

REPUBLIC OF SOUTH AFRICA

MARINE LIVING RESOURCES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36847 of 12 September 2013)
(The English text is the official text of the Bill)*

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B 30—2013]

ISBN 978-1-77597-057-6

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Marine Living Resources Act, 1998, so as to insert, amend or delete certain definitions; to amplify the objectives and principles provided for in that Act; to make provision for measures relating to small-scale fishing and for the powers and duties of the Minister in this regard; to effect technical amendments; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 18 of 1998

1. Section 1 of the principal Act is hereby amended—

(a) by the insertion after the definition of “sedentary species” of the following definitions: 5

“**small-scale fisher**” means a member of a small-scale fishing community engaged in fishing to meet food and basic livelihood needs, or directly involved in processing or marketing of fish, who— 10

(a) traditionally operate in near-shore fishing grounds;

(b) predominantly employ traditional low technology or passive fishing gear;

(c) undertake single day fishing trips; and

(d) is engaged in consumption, barter or sale of fish or otherwise involved in commercial activity, all within the small-scale fisheries sector, and 15

“small-scale fishing” must be interpreted accordingly;

“**small-scale fisheries sector**” means that sector of fishers who engage in small-scale fishing; 20

“**small-scale fishing community**” means a group of persons who—

- (i) are, or historically have been, small-scale fishers;
- (ii) have shared aspirations and historical interests or rights in small-scale fishing;
- (iii) have a history of shared small-scale fishing and who are, but for the impact of forced removals, tied to particular waters or geographic area, and were or still are operating where they previously enjoyed access to fish, or continue to exercise their 25

- rights in a communal manner in terms of an agreement, custom or law; and
- (iv) regard themselves as a small-scale fishing community;”;
- (b) by the deletion in the definition of “South African person” of the word “or” at the end of paragraph (c);
- (c) by the addition to the definition of “South African person” of the word “or” at the end of paragraph (d);
- (d) by the addition to the definition of “South African person” of the following paragraph:
- “(e) a co-operative registered in terms of the Co-operatives Act, 2005 (Act No. 14 of 2005), of which all the members are South African citizens but, where any member is a juristic person, such person’s principal place of business must be in the Republic;”;
- (e) by the deletion of the definition of “subsistence fisher”; and
- (f) by the substitution for the definition of “total allowable catch” of the following definition:
- “**‘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] small scale, commercial and foreign fishing in terms of section 14;”.

Amendment of section 2 of Act 18 of 1998

2. Section 2 of the principal Act is hereby amended—

- (a) by the deletion of the word “and” at the end of the paragraph (i); and
- (b) by the addition of the following paragraphs:
- “(k) the need to promote equitable access to and involvement in all aspects of the fishing industry and, in particular, to rectify past prejudice against women and other marginalised groups;
- (l) the need to recognise approaches to fisheries management which contribute to food security, socio-economic development and the alleviation or poverty; and
- (m) the need to recognise that fish may be allocated through a multi-species approach.”.

Amendment of section 14 of Act 18 of 1998, as amended by section 1 of Act 68 of 2000

3. Section 14 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Minister shall determine the portions of the total allowable catch, the total applied effort, or a combination thereof, to be allocated in any year to [subsistence] small-scale, recreational, local commercial and foreign fishing, respectively.”.

Amendment of section 18 of Act 18 of 1998

4. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) No person shall undertake commercial fishing or [subsistence] small-scale fishing, engage in mariculture or operate a fish processing establishment unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.”.

Substitution of section 19 of Act 18 of 1998

5. The following section is hereby substituted for section 19 of the principal Act:

“Small-scale fishing

- 19.** (1) The Minister, in order to achieve the objectives contemplated in section 9(2) and 39(3) of the Constitution, by notice in the *Gazette*—
- (a) must, subject to any law relating to marine protected areas, establish areas or zones where small-scale fishers may fish;
 - (b) may, within a prescribed period, recognise a community to be a small-scale fishing community, if the community meets requirements contained in the definition of a small-scale fishing community;
 - (c) may declare any other fishing or related activity or the exercise of any right of access in an area or zone contemplated in subsection (1)(a) to be prohibited; and
 - (d) must prescribe—
 - (i) the process and procedures relating to the allocation and recognition or rights of access to small-scale fishers based within small-scale fishing communities;
 - (ii) procedures to be applied in the allocation of those rights;
 - (iii) the management of the rights of access;
 - (iv) the criteria and timetable for recognition of small-scale fishers and small-scale fishing communities; and
 - (e) may prescribe any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper exercise and performance of the powers and duties referred to in the preceding paragraphs.
- (2) No small-scale fishing right or permit shall be transferable except with the approval of and subject to the conditions determined by the Minister.
- (3) The Minister and any organ of state shall have regard to the need to incorporate a community-based approach in the allocation of rights of access within the small-scale fisheries sector.”

Substitution of section 24 of Act 18 of 1998

6. The following section is hereby substituted for section 24 of the principal Act:

“Reduction of rights

- 24.** The Minister may in respect of any fishery, determine, after consultation with the Forum, that the portions of the total allowable catch, the total applied effort, or a combination thereof, allocated in any year to [subsistence] small-scale, local commercial and foreign fishing, and rights granted in respect thereof, shall be reduced.”

Short title and commencement

7. This Act is called the Marine Living Resources Amendment Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MARINE LIVING RESOURCES AMENDMENT BILL, 2013

1. PURPOSE AND BACKGROUND

- 1.1 Fisheries fall within the legislative competency of the national sphere of Government and is regulated in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (the MLRA). This is in line with the constitutional imperative to protect the environment and secure the ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
- 1.2 The purpose of the Marine Living Resources Amendment Bill, 2013, is to provide a legal framework for the implementation of the Policy for the Small-Scale Fisheries Sector (the Policy) in South Africa, published as Government Notice 474 in *Government Gazette* No. 35455 on 20 June 2012, and to transform the inequalities of the past fisheries system in the measures it introduces.
- 1.3 The development of the Small Scale Fisheries Policy has taken place within a very challenging and complex context. The Policy comes almost two decades after the promulgation of the MLRA and after long-term commercial fishing rights were allocated. Small-scale fishing is not recognised in the MLRA that regulates access to, and the consumptive use of, marine living resources. The allocation of commercial fishing rights negatively impacted on the traditional fishing communities and their lifestyles as a large percentage of these fishing communities did not receive any allocations.
- 1.4 The small-scale fishing communities are faced with high levels of abject poverty, unemployment and food insecurity. There is an obligation on the State to give effect to an Equality Court order to implement the Policy Framework that will effectively accommodate small-scale fishers and ensuring equitable access to marine living resources for these fishers. The Marine Living Resources Amendment Bill will give recognition to and enable the allocation of fishing rights to identified fishing communities who have previously been excluded from the commercial fishing rights allocation process in South Africa.

2. DETAILED ANALYSIS OF THE PROVISIONS OF THE BILL

2.1 Clause 1: Amendment of section 1 of Act 18 of 1998

This clause amends section 1 to insert, amend or delete definitions.

Section 1 of the MLRA is amended to insert the definitions of “small-scale fisher”, “small-scale fisheries sector” and “small-scale fishing community” as set out in the Policy. These definitions are required to identify, verify and register small-scale fishers and small-scale fishing communities.

Section 1 of the MLRA is amended to add to the definition of “South African person” a co-operative registered in terms of the Co-operatives Act, 2005 (Act No. 14 of 2005). This will enable small-scale fishers to access the benefits and support of the Department of Trade and Industry to co-operatives.

Furthermore, all references to the word “subsistence” in the MLRA are to be deleted and replaced with the word “small-scale”. This will entrench small-scale fisheries in the fisheries management systems.

2.2 Clause 2: Amendment of section 2 of Act 18 of 1998

Three new principles and objectives that will guide the interpretation, administration and implementation of the Policy are added to the current principles and objectives of the MLRA. The new principles and objectives will ensure that decision-makers must have due regard to the need to promote marginalised groups such as women. It also highlights the importance of food security, socio-economic development and the alleviation of poverty. It further recognises the allocation of a basket of species as opposed to single species allocations.

2.3 Clause 3: Amendment of section 14 of Act 18 of 1998

This clause includes small-scale fishers and prescribes that the Minister may allocate the allowable catch in quantity and mass.

2.4 Clause 4: Amendment of section 18 of Act 18 of 1998

This clause provides that no person may undertake small-scale fishing, engage in mariculture or operate a fish processing establishment unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.

2.5 Clause 5: Amendment of section 19 of Act 18 of 1998

This clause proposes a new section 19 to replace the current section 19 of the MLRA. This section deals with the management of the small-scale fisheries sector. It determines the establishment of fishing areas or zones for small-scale fishers, the recognition of small-scale fishing communities and the possible prohibition of other fishing or related activity which may impact negatively on small-scale fishing.

This clause also determines that processes and procedures relating to the allocation and management of small-scale fishing rights, the criteria for recognition of small-scale fishers and communities and any other administrative or procedural matter that may be necessary, must be set out in regulations and that small-scale fishing rights may only be transferred with the Minister's approval.

2.6 Clause 6: Amendment of section 24 of Act 18 of 1998

This clause includes small-scale fishers and prescribes that the Minister may in respect of any fishery, determine, after consultation with the Forum, that the portions of the total allowable catch, the total applied effort, or a combination thereof, allocated in any year to small-scale, local commercial and foreign fishing, and rights granted in respect thereof, shall be reduced.

2.7 Clause 7: Short title and commencement

This clause provides for the short title of the Act and that the Act will come into operation on a date fixed by the President by proclamation in the *Gazette*.

3. DEPARTMENTS / BODIES / PERSONS CONSULTED

Extensive consultation has taken place with coastal communities, a range of NGO's and the parties represented at NEDLAC.

The Department will host an intergovernmental stakeholder workshop with key identified departments, at the national and provincial level, to outline roles and responsibilities of each department in the roll out of the Small-Scale Fisheries Policy.

4. FINANCIAL IMPLICATIONS FOR STATE

The estimated cost for implementing the Small-Scale Fisheries Policy is R424 642 374 over five years. The summary of required resources, goods and services, capital item and contingency costs will be absorbed in the resources of the Department, or bid for through MTEF processes.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Agriculture, Forestry and Fisheries are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.