) an area bordering on the sea which has in terms of the National Parks Act, 1976 (Act No. 57 of 1976), been declared to be a national park or part of such park, or which has been declared a lake area under the Lake Areas Development Act, 1975 (Act No. 39 of 1975).

Conflict with other Acts

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4. If any conflict relating to marine living resources dealt with in this Act arises between this Act and the provisions of any other law, save the Constitution or any Act expressly amending this Act, the provisions of this Act shall prevail.

CHAPTER 2

ADMINISTRATION

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Establishment of Forum

5. The Minister shall establish a body called the Consultative Advisory Forum for Marine Living Resources.

Functions of Forum

6. The Forum shall advise the Minister on any matter referred to it by him or her, and 25 in particular—

- (a) the management and development of the fishing industry, including issues relating to the total allowable catch;
- (b) marine living resources management and related legislation;
- (c) the establishment and amendment of operational management procedures, 30 including management plans;
- (d) recommendations and directives on areas of research, including multi-disciplinary research; and
- (e) the allocation of money from the Fund.

Composition of Forum

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7. (1) The forum shall consist of at least five members, including a chairperson, appointed by the Minister for the period determined by him or her, but not exceeding three years at a time.

(2) The Minister shall ensure that the Forum be broadly representative and multidisciplinary, with members qualified to make a substantial contribution towards the 40 proper functioning of the Forum.

(3) A member of the Forum shall vacate his or her office if he or she—

- (a) becomes insolvent;
- (b) becomes of unsound mind;
- (c) is convicted of an offence and is sentenced to imprisonment without the option 45 of a fine;
- (d) is absent from three consecutive meetings of the Forum without leave of the chairperson;

(e) resigns by written notice to the Minister; or

(f) is removed from office by the Minister if there are sufficient reasons in the opinion of the Minister for doing so,

(4) The Director-General may pay to a member of the Forum who is not in the full-time employment of an organ of state, from money appropriated by Parliament for that purpose, the allowances and remuneration which the Minister may determine in general or in a specific case, in consultation with the Minister of Finance.

(5) The Minister may prescribe the necessary matters relating to meetings of the Forum.

Industrial bodies and interest groups

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8. (1) The Minister may, by notice in the *Gazette*, recognise any industrial body or interest group in a branch of the fishing industry which, in the opinion of the Minister, is representative of the specific body or group.

(2) The Forum shall give consideration to information submitted to it by industrial bodies and interest groups recognised in terms of subsection (1).

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Fishery control officers

9. (1) The Minister may, subject to the laws governing the public service, designate posts or ranks in any organ of state of which the incumbents shall be fishery control officers.

(2) The Minister may by written notice to any other person that he or she deems fit to be a fishery control officer, appoint that person, and in doing so may specify the powers to be exercised by such a fishery control officer in terms of this Act.

(3) A fishery control officer shall be furnished by the Director-General with the prescribed identity card.

Marine Living Resources Fund

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10. (1) The Sea Fishery Fund referred to in section 27 of the Sea Fishery Act, 1988 (Act No. 12 of 1988), shall continue to exist under the name the Marine Living Resources Fund, notwithstanding the repeal of the said Act by section 86.

(2) Into the Fund there shall be paid, notwithstanding the provisions of any other Act, but subject to section 24-

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(a) money paid in respect of fines, penalties and interest for any offence committed in terms of this Act, including any proceeds from the sale of any vessel, vehicle, aircraft, gear or fish forfeited or seized in terms of this Act;

(b) all interest and fees collected in terms of this Act;

(c) money appropriated by Parliament for the realisation of the objects of the Fund;

(d) interest on investments;

(e) donations, with the approval of the Minister in consultation with the Minister of Finance;

(f) money which, with the approval of the Minister in consultation with the Minister of Finance, may accrue to the Fund from any other source; and

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(g) any levy on fish, fish products, aquatic plants or other marine resources, imposed and collected in terms of this Act or the Sea Fishery Act, 1988.

(3) The Fund shall be administered by the Director-General in consultation with the Minister, in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister with the concurrence of the Minister of Finance in respect of every financial year, which shall end on 31 March, and no expenditure payable from the Fund may be incurred except in accordance with such estimate of expenditure.

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(4) The Director-General shall be the accounting officer charged with the responsibility of accounting for money received and expenditure incurred by the Fund.

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(5) The Director-General shall invest money in the fund not required for immediate use with the Public Investment Commissioners.

(6) Any unexpended balance in the Fund at the end of a financial year shall be carried forward as a credit in the Fund to the next financial year.

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(7) The Director-General shall annually audit the books and accounts of the Fund

Appropriation of Fund

11. The Fund shall provide for the administration of the provisions of this Act, including any activity aimed at reaching the objectives referred to in section 2.

Register

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12. (1) The Director-General shall keep a register of all rights of access, other rights, permits and licences granted or issued in terms of Chapter 3.

(2) The Minister may prescribe—

(a) the format of the register contemplated in subsection (1); and

(b) any registration system that he or she deems necessary.

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(3) The register contemplated in subsection (1) shall be available for inspection by the public at the prescribed places and times,

Permits

13. (1) No person shall exercise any right of access or other right or perform any other activity in terms of this Act unless a permit has been issued by the Minister to such person to exercise that right or perform that activity. 15

(2) Any permit contemplated in subsection (1) shall—

(a) be issued for a specified period not exceeding one year;

(b) be issued subject to the conditions determined by the Minister in the permit; and

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(c) be issued against the payment of any fees determined by the Minister in terms of section 38(1).

(3) The holder of a permit shall at all times have that permit available for inspection at the location where the right or activity in respect of which the permit has been issued, is exercised. 25

(4) A permit to exercise an existing right in terms of this Act may be refused if the conditions of a previously issued permit had not been adhered to.

CHAPTER 3

MANAGEMENT OF MARINE LIVING RESOURCES

PART 1: FISHERIES PLANNING

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Determination of allowable catches and applied effort

14. (1) The Minister may determine the total allowable catch, the total applied effort, or a combination thereof.

(2) The Minister may determine the portions of the total allowable catch, the total applied effort, or a combination thereof, to be allotted in any year to subsistence, recreational, local commercial and foreign fishing, respectively. 35

Fisheries management areas

15. (1) The Minister may by notice in the *Gazette* declare any area of the South African waters to be a fisheries management area for the management of the species described in the notice. 40

(2) The Minister may in respect of each fisheries management area approve a plan for the conservation, management and development of the fisheries.

(3) The Minister shall, during the preparation of any plan contemplated in subsection (2), consult with the Forum and other organs of state affected by the plan.

Emergency measures

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16. (1) If an emergency occurs that endangers or may endanger stocks of fish or aquatic life, or any species or class of fish or aquatic life in any fishery or part of a fishery

for which there is no fisheries management plan, or for which a proposed plan has not yet been approved by the Minister, the Minister may—

- (a) suspend all or any of the fishing in that fishery or any specified part of it;
- (b) restrict the number of fishing vessels fishing in that fishery; or
- (c) restrict the mass of fish which may be taken from that fishery. 5

(2) The particulars of any measures taken in terms of this section shall be made known by notice in the *Gazette* and in any other appropriate manner.

Priority fishing areas

17. If the Minister is of the opinion that special measures are necessary to ensure that authorised fishing within any area of the South African waters is not impeded or otherwise interfered with, he or she may, after consultation with the affected parties, by notice in the *Gazette*— 10

- (a) declare such an area to be a priority fishing area for the purposes stated in the notice; and
- (b) prohibit any activity determined in the notice. 15

PART 2: LOCAL FISHING AND MARICULTURE

Subsistence fishing

18. (1) The Minister may, in order to achieve the objectives contemplated in section 9(2) of the Constitution, by notice in the *Gazette*—

- (a) establish areas or zones where subsistence fishers may fish; and 20
- (b) after consultation with the Forum, declare—
 - (i) a specified community to be a fishing community, from which inhabitants may be declared to be subsistence fishers; or
 - (ii) any other person to be a subsistence fisher.

(2) No subsistence fishing permit shall be transferable except with the approval of and subject to the conditions determined by the Director-General. 25

Recreational fishing

19. (1) No person shall sell, barter or trade any fish caught through recreational fishing.

- (2) No recreational fishing permit shall be transferable. 30

Fish processing establishments

20. (1) No person shall operate a fish processing establishment unless a right to conduct such activity has been granted to such person.

(2) An application to operate a fish processing establishment shall be submitted to the Minister in the manner that the Minister may determine. 35

(3) The right to operate a fish processing establishment may be granted for the period that the Minister may determine.

Mariculture

21. (1) No person shall engage in mariculture unless a right to engage in such activity has been granted to such person. 40

(2) An application to engage in mariculture shall be submitted to the Minister in the manner that the Minister may determine.

(3) The Minister may require an environmental impact assessment report to be submitted by the applicant.

(-i) The right to engage in mariculture may be granted for the period that the Minister may determine. 45

PART 3: COMMERCIAL FISHING

Allowable commercial catch

22. (1) The Minister may annually determine the allowable commercial catch, the total applied effort, or a combination thereof, in relation to commercial fishing. 50

(2) In the execution of his or her powers in terms of subsection (1), the Minister may—

- (a) determine that the allowable commercial catch, the total applied effort or a combination thereof, shall apply in a particular area, or in respect of a particular species or group of species of fish; and 5
 - (b) determine that the allowable commercial catch, or the total applied effort, or a combination thereof, shall apply in respect of the use of particular gear, fishing methods or types of fishing vessels.
- (3) If the allowable commercial catch in respect of which rights of access exist, increases, and the increase exceeds a maximum determined by the Minister, the mass of the allowable catch in excess of this limit shall be available for allocation to others in accordance with criteria that may be set by the Minister and in order to achieve the objectives contemplated in section 9(2) of the Constitution. 10

Rights of access

2.3. (1) No person shall undertake commercial fishing unless a right of access has been granted to such person. 15

(2) An application for a right of access shall, subject to section 24, be submitted to the Minister in the manner that the Minister may determine.

(3) In granting a right of access the Minister shall, in order to achieve the objectives contemplated in section 9(2) of the Constitution, have particular regard to— 20

- (a) the need to permit new entrants, particularly those from historically disadvantaged sectors of society; and
- (b) the need to promote stability within the commercial fishing industry,

(4) A right of access granted in terms of this section shall be valid for the period determined by the Minister, which period shall not exceed 50 years. 25

(5) A right of access granted in terms of this section shall reduce over its period of duration at a rate which may be determined by the Minister at the time when the right is granted.

(6) If the Minister has not determined a rate of reduction under subsection (5), the right of access shall terminate in its entirety on the expiration of that right. 30

(7) Unless otherwise determined by the Minister in relation to the holders of existing rights, only South African persons shall acquire or hold rights of access in terms of this Part.

(8) Subject to the provisions of this Part, a right of access shall be saleable, leasable, inheritable, divisible or otherwise transferable. 35

(9) An application to transfer a right of access or a part thereof shall be submitted to the Minister in the manner that the Minister may determine, and subject to the provisions of this Part and any applicable regulation, the Minister may, in writing, approve the transfer of the right of access or a part thereof.

(10) The Minister may, after consultation with the Forum, make regulations regarding— 40

- (a) the formula by which a right of access as a portion of the allowable commercial catch, the total applied effort, or a combination thereof, shall be determined;
- (b) the circumstances in which a right of access may be cancelled, suspended or reduced, having regard to the failure of the holder of the right to effectively utilise the right in question; 45
- (c) guidelines or criteria concerning the transfer of rights of access, including determining limits on the transfer of rights of access between holders of such rights on a temporary basis; 50
- (d) the maximum or minimum portion of the allowable commercial catch, the total applied effort, or a combination thereof, which may be allocated or transferred to, or acquired or otherwise held by, any person;
- (e) reallocation of rights of access, having regard to any significant alteration in the long-term availability of the resource being exploited or in the long-term availability of the resource; 55
- (f) the establishment of sustainable conservation and management measures, including the use of a particular type of vessel or gear, or the area of fishing, to which a right of access may be subject;

- (g) the determination of rights to, or disposition of, by-catches in relation to rights of access;
- (h) the monitoring and control of the use of rights of access;
- (i) subject to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), the employment of South African persons on board fishing vessels that are used for the utilisation of rights of access;
- (j) the utilisation of South African fish processing establishments in the exercise of a right of access;
- (k) the operation, management and control of the Company; and
- (l) such other measures as may be necessary or desirable to achieve the effective implementation of a scheme for rights of access.

Selling of rights of access by tender process

24. (1) As from a date fixed by the Minister in the *Gazette*, rights of access shall, subject to section 29, be sold by the State through a tender process.

(2) A successful applicant shall be granted a right of access for a specified period of time, during which period a holder of a right shall pay an annual fee in respect of the right of access which shall be determined in accordance with section 38(1).

(3) The Minister may prescribe the tender process for rights of access referred to in subsection (1), including criteria for granting rights of access to applicants who may or may not be the highest bidders.

(4) Money paid in respect of a right of access sold by the State and the fees contemplated in subsection (2) shall be paid into the National Revenue Fund.

Local fishing vessel licence

25. (1) No person shall use a fishing vessel or any other vessel to exercise a right of access unless a local fishing vessel licence has been issued to such person.

(2) An application for a local fishing vessel licence shall be submitted to the Minister in the manner that the Minister may determine.

Reduction of rights

26. The Minister may in respect of any fishery for which scientific evidence indicates a deterioration, determine, after consultation with the Forum, that the allowable commercial catch, the total applied effort, or a combination thereof, and rights of access granted in respect thereof, shall be reduced accordingly.

PART 4: GENERAL LOCAL MATTERS

Establishment and incorporation of Company

27. (1) The Minister shall on a date to be determined by him or her, effect the incorporation in terms of the Companies Act, 1973 (Act No. 61 of 1973), of a public company which shall bear the name approved by the Minister, and the issue to the Company of a certificate to commence business.

(2) The Minister shall give notice in the *Gazette* of the incorporation of the Company.

(3) The Minister shall on behalf of the State sign all documents necessary for the establishment and incorporation of the Company.

Main object and main business of Company

28. In order to achieve fair and equitable access to fish, the memorandum of association of the Company shall *inter alia* provide that the main object and main business of the Company shall be to lease rights of access, according to criteria prescribed by the Minister, to small and medium size enterprises which do not already have such rights of access.

Allocation of rights of access to Company

29. The Minister may, notwithstanding the provisions to this Act, allocate rights of access to the Company.

Powers of Company

30. (1) The Company may - 5
- (a) acquire rights of access subject to restrictions determined by the Minister;
 - (b) lease rights of access;
 - (c) determine the price to be paid by the lessees of rights of access; and
 - (d) determine the conditions applicable to leases granted in terms of this section, which conditions shall govern the circumstances under which the lease may be cancelled, suspended or altered. 10
- (2) The Company may not without the approval of the Minister in consultation with the Minister of Finance—
- (a) alienate or encumber any asset of the Company otherwise than in the normal course of its exercise of its powers; 15
 - (b) cease or alter the main object or main business of the Company;
 - (c) merge the Company with any person or enter into a partnership or a joint venture; or
 - (d) engage in fishing.

Management and control 20

31. (1) For the purposes of the management and control of the Company the Minister may, notwithstanding the provisions of the Companies Act, 1973—
- (a) appoint a board of directors, or assign such management and control to any other person;
 - (b) issue criteria, guidelines and instructions for the operation of the Company; 25 and
 - (c) determine that the Company shall be managed and controlled according to a business plan approved by him or her.
- (2) The affairs of the Company shall be administered on sound business principles with due regard to the efficient leasing of access rights. 30
- (3) No person who has a direct interest in any manner whatsoever in commercial fishing or mariculture shall be appointed in terms of this section.
- (4) Notwithstanding the provisions of the Companies Act, 1973, the articles of association shall provide that if a board of directors is appointed—
- (a) the directors, with the exception of the managing director, shall fulfil a non-executive function; 35
 - (b) the affairs of the Company shall be managed by a management board appointed in terms of the articles of association; and
 - (c) one of the directors shall be appointed as managing director as well as chairperson of the management board. 40
- (5) The State shall be the sole shareholder in the Company.
- (6) The powers and duties of the State as a member and shareholder shall be exercised and performed by the Minister.

Share capital

32. (1) Upon incorporation the Company shall issue one share with a nominal value of one rand to the State. 45
- (2) In addition to the share referred to in subsection (1), the Company may issue additional shares to the State as the Minister may determine in consultation with the Minister of Finance.
- (3) The shares issued in terms of subsection (1), shall be allotted and issued at the time and on the conditions and at such value as the Minister may determine in consultation with the Minister of Finance. 50
- (4) Notwithstanding the provisions of the Companies Act, 1973, the Company shall not have more than one member.

(5) No stamp duty shall be paid by the Company in respect of the issue of shares to the State in terms of this Act.

(6) No money shall be paid by the Company in terms of section 63 or 75 of the Companies Act, 1973, in respect of the creation of or increase in the capital of the Company.

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Limitation of liability

33. (1) A director of the Company, or any other person to whom management and control of the Company has been assigned under section 31(1)(a), shall not be liable for any loss or damages suffered by the Company for any act or omission in good faith on behalf of the Company.

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(2) An operating loss suffered by the Company during any financial year shall be a direct charge on the National Revenue Fund.

Appropriation of profit

34. Any dividends declared by the Company shall be paid into the Fund.

Reporting

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35. The provisions of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), shall apply to the Company.

Exemption from taxes

36. The Company shall be exempt from the payment of any national, provincial and municipal taxes, but shall be liable for the collection and payment of value-added tax, customs duties and service charges.

Dissolution of Company

37. Notwithstanding the provisions of any other Act, the Company shall not be wound up or placed under judicial management except by the Minister by notice in the *Gazette*.

Fees

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38. (1) All rights of access, other rights, permits and licences in terms of this Act shall be granted or issued against the payment of the fees determined by the Minister in consultation with the Minister of Finance.

(2) An application for any right of access, other right, permit or licence in terms of this Act shall be accompanied by an application fee determined by the Minister in consultation with the Minister of Finance.

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Recovery of interest and fees

39. The Director-General may recover the amount of any interest or fee which is due and payable in terms of this Act in a competent court of law.

Fishing harbours

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40. (1) Subject to subsection (2), the Minister may by notice in the *Gazette* declare a harbour or a defined portion of a harbour or a defined area of the sea and the seashore, to be a fishing harbour.

(2) If the Minister desires to declare a commercial harbour or a portion of such harbour to be a fishing harbour, he or she shall obtain the prior approval of the Minister of Transport.

(3) The Minister may, in consultation with the Minister of Finance, determine the fees payable in respect of the use of a fishing harbour or the facilities available in such a harbour.

Cancellation **and** suspension of rights of access, other rights, **licences and permits**

41. (1) If a holder of any right of access, other right, licence or permit—

- (a) has furnished information in the application for that right of access, other right, licence or permit, or has submitted any other information required in terms of this Act, which is not [true or complete];
- (b) contravenes or fails to comply with a condition imposed in the right of access, other right, licence or permit;
- (c) contravenes or fails to comply with a provision of this Act; or
- (d) is convicted of an offence in terms of this Act,

the Director-General may by written notice delivered to such holder, or sent by registered post to the said holder's last known address, request the holder to show cause in writing, within a period of 21 days from the date of the notice, why the right of access, other right, licence or permit should not be suspended, cancelled, altered or reduced, as the case may be.

(2) The Director-General shall after expiry of the period referred to in subsection (1) refer the matter, together with any *reason* furnished by the holder in question, to the Minister for the Minister's decision.

(3) When a matter is referred to the Minister in terms of subsection (2), the Minister may—

- (a) suspend the right of access, other right, licence or permit for a period determined by the Minister;
- (b) cancel the right of access, other right, licence or permit from a date determined by the Minister;
- (c) alter the terms or conditions of the right of access, other right, licence or permit; or
- (d) decide not to suspend, cancel, alter or reduce the right of access, other right, licence or permit.

(4) Notwithstanding the provisions of subsections (1), (2) and (3), the Minister may, whenever he or she is of the opinion that it is in the interests of the promotion, protection or utilisation on a sustainable basis of a particular marine living resource, at any time by written notice to the holder of the right of access, other right, licence or permit, suspend, cancel or reduce that right of access, other right, licence or permit.

PART 5: FOREIGN FISHING

International agreements

42. (1) No international agreement entered into by the national government of the Republic concerning access to fish in South African waters shall exceed the total resources or the total mass of fish allowed to the appropriate category of foreign fishing vessels in terms of any applicable determination of the total allowable catch or applicable fishery plan.

(2) Any international agreement entered into by the national government of the Republic concerning access to fish in South African waters shall include a provision establishing the responsibility of the foreign state or an association to take necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the legislation relating to fishing in South African waters.

Foreign fishing vessel licences

43. (1) No foreign fishing vessel shall be used for fishing or related activities in South African waters unless a foreign fishing vessel licence has been issued to such vessel.

(2) Subject to the provisions of this Act, the Minister may issue a foreign fishing vessel licence in the prescribed format authorising a foreign fishing vessel to be used in South African waters, or any part thereof, for the fishing or related activities that may be determined in the licence.

(3) Subject to subsection (4), no foreign fishing vessel licence shall be issued to any foreign fishing vessel unless there is in force with the government of the flag state of the vessel or with an association of which the owner or charterer is a member, a fishery agreement to which the national government of the Republic is a party.

(4) Notwithstanding the absence of a fishery agreement contemplated in subsection (3), the Minister may issue a licence in respect of a foreign fishing vessel where the applicant provides sufficient financial and other guarantees relating to his or her fulfillment of all obligations arising in terms of this Act, as well as other conditions regarding insurance related to pollution and rescue, and the Minister is satisfied that those guarantees are adequate for that purpose.

(5) If a fishing vessel is used in contravention of subsection (1) or of any condition of a foreign fishing vessel licence, the master, owner and charterer of that fishing vessel shall each be guilty of an offence.

PART 6: HIGH SEAS FISHING 10

Prohibition of high seas fishing

44. No person shall undertake fishing or related activities on the high seas by means of a fishing vessel registered in the Republic unless a high seas fishing vessel licence has been issued in respect of such a fishing vessel.

High seas licences 15

4.5. (1) The Minister may issue a high seas fishing licence in respect of a local fishing vessel, subject to the conditions that he or she considers appropriate.

(2) A high seas fishing licence shall be valid for a period not exceeding one year.

(3) A high seas fishing licence shall only be issued in respect of a local fishing vessel.

(4) A high seas fishing licence shall terminate— 20

(a) on expiration of the period for which it was valid;

(b) should the vessel cease to be registered in the Republic; or

(c) should the master, owner or charterer of the high seas fishing vessel be convicted of an offence in terms of section 43(5).

Implementation of international conservation and management measures 25

46. (1) The Minister may provide appropriate information in terms of international conservation and management measures to an international organisation of which the Republic is a member, or to states parties to such international conservation and management measures.

(2) The Minister may exchange information, including evidentiary material, with 30 other states that are parties to international conservation and management measures to enable the Republic and such other states to better implement the objects of such international conservation and management measures.

(3) If the Director-General has reason to suspect that a foreign fishing vessel was involved in a contravention of an international conservation or management measure, he 35 or she may—

(a) provide to the appropriate authorities of the flag state of the foreign fishing vessel concerned, such information, including evidentiary material, relating to that contravention; and

(b) when such foreign fishing vessel is voluntarily in a port of the Republic, 40 promptly notify the appropriate authorities of the flag state of the vessel accordingly.

(4) The Minister may from time to time publish by notice in the *Gazette* particulars of any international conservation and management measures or international agreement 45 concerning marine living resources.

CHAPTER 4

MARINE PROTECTED AREAS

Marine protected areas

47. (1) The Minister may, by notice published in the *Gazette*, declare an area to be a marine protected area— 50

(a) for the protection of fauna and flora and the physical features on which they depend;

- (b) to facilitate fishery management by protecting spawning stock, allowing stock recovery, enhancing stock abundance in adjacent areas, and providing pristine communities for research; or
- (c) to diminish any conflict that may arise from competing uses in that area.
- (2) No person shall in any marine protected area, without permission in terms of subsection (3)—
- (a) fish or attempt to fish;
- (b) take or destroy any fauna and flora other than fish;
- (c) dredge, extract sand or gravel, discharge or deposit waste or any other polluting matter, or in any way disturb, alter or destroy the natural environment; or
- (d) construct or erect any building or other structure on or over any land or water within such a marine protected area.
- (3) The Minister may give permission in writing that any activity prohibited under this section may be undertaken, where such activity is required for the proper management of the marine protected area.

CHAPTER 5

PROHIBITED ACTIVITIES AND STOWAGE OF GEAR

Prohibited fishing methods

48. (1) No person shall—
- (a) use, permit to be used, or attempt to use any explosive, fire-arm, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or of in any way rendering fish to be caught more easily; or
- (b) carry or have in his or her possession or control any explosive, fire-arm, poison or other noxious substance for any of the purposes referred to in paragraph (a).
- (2) No person shall land, sell, receive or possess any fish taken by any means in contravention of subsection (1)(a).

Possession of prohibited gear

49. No person shall use, possess or have control of—
- (a) any net or trap, the mesh size of which does not conform to the prescribed minimum mesh size;
- (b) any gear which does not conform to the standards that may be prescribed for that type of gear; or
- (c) any gear which is prohibited in terms of this Act.

Interference with gear

50. No person shall—
- (a) remove, haul, empty, cast adrift or otherwise interfere with any fishing net, line, pot, trap, gear, tackle, or other equipment belonging to any other person without the consent of that person;
- (b) place any object in the water, or promote or undertake any activity in a manner so as to obstruct a fishing operation being carried out by another person;
- (c) destroy, damage, displace or move or alter the position of any fishing net, line, pot, trap, gear, tackle or other fishing equipment, or any buoy, float or other marker attached to it; or
- (d) remove fish from any fishing net, line, pot, trap, gear, tackle or other fishing equipment belonging to any other person without the consent of that person.

Driftnet fishing

51. (1) Except on the authority of a permit issued by the Minister no vessel shall be used for or to assist in any driftnet fishing activities.

- (2) No person shall engage or assist in any driftnet fishing activities.
- (3) No person on board a local fishing vessel or a foreign fishing vessel in respect of which a foreign fishing vessel licence has been issued, shall be in possession of a driftnet or part [hereof].

Fish aggregating devices

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52. (1) An application to place a fish aggregating device in South African waters shall be submitted to the Minister in the manner that the Minister may determine.
- (2) A permit to place a fish aggregating device shall not confer any right to fish.
- (3) The Minister may by notice in the *Gazette*—
- (a) declare any fish aggregating device to be a designated fish aggregating device for the purposes of this section; and
- (b) determine who may fish within a radius of one nautical mile of a designated fish aggregating device or a class of designated fish aggregating devices.
- (4) Subject to subsection (3), no person shall fish within a radius of one nautical mile from a designated fish aggregating device without the permission of the Minister and unless in accordance with the conditions that he or she may determine.
- (5) Permission to use a fish aggregating device does not affect any obligation to observe applicable conservation or management measures, unless the Minister determines in writing that a particular measure does not apply in respect of fish caught within one nautical mile of that device.

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Stowage of gear

53. (1) Gear on board any foreign fishing vessel for which a foreign fishing vessel licence has not been issued shall be stowed in the prescribed manner while the vessel is within South African waters.
- (2) A foreign fishing vessel that is licensed in terms of section 43(2) to fish by means of a particular type of gear in any specific area of the South African waters—
- (a) shall stow any other gear on board the vessel in the prescribed manner while the vessel is within that area; and
- (b) shall stow all gear on board the vessel in the prescribed manner while the vessel is within any other area of the South African waters where it is not licensed to fish.

CHAPTER 6

LAW ENFORCEMENT

Observers

54. (1) The Director-General may designate a person in writing to act as an observer on vessels issued with fishing licences in terms of this Act and shall furnish such an observer with the prescribed identity card.
- (2) An observer may be designated in accordance with the terms of an agreement contemplated in section 42.
- (3) Any person designated in accordance with subsection (2) who is not a citizen of the Republic shall, while in South African waters, be subject to the provisions of this Act for the purposes of carrying out his or her duties and enforcing his or her rights.
- (4) An observer shall exercise the scientific, compliance, monitoring and other functions determined by the Minister,
- (5) Any person on board any vessel issued with a licence or permit shall permit any observer to board and remain on such vessel for the purposes of performing his or her functions.

Powers of fishery control officers

55. (1) For the purposes of enforcing this Act any fishery control officer may with

a warrant enter and search any vessel, vehicle, aircraft or premises or seize any property.

(2) For the purposes of enforcing this Act any fishery control officer may without a warrant—

- (a) order any foreign fishing vessel in South African waters, and any local fishing vessel in or beyond such waters to stop; 5
- (b) require the master of a vessel to stop fishing and take the gear of the vessel back on board;
- (c) require the master of a vessel to facilitate the boarding of a vessel by all appropriate means; 10
- (d) go on board a vessel and take with him or her such other persons as he or she may require for assistance in the execution of his or her powers;
- (e) muster the crew of a vessel;
- (f) require to be produced, examine and make copies of a certificate of registry, licence, permit, log book, official documents, record of fish caught and any other document required in terms of this Act or relating to a vessel and to the crew or any member thereof or to any person on board the vessel which is in their respective possession or control on board the vessel; 15
- (g) require the master to appear and give an explanation concerning the vessel, the crew, any person on board the vessel and any document referred to in paragraph (f); 20
- (h) make any examination or enquiry which he or she may consider necessary to ascertain whether any provision of this Act has been contravened;
- (i) make an entry dated and signed by him or her in any vessel's log book;
- (j) where he or she has reasonable grounds to believe that an offence in terms of this Act has been or is being committed, take or require the master to take the vessel to any place, port or harbour in [he territory of the Republic for the purpose of carrying out any search, examination or enquiry; 25
- (k) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Act for the compliance by the vessel, master or any crew member with any condition of a licence; 30
- (l) at all reasonable times enter and inspect any fish processing establishment or any other place where fish or fish products are kept or stored; and
- (m) take samples of any fish found in any vessel, vehicle, aircraft or on any premises searched in terms of this section. 35

(3) A fishery control officer may, without a warrant—

- (a) enter and search any vessel, vehicle, aircraft or premises if he or she has reasonable grounds to believe that an offence has been or is being committed or that fish illegally fished or substances or devices for use contrary to section 48 or 49 are being stowed, if— 40
 - (i) the person in control of the vessel, vehicle, aircraft or premises consents to such entry or search; or
 - (ii) the fishery control officer has reasonable grounds to believe that a warrant will be issued, if he or she were to apply for such warrant, and the delay caused by the obtaining of such a warrant would defeat the object of the entry or search; 45
- (b) stop, enter and search any vessel, vehicle or aircraft which he or she reasonably suspects is being used or is involved in the commission of an offence in terms of this Act; 50
- (c) seize—
 - (i) any property on board any vessel, vehicle or aircraft or on any premises if—
 - (aa) the person in control of the vessel, vehicle, aircraft or premises consents to such seizure; or 55
 - (bb) the fishery control officer has reasonable grounds to believe that a warrant will be issued, if he or she were to apply for such warrant,

and the delay caused by the obtaining of such a warrant would defeat the object of the seizure;

- (ii) any vessel, including its gear, equipment, stores and cargo, and any vehicle or aircraft of which he or she has reasonable grounds to believe that it has been *or is* being used in the commission of an offence in terms of this Act or in respect of which he or she suspects such offence to have been committed or which he or she knows or has reasonable grounds to suspect that it has been seized or *forfeited* in terms of any provision of this Act;
 - (iii) any fish or fishproduct which he or she has reasonable grounds to suspect to have been taken or produced in the commission of such offence or which are possessed in contravention of this Act;
 - (iv) any substance or device which he or she has reasonable grounds to suspect to have been used or to be possessed or controlled in contravention of section 48 or 49;
 - (v) any log book, chart or other document required to be maintained in terms of this Act or in terms of any licence, in respect of which he or she has reasonable grounds to believe that it shows or tends to show, with or without other evidence, the commission of an offence in terms of this Act; or
 - (vi) anything which he or she has reasonable grounds to believe might be used as evidence in any proceedings in terms of this Act; or
- (d) arrest any person whom he or she has reasonable grounds to suspect to have committed an offence in terms of this Act.

(4) In exercising the powers referred to in this section a fishery control officer may, where necessary, use only the minimum force which is reasonable in the circumstances, with due regard to human dignity and privacy.

(5) A fishery control officer shall in the exercise of his or her powers in terms of this Act, be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Powers of fishery control officers beyond South African waters

56. A fishery control officer may without a warrant following hot pursuit in accordance with international law as reflected in article 111 of the United Nations Convention on the Law of the Sea—

- (a) stop, board and search outside South African waters, any foreign fishing vessel which he or she has reasonable grounds to believe has been used in the commission of an offence in terms of this Act in South African waters and bring such vessel and all persons and things on board to any place, port or harbour in the territory of the Republic; and
- (b) exercise beyond South African waters all the powers conferred on a fishery control officer in terms of this Act.

Seizure of vessels

57. (1) Where any vessel is seized in terms of section 55, the master and crew thereof shall take the vessel to such place, port or harbour in the territory of the Republic as the fishery control officer shall require and the vessel may be detained pending the outcome of any proceedings in terms of this Act until it is released on payment or lodging of security in terms of section 65.

(2) If a master fails or refuses to take a vessel contemplated in subsection (1) to the designated place, port or harbour, a fishery control officer may take charge of the vessel for the purpose of taking it to the designated place, port or harbour.

Seizure of vehicles or aircraft

58. (1) Where any vehicle or aircraft is seized in terms of section 55, the driver or pilot thereof shall take the vehicle or aircraft to such place in the territory of the Republic as a fishery control officer shall designate as being the nearest or most convenient place for the holding of such vehicle or aircraft and the vehicle or aircraft may be detained

pending the outcome of any proceedings in terms of this Act until it is released on payment or lodging of security in terms of section 65.

(2) If a driver or pilot fails or refuses to take a vehicle or aircraft contemplated in subsection (1) to the designated place, a fishery control officer may take charge of the vehicle or aircraft for the purpose of bringing it to the designated place. 5

(3) A court with jurisdiction over a vessel seized in terms of section 55, shall have jurisdiction over any vehicle or aircraft seized in connection with the same offence in terms of this section notwithstanding the whereabouts of the said vehicle or aircraft.

Immobilisation of vessels, vehicles or aircraft

59. (1) Having regard to the safety of a vessel, vehicle or aircraft seized, taken or 10 detained, which is in the custody of the State in terms of this Act, a fishery control officer may take steps to immobilise it and may remove any part thereof.

(2) Any part removed as contemplated in subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft immediately upon its release from custody.

Co-operation with officials

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60. (1) Whenever a fishing control officer exercises any power or performs any duty in terms of this Act, he or she shall at the request of any person affected thereby, produce the identity card contemplated in section 9(3) to such person for inspection.

(2) The master and each member of the crew of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with any lawful 20 instruction given or request made by a fishery control officer and shall facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any gear, equipment, register, document, fish and fish product.

(3) The master and each member of the crew of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall take all measures to ensure the safety 25 of a fishery control officer in the performance of his or her duties.

(4) The holder of a permit for and all persons employed at any fish processing establishment, shall immediately comply with any instruction or request given by a fishery control officer, facilitate his or her safe entry and inspection of the fish processing 30 establishment, records, documents, fish and fish products and take all measures necessary to ensure the safety of a fishery control officer in the performance of his or her duties.

(5) No person shall—

- (a) assault, obstruct, resist, delay, refuse the boarding of, intimidate or fail to take all reasonable measures to ensure the safety of, or otherwise interfere with a 35 fishery control officer or observer in the performance of his or her duties;
- (b) incite or encourage any other person to assault, resist or obstruct any fishery control officer while exercising or performing his or her powers or duties, or any other person lawfully acting under the orders of the fishery control officer in his or her aid; 40
- (c) use threatening language or behave in a threatening or insulting manner or use abusive language or insulting gestures towards any fishery control officer or observer while exercising or performing his or her powers or duties, or towards any other person lawfully acting under the orders of a fishery control officer in his or her aid; 45
- (d) fail to comply with the lawful requirements of any fishery control officer or observer;
- (e) furnish to any fishery control officer any particulars which are false or misleading;
- (f) impersonate or falsely represent himself or herself as a fishery control officer; 50
or

(g) falsely represent himself or herself as a person lawfully acting under a fishery control officer's orders or **in his or her aid.**

CHAPTER 7

JUDICIAL MATTERS

Offences and penalties 5

61. (1) Any person who, subject to the provisions of subsections (2) or (3)—

(a) undertakes fishing or related activities in contravention of—

(i) a provision of section 13;

(ii) the conditions of any right of access, other right, licence or permit granted or issued in terms of Part 2 or 3 of Chapter 3; or 10

(iii) an authorisation to undertake fishing or related activities in terms of Part 5 or 6 of Chapter 3, but excluding section 43(5); or

(b) contravenes any other provision of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding two million rand, or to imprisonment for a period not exceeding five years. 15

(2) Any person who contravenes—

(a) a provision of an international conservation and management measure inside or outside South African waters, or otherwise fails to comply with any provision of Part 6 of Chapter 3, by means of a vessel registered in the Republic; or 20

(b) the conditions imposed in a high seas fishing permit or high seas fishing vessel licence,

shall be guilty of an offence and liable on conviction to a fine not exceeding three million rand.

(3) Any person who contravenes a provision of section 43(5), 49, 51, 52 or 53 shall be guilty of an offence and liable on conviction to a fine not exceeding five million rand. 25

(4) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Limitation of liability 30

62. (1) The State, the Minister, any person in the employment of an organ of state or any person appointed to perform any function in terms of this Act shall not be liable by virtue of anything done in good faith under a provision of this Act.

(2) The State, the Minister or any persons contemplated in subsection (1) shall not be liable, except in the case of any intentional act or omission on the part of any such person, to any person who, except in the performance of any function in terms of this Act or any other law— 35

(a) makes use of any vessel, vehicle or aircraft which is the property or under control of the State;

(b) is present in any fishing harbour; or 40

(c) leaves any vessel or any other property in a fishing harbour or makes use of the facilities of a fishing harbour,

or to the spouse or any dependant of any such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to any property caused by or arising out of or in any manner connected with the use of any vessel, vehicle or aircraft referred to in paragraph (a), the presence referred to in paragraph (b) or the presence of any property or the use of any facilities referred to in paragraph (c). 45

Destruction of evidence

63. (1) No person who, being on board any vessel being pursued, about to be boarded or notified that it will be boarded by a fishery control officer shall throw overboard or destroy any fish, fish product, gear, explosive, fire-arm, poison, noxious substance, 50

chart, log book, document or other thing to avoid the seizure thereof or the detection of any offence against this Act.

(2) Subsection (1) shall as far as applicable also apply to vehicles, aircraft, fish processing plants and other premises.

Payment for information leading to conviction

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64. The Minister may from money appropriated by Parliament for that purpose and in consultation with the Minister of Finance, pay to any person, excluding a person in the employment of the State or an organ of state who has furnished any information or material of **proof which leads to a conviction by a court, a remuneration in cash which,** in the opinion of the Minister, is reasonable and fair in the circumstances.

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Security for release of vessel, vehicle or aircraft

65. (1) If a fishing vessel, vehicle or aircraft is taken, seized or detained in terms of this Act and judicial proceedings are instituted in respect of an offence for which the vessel has been detained, the master, owner, charterer or agent of the owner or the charterer of the vessel, vehicle or aircraft may at any time apply to the court which will hear the matter, for the release of the vessel, vehicle or aircraft on the provision of security in terms of this section.

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(2) On hearing the application the court shall—

(a) determine the amount of security to be deposited with the court by adding to the value of the vessel, vehicle or aircraft—

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(i) the maximum fine for the offence or offences alleged; and

(ii) costs and expenses incurred or reasonably foreseen to be incurred by the State, and recoverable in terms of this Act,

and order the release of the vessel subject to the lodging of a guarantee or depositing of the security as determined; or

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(b) where it is satisfied that there are special and exceptional circumstances to justify it doing so, order the release of the vessel, vehicle or aircraft subject to the payment of security which is less than the amount contemplated in paragraph (a).

(3) The furnishing of security shall, subject to subsection (4), be subject to the conditions that the court determine.

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(4) Any security granted in terms of subsection (2) shall be subject to the condition that, if—

(a) the accused is found not guilty of the charge; or

(b) the accused, on being convicted of the charge, pays in full within 14 days, or such time as the court may determine, after he or she is convicted, the amount of the fine imposed by the court and the amount of all costs and expenses due by him or her to the State in terms of subsection (2),

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the security shall be of no effect and any amount that has been deposited, shall forthwith be returned to the accused.

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(5) Any security granted in terms of subsection (2) shall be recoverable in full in any court as a debt due to the State jointly and severally by the person or persons by whom the security has been given unless the person or persons prove the due performance of the conditions on which the security was given.

(6) The Minister may order the release of any vessel, vehicle, aircraft or gear, equipment or fish seized in terms of this Act.

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Disposal of perishables

66. (1) If any fish or other thing of a perishable nature is seized in terms of section 55 the Minister may, notwithstanding any other provision of this Act—

(a) return the fish or other thing to the person from whom it was seized on receiving adequate security equivalent to the value of the fish or thing; or

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(b) cause the sale of the fish or **other thing at a price which is reasonable** in the circumstances and, if court proceedings are instituted, pay the proceeds of the sale into a suspense account of the Department pending a court order in respect of the forfeiture of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was 5 seized: Provided that, if, after making all reasonable efforts, the Minister is unable to sell the fish or other thing, or where such fish or other things are unfit for sale, he or she may dispose thereof in such *other* manner as he or she deems fit, including by destruction.

(2) If any live fish has been seized in terms of section 55, it may be released or 10 destroyed at the discretion of the seizing fishery control officer where he or she for any sufficient reason considers such act desirable.

Treatment of things detained or seized

67. (1) If any vessel, vehicle, aircraft or other thing has been detained or seized in terms of section 55, and a person who has been properly charged with an **offence** in 15 relation thereto fails to appear to answer the charge within 90 days of the detention or seizure, the Minister may apply to the court for it to be forfeited to the State and the court shall make such order as it shall deem fit.

(2) If the lawful owner of a vessel, vehicle, aircraft or thing seized or detained in terms of section 55 cannot be traced within 90 days of such seizure it shall be forfeited to the 20 State and be disposed of as the Director-General in his or her discretion shall consider fit.

(3) If a vessel, vehicle, aircraft or thing has been seized or detained in terms of section 55 and the court does not order the forfeiture of it, any proceeds realised from its disposal **shall** be returned to the owner thereof or the person having the possession, care 25 or control of it at the time of such detention or seizure.

(4) If the owner of a vessel, vehicle, aircraft or thing or the person having the possession, care or control of it at the time of its seizure or detention is convicted of an **offence** in terms of this Act and a fine is imposed, it may be detained until all fines, orders 30 for costs and penalties imposed in terms of this Act have been paid.

(5) If any payment contemplated in subsection (4) is not **made within** such time as the court may determine, the vessel, vehicle, aircraft or thing may be sold in satisfaction and the proceeds **shall** be dealt with in accordance with section 68.

(6) Any vessel, vehicle, aircraft or other thing ordered to be forfeited in terms of this Act may, if no appeal has been lodged at the expiry of the time limited for appeal in a 35 court, be disposed of in the manner that the Minister may determine.

Application of security

68. Any security or net proceeds of sale held in respect of any vessel, vehicle, aircraft or other thing shall be applied as follows and in that order:

- (a) The discharge of any forfeiture ordered in terms of section 71; 40
- (b) the payment of all fines or a contribution towards such a fine, for **offences** in terms of this Act or penalties imposed in terms of this Act, arising out of the use of or in connection with the vessel, vehicle, aircraft or other thing;
- (c) the discharge of all orders for costs in proceedings *in* terms of this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other 45 thing;
- (d) return as provided for in section 67.

Liability for loss, damage or deterioration of things in custody

69. The State shall not be **liable** to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or **other thing while** in the custody of the 50 State in terms of this Act.

Removal from custody

70. (1) Any person who knows or can reasonably be expected to know that a vessel, vehicle, aircraft or other thing is held in the custody of the State in terms of this Act and who removes such vessel, vehicle, aircraft or thing, shall be guilty of an offence.

(2) If any vessel, vehicle, aircraft or other thing held or forfeited in terms of this Act has been unlawfully removed from the custody of the State it is liable to seizure in accordance with international law. 5

Forfeiture orders by court

71. (1) If any person is convicted of an offence in terms of this Act, the court may, in addition to any other penalty, order that any fishing vessel, together with its gear, equipment, any fish caught unlawfully or the proceeds of sale of such fish or any perishables, and any vehicle or aircraft used or involved in the commission of that offence be forfeited to the State. 10

(2) If any vessel, vehicle, aircraft or other thing seized in terms of this Act, or any security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed in terms of this Act, it shall be made available to the registered owner or her or his nominee or, in the absence of such persons, a person who appears to be entitled to it. 15

(3) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the security. 20

(4) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, the court may order any person convicted of an offence in connection therewith and the owner of the vessel, vehicle, aircraft or other thing concerned, whether or not he or she is an accused, to pay the difference between the amount lodged in respect of security and the aggregate value of the forfeited property. 25

Disposal of forfeited things and discharge of forfeiture orders

72. (1) Any vessel, including its gear, cargo, stores and fuel, and any vehicle or aircraft, gear, net or other equipment, explosive, fire-arm or poison ordered to be forfeited in terms of this Act shall be disposed of in such manner as the Minister may determine. 30

(2) The owner or any other person with real security in any property forfeited in terms of section 71, may apply to court for the release of the property in question or for the realisation of his or her security therein, as the case may be.

(3) The court may release the property contemplated in subsection (2) or order the realisation of the security therein, if the applicant proves that he or she was in no way implicated in the commission of the offence, and that he or she could not have prevented it. 35

Jurisdiction of courts

73. (1) Any act or omission in contravention of any of the provisions of this Act which is committed— 40

(a) by any person within South African waters;

(b) outside South African waters by any citizen of the Republic or any person ordinarily resident in the Republic; or

(c) by any person on board any local fishing vessel; 45

shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the territory of the Republic.

(2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted. 50

(3) Notwithstanding anything to the contrary in any other Act, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

Documentary evidence

74. (1) The Minister may issue a certificate stating that—

- (a) a specified vessel was or was not a local fishing vessel or a foreign fishing vessel on a specified date; 5
- (b) a specified vessel or person was or was not on a specified date the holder of any specified licence, permit, authorisation or certificate of registration; 5
- (c) an appended document is a true copy of the licence, authorisation or certificate of registration for a specified vessel or person and that specified conditions were those of a licence, permit, authorisation or certificate of registration issued in respect of a specified vessel or person; 10
- (d) a particular location or area of water was on a specified date within South African waters, or within an area of South African waters subject to specified conditions; 15
- (e) an appended chart shows the boundaries on a specified date of South African waters, internal waters, territorial waters, the exclusive economic zone or any area within such waters or zones which is subject to specified conditions; 15
- (f) a call sign, name or number is that of a particular vessel or has been allotted under any system of naming or numbering of vessels to a particular vessel; or 20
- (g) a particular position or catch report was given in respect of a specified vessel. 20

(2) Any certificate issued in terms of this section shall be—

- (a) signed by the person who made it; and
- (b) headed "Certificate: Section 74 Marine Living Resources Act, 1997".

(3) In the absence of evidence to the contrary, a document purporting to be a certificate issued in terms of this section shall be deemed to be such a certificate and to have been duly given. 25

(4) In any proceedings for any offence in terms of section 48, a certificate as to the cause and manner of death or injury of any fish, signed by the Director-General, shall, in the absence of the evidence to the contrary, be so sufficient evidence as to the matters stated in that certificate. 30

Validity of certificates

75. (1) Subject to this section, in any proceedings in terms of this Act, a certificate issued in terms of section 74 shall be admissible in evidence and shall be *prima facie* evidence of the facts averred in it. 35

(2) A court may, of its own accord or on application by any party to proceedings, require that the person who issued the certificate attend and give oral evidence at the hearing.

(3) Any omission or mistake in any certificate issued in terms of section 74 shall not render it inadmissible in evidence unless the court considers such omission or mistake to be material to any issue in the proceedings concerned, or the court is of the opinion that the defendant or accused is unduly prejudiced thereby. 40

Certificate as to location of vessel

76. (1) A certificate given by a fishery control officer or observer shall be *prima facie* evidence in any proceedings in terms of this Act, of the place or area in which a vessel has been at a particular date and time or during a particular period of time. 45

(2) A fishery control officer shall in any certificate issued in terms of subsection (1) state the following:

- (a) His or her name, address, official position, place of appointment and provision in terms of which he or she is appointed; 50

- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in a place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area referred to in paragraph (d) and their accuracy within their specified limits; 5
- (f) that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position and that they appeared to be working correctly; and
- (g) if a position fixing instrument which is not a designated machine or is not generally recognised as reliably accurate is used, that he or she checked the instrument as soon as possible after the time concerned against such an instrument. 10

(3) Section 74 shall, with the necessary changes, apply to a certificate issued in terms of this section.

Designated machines 15

77. (1) The Minister may by notice published in the *Gazette* designate any machine or instrument or class of machines or instruments as a designated machine.

(2) The readings of a designated machine shall be admissible as evidence of the facts that they aver if—

- (a) the readings were made by a person who has received training in the operation of designated machines; and 20
- (b) the machine was checked for correct working a reasonable time before and after the readings it is sought to adduce in evidence were made and the machine appeared to be working correctly.

(3) If a designated machine has been checked for correct working and read by a person trained in the operation thereof, it shall, in the absence of evidence to the contrary, be presumed to give accurate readings within the manufacturer's specified limits. 25

(4) The readings of designated machines maybe made from a printout or as observed from a visual display unit. 30

(5) Any machine contemplated in subsection (1) must be capable either wholly or partially in itself of producing the readings concerned and not merely be a receiver of information or data.

Photographic evidence

78. (1) If a photograph is taken of any fishing or related activity and the date and time on and position from which the photograph is taken are simultaneously superimposed upon the photograph, it shall be *prima facie* evidence that the photograph was taken on the date, at the time and in the position so appearing. 35

(2) The provisions of subsection (1) shall apply only when—

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and 40
- (b) the instruments which provide the date, time and position are generally recognised as being accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.

(3) Any fishery control officer or observer who takes a photograph contemplated in subsection (1) may issue a certificate appending the photograph stating the following: 45

- (a) His or her name, address, official position, place of appointment and provision in terms of which he or she is appointed;
- (b) the name and call sign, if known, of any fishing vessel appearing in the photograph; 50
- (c) the brand and model names of the camera, watch, clock or other instruments supplying the date and time, including the position fixing instrument, and that he or she checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b), and that they all appeared to be working correctly; 55
- (d) the matters set out in subsection (2)(u);

(e) the accuracy of the fixing instrument if used within specified limits;

(f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

(4) Section 74 shall, with the necessary changes, apply to a certificate issued in terms of this section.

Observation devices

79. (1) The Minister may, by notice published in the *Gazette*, designate any device or machine or class of device or machine as an observation device, 5

(2) The information or data concerning the vessel's position and fishing activities referred to in subsection (3) may be fed or captured manually into the observation device or automatically from machines aboard the vessel or ascertained by the use of the observation device's transmissions in conjunction with other machines.

(3) All information or data obtained or ascertained by the use of an observation device, shall be *prima facie* evidence that such information— 10

(a) came from the vessel so identified;

(b) was accurately relayed or transferred; and

(c) was given by the master, owner and charterer of the fishing vessel,

and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit. 15

(4) Subsection (3) applies irrespective of whether or not the information was stored before or after any transmission or transfer.

(5) Any fishery control officer or observer may issue a certificate stating the following: 20

(a) His or her name, address, official position, place of appointment and provision in terms of which he or she is appointed;

(b) that he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an observation device; 25

(c) the date and time the information was obtained or ascertained from the observation device and the details thereof;

(d) the name and call sign of the vessel on which the observation device is or was located as known to him or her or as ascertained from any official register, record or other document; and 30

(e) that there appeared to be no malfunction in the observation device, its transmissions or other machines used in obtaining or ascertaining the information.

(6) Section 74 shall, with the necessary changes, apply to a certificate issued in terms of this section. 35

(7) No person shall destroy, damage, render inoperative or otherwise interfere with an observation device or machine aboard a vessel, vehicle or aircraft which automatically feeds or inputs information or data into an observation device.

(8) No person shall intentionally feed or capture information or data into an observation device which is not officially required in terms of this Act, or is false or inaccurate. 40

CHAPTER 8

GENERAL PROVISIONS

Power to make regulations

80. (1) The Minister may make regulations regarding— 45

(a) any matter required or permitted to be prescribed in terms of this Act; and

(b) generally all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) Without prejudice to the generality of (the provisions of subsection (1), the Minister may make regulations— 50

(a) prescribing fines greater in amount than those already specified in any provision of this Act—

(i) if necessary as a result of inflation or a rise in the consumer price index;

(ii) to be in accordance with international law;

- (b) providing for the forfeiture of any vessel, vehicle, aircraft or thing used in the commission of an offence in terms of this Act;
- (c) providing for the forfeiture of any fish caught in contravention of any provision of this Act;
- (d) providing for the imposition of an additional fine to an amount representing the value in whole or in part of any vessel, vehicle, aircraft, gear, equipment or fish in the place of forfeiture of such vessel, vehicle, aircraft, gear, equipment or fish; 5
- (e) prescribing fisheries management and conservation measures, including mesh sizes, gear standards, minimum species sizes, closed seasons, closed areas, prohibited methods of fishing or gear and schemes for limiting entry into all or any specified fisheries; 10
- (f) to regulate the catching and utilisation of fish taken **incidentally** when fishing for a species for which a licence or permit has been issued;
- (s) regarding licences or authorisation in respect of any vessel or class or category of vessels to be used for fishing, related activities or any other purpose pursuant to this Act, including application procedures and forms, and the format and requirements for the issuing of licences or permits, grounds for denial, terms and conditions; 15
- (h) prescribing different classes of and formats for licences or permits, including application procedures and forms, and the area or fishing method or type of gear in respect of which each class of licence or permit shall be valid; 20
- (i) prescribing the operation of, and conditions and procedures to be observed by any fishing vessel while in South African waters, having due regard to the provisions of the United Nations Convention on the Law of the Sea; 25
- (j) prescribing the operation of, and conditions and procedures to be observed by, any vessel which enters South African waters for any purpose, including transiting the South African fisheries waters, in terms of this Act;
- (k) regulating—
 - (i) the navigation of foreign fishing vessels through South African waters, having due regard to the provisions of the United Nations Convention on the Law of the Sea; and 30
 - (ii) the manner in which gear is to be stowed aboard such vessels;
- (l) regarding the catching, loading, landing, handling, processing, transshipping, transporting, possession and disposal of fish; 35
- (m) regarding the import, export, trade in, distribution and marketing of fish and fish products;
- (n) prescribing the manner in which any gear shall be stowed;
- (o) providing for the implementation of any agreement or arrangement entered into under section 42 or 46; 40
- (p) regarding the appointment, powers and duties of fishery control officers and observers;
- (q) prescribing the duties and procedures to be followed by the master and crew of any vessel in respect of fishery control officers and observers;
- (r) prescribing the licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and setting times and the minimum distances from such devices any vessel may fish around such devices; 45
- (s) regulating or prohibiting the use of any diving apparatus, spear guns or other similar devices for fishing or related activities;
- (t) establishing standards and measures for the safety of local fishers and local fishing vessels; 50
- (u) requiring the provision of statistical and other information related to fisheries, including fishing log books, and the format in which the information shall be recorded;
- (v) regulating and controlling the operation of fish processing establishments, including quality control measures and inspection of such establishments; 55
- (w) regarding the prevention of marine pollution;

- (x) regulating or prohibiting, either generally or in any specified fisheries—
 - (i) the management and protection of marine protected areas;
 - (ii) the taking of coral;
 - (iii) the setting of fishtraps, nets, fish pens or seine nets;
 - (iv) the taking of fish for aquarium purposes; or
 - (v) the taking of turtles;
- (y) establishing measures for the protection of specified species;
- (z) governing the administration of fishing harbours and any other matter incidental thereto;
- (aa) relating to the circumstances in which fish which have been caught shall be returned or not returned to the sea or shall be released or not released;
- (bb) relating to the dumping or discharging of anything which is or may be injurious to fish, or which may disturb or change the ecological balance in any area of the sea;
- (cc) to ensure the orderly development and control of mariculture in the Republic;
- (old) to ensure the orderly development of high seas fishing by South African persons and vessels.

Assignment to provinces

81. The Minister may assign the administration of any provision of this Act to the executive authority of a province.

Delegation of powers

82. (1) The Minister may—
- (a) upon the conditions that he or she deems fit, delegate any or all the powers conferred upon him or her in terms of this Act, save a power to make regulations, to the Director-General or an officer of the Department nominated by the Director-General; or
 - (b) by notice in the *Gazette*, delegate any power conferred upon him or her in terms of this Act, excluding the power to make regulations, to an authority in the local sphere of government.
- (2) The Director-General may delegate any power conferred upon him or her in terms of this Act to an officer in the Department upon the conditions that he or she deems fit.
- (3) No delegation of any power shall prevent the exercise of such power by the Minister or the Director-General.

Appeal to Minister

83. (1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated in terms of this Act or section 238 of the Constitution.

(2) An appeal under subsection (1) must be noted and shall be dealt with in the manner and in accordance with the procedure prescribed by the Minister.

(3) The Minister shall consider any matter submitted to him or her on appeal, after giving every person with an interest in the matter an opportunity to state his or her case.

Exemptions

84. (1) If in the opinion of the Minister there are sound reasons for doing so, he or she may, subject to the conditions that he or she may determine, in writing exempt any person or group of persons or organ of state from a provision of this Act.

(2) An exception granted in terms of subsection (1) may at any time be cancelled or amended by the Minister.

Scientific investigations **and practical experiments**

85. The Minister may, notwithstanding the provisions of this Act, permit any scientific investigation or practical experiment.

Repeal of laws, and savings

86. (1) The laws mentioned in Schedule 1 **are** hereby repealed to the extent indicated in the third column thereof. 5

(2) A registration ~~01~~, or any **licence** in respect of, ~~a~~ fishing boat, factory or implement and any right, permit or permission for the performance of any act in connection with fish or fish products under any provision of a law referred to in subsection (1) shall be deemed to be an appropriate registration, **licence**, ~~permit~~, right or permission in terms of the corresponding provision of this Act (if any), respectively, for the unexpired portion of the period for which it would have been valid had this Act not been passed. 10

(3) Notwithstanding the provisions of subsection (2), the Minister may by notice in the Gazette **terminate** a right of exploitation granted in terms of a provision of a law referred to in subsection (1). 15

(4) ~~An~~ area set aside as a marine reserve under a provision of a law referred to in subsection (1), shall be deemed to have been **declared** a marine protected area in terms of this Act.

Short title and commencement

87. This Act shall be called the Marine Living Resources Act, 1997, and **shall** come into operation on a date fixed by the President by proclamation in the *Gazette*. 20

Schedule 1

No. and year of law	Short title	Extent of repeal
Act NO. 12 of 1988	Sea Fishery Act, 1988	The whole, except— (a) section 1 in its application to sections 29, 38 and 47; (b) section 29; (c) section 38 in its application to shells; and (d) section 47 in its application to sections 29 and 38.

MEMORANDUM ON THE OBJECTS OF THE MARINE LIVING RESOURCES BILL, 1997

The Marine Living Resources Bill is based on the White Paper for a Marine Fisheries Policy for South Africa that was discussed by the Cabinet on 16 April 1997 and 14 May 1997. The Fisheries Policy was adopted by the Cabinet on 14 May 1997. The key objectives of the Bill were taken from the White Paper and are as follows:

- (a) The principle of national control and co-ordination;
- (b) the responsibility for resource allocation decisions is vested in the Minister and the Department of Environmental Affairs;
- (c) enforcement of the principle of sustainable utilisation of marine living resources;
- (d) national interests are served before foreign interests;
- (e) broadening of access primarily through appropriate redistribution and development;
- (f) creation of opportunities for formerly disadvantaged fishers in terms of both small-scale fishing activities and as meaningful equity holders in larger enterprises;
- (g) the gradual transformation towards more affordable fishing methods;
- (h) fees for resource utilisation should contribute more than at present to line-function activities;
- (i) promotion of a favorable business environment; and
- (j) licensing and registering of all participants in sea fishery.

CHAPTER 1: INTRODUCTORY PROVISIONS

It is attempted through the use of extensive and broad definitions to regulate all fishing activities effectively, Clause 2, which contains the objectives and principles of the Bill, provides a framework for the interpretation of the Bill as a whole and also encapsulates a primary objective of the White Paper, namely the sustainable utilisation of marine living resources.

The Bill has a wide scope in order to be applicable to all persons, whether or not South African persons, and all fishing vessels (including foreign fishing vessels), vessels and aircraft, on, in or in the airspace above South African waters. The scope of the Bill is therefore wider than that of the current Act, *in* order to cover fishing activities carried out by means of South African fishing vessels or aircraft in, on, or in the airspace above waters outside South African waters, including waters under the particular jurisdiction of another state. This facilitates law enforcement and regulation of the conduct of South African vessels in respect of resources which are increasingly under pressure, such as the patagonian toothfish, and to ensure compliance with the whaling moratorium by South Africans beyond South African waters.

CHAPTER 2: ADMINISTRATION

This Chapter is regulatory and provides for the establishment of the Consultative Advisory Forum for Marine Living Resources, a broadly based and multi-disciplinary body whose members are to be appointed by the Minister. The function of the body is to advise the Minister on any matter referred to it by the Minister. Particularly important examples of such matters are set out in the Bill.

Industrial bodies and interest groups may be recognised by the Minister if they are representative of specific bodies or groups. The recognised industrial bodies and interest groups are empowered to submit information to the Forum.

This Chapter also deals with the Marine Living Resources Fund which is carried over from the current dispensation and which is to provide for the financing of all activities provided for in terms of the Bill.

The concept of "the user pays" is introduced by providing for payment for rights of access to fish, to be sold by the State through a tendering process, as well as for licences and permits.

No fishing whatsoever is allowed without a permit having been issued.

CHAPTER 3: MANAGEMENT OF MARINE LIVING RESOURCES

This is the most important Chapter of **the Bill**, as it establishes the basis on which resource allocation decisions are to be made.

Part One: Fisheries Planning

It is a key objective of the Bill that the allocation of resources is done on a national basis, and that it is the Minister who **determines the total** allowable catch, the total applied effort, or a combination thereof, **as well as** which portions of the total allowable catch or the total applied effort **shall** be allocated in any year. The power to decide how much fish is to be caught in any year or season therefor vests in the Minister, who **will** also determine what proportion of the catch is allocated to the following sectors:

- (a) Commercial fishing;
- (b) recreational fishing (may not sell or in any way trade in their catch);
- (c) subsistence fishing (a newly recognised category of fishers); and
- (d) foreign fishing.

The remainder of the Part vests increased powers in the Minister to control and manage the resources by providing for the establishment of fisheries management areas, the power to impose emergency restrictions if anything endangers or may endanger stocks of fish (such a situation arose recently at Elands Bay where rock lobster came out of the sea in their thousands) and to declare any area of South African waters to be a fishing priority area.

Part Two: Local Fishing and Mariculture

This Part regulates fishing by recreational and subsistence fishers as well as **mariculture** activities, which is an increasingly important economic activity. The environmental consequences of any fishing activity are an important feature of the Bill and, with regard to **mariculture**, the Minister may require that an environmental impact assessment be conducted before a permit is granted.

Part Three: Commercial Fishing

The Minister may annually determine the allowable catch, the total applied effort, or a combination thereof, in relation to commercial fishing, that is, the mass of fish that may be caught by the commercial fishing sector.

Commercial fishing may only be undertaken if a right of access, a permit and a fishing vessel **licence** has been granted or issued. An application for a right of access is made to the Minister, and the Minister in considering a decision to grant a right of access shall have regard to the objectives referred to in section 9(2) of the Constitution, as well as—

- (a) the need to permit new entrants, particularly those from historically disadvantaged sectors of society; and
- (b) the need to promote stability within the commercial fishing sector.

The Minister determines the period for which a right of access shall be valid, but that period shall not exceed 50 years.

Once a right of access has been granted, the applicant has to apply for a permit which shall be issued annually. The permit will stipulate the conditions applicable to the holder of the permit and will authorise the holder thereof to engage in fishing.

The right of access shall be granted on the basis that a certain proportion of the right reduces over its period of duration at a rate to be determined by the Minister at the time when the right is granted, If no rate of reduction has been determined by the Minister, the right of access shall terminate on its expiry.

Other key principles in respect of commercial fishing are **that—**

- (a) **only a South African** person may acquire or hold a right of access to undertake commercial fishing;
- (b) a right of access **may** be sold, leased, inherited, divided or otherwise transferred; and

(c) any holder of a right of access who wishes to transfer part or all of the right can only do so with the permission of the Minister.

Part Four: General Local Matters

This Part implements the broadening of access through constructive redistribution and development and the creation of a favorable business environment. A public company shall be established and incorporated and have as its main object and main business the leasing of rights of access to small and medium sized enterprises which do not have such rights. This will be done according to criteria prescribed by the Minister. This company will function under supervision of the Minister who may terminate its activities at any time. It is possible for the Minister to effect such control as the State shall be the sole shareholder of the company.

If the holder of a right of access, other right, licence or permit does not comply with the conditions under which it was issued or contravenes any provision of the Bill, the Director-General has wide powers to cancel or suspend that right, licence or permit.

Part Five : Foreign Fishing

It should be ensured that national interests are served before foreign interests. Any international agreement entered into concerning access to fish in South African waters must include a provision to establish the responsibility of the foreign state to take the necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement, and with South African legislation relating to fishing. No foreign fishing vessel shall be allowed to operate in South African waters without a valid foreign fishing vessel licence. Such licence may only be issued by the Minister if there is a fishery agreement or if sufficient financial and other guarantees have been put in place for the fulfillment of all obligations in terms of this Bill, as well as other conditions regarding insurance related to pollution and rescue, and that the Minister is satisfied that these guarantees are adequate.

Part Six: High Seas Fishing

No person shall be permitted to undertake fishing or related activities on the high seas by means of a fishing vessel registered in South Africa unless it has been issued with a high seas fishing permit and a high seas fishing vessel licence.

CHAPTER FOUR : MARINE PROTECTED AREAS

The Minister may declare an area to be a marine protected area. The Bill places strong emphasis on—

- (a) the protection of fauna, flora and the physical features on which they depend;
- (b) facilitating of fishery management; and
- (c) diminishing of conflicts that may arise from competing uses in an area.

CHAPTER FIVE: PROHIBITED ACTIVITIES AND STOWAGE OF GEAR

This Chapter strengthens the hand of law enforcement officials through increased powers and increased maximum penalties. A feature of this Chapter is that it makes the prosecution of offences easier.

CHAPTER SIX: LAW ENFORCEMENT

This Chapter gives wide powers [o fishery control officers to enforce the provisions of

the Bill. It provides for the Director-General to designate persons to act as observers on vessels in order to monitor fishing activities. It gives power to fishery control officers to act beyond South African waters in accordance with international law, as well as to exercise all powers that a fishery control officer has in terms of this Bill. It also provides for the seizure of vessels, vehicles or aircraft and related matters.

CHAPTER SEVEN: JUDICIAL MATTERS

This Chapter prescribes the various penalties for breach of any provision of the Bill. Provision is made for a reward to be paid to any person who furnishes information or material proof which leads to a conviction.

An important provision is that a fishery control officer or observer, when exercising the powers that he or she may have in terms of this Bill, must produce identification to show that he or she is such an authorised fishery control officer or observer.

An important aspect of this Chapter is that a court, in addition to any other penalty, may order that any fishing vessel together with its gear and equipment and fish be forfeited to the State. It deals with the administrative measures for the lodging of security for the release of seized fishing vessels, disposal of seized fish, the treatment of detained vessels and other things detained or seized.

The Bill aims to improve the success rate of prosecuting offenders. Provision is made for evidence by certificate to establish technical matters. The aim is to make evidence more readily available in order to facilitate more frequent and successful prosecution.

CHAPTER EIGHT: GENERAL MATTERS

This Chapter provides for extensive general regulation powers and certain transitional provisions.

The Department of Environmental Affairs and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with section 76 of the Constitution of the Republic of South Africa, 1996.