

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 527.

23 Maart 1988

No. 527.

23 March 1988

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

— 12 van 1988: Wet op Seevisserij, 1988.

No. 12 of 1988: Sea Fishery Act, 1988.

# ACT

To provide for the conservation of the marine ecology and the orderly exploitation, utilization and protection of certain marine resources; for that purpose to provide for the exercise of control over sea fishery; and to provide for matters connected therewith.

*(English text signed by the State President.)  
(Assented to 14 March 1988.)*

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**BE IT ENACTED** by the State President and the Parliament of the Republic of South Africa, as follows:—

**1.** In this Act, unless the context indicates otherwise—

Definitions.

- (i) "advisory committee" means the Sea Fishery Advisory Committee established in terms of section 7; (i)
- (ii) "aquatic plant" means any kind of plant, alga or other plant organism found in the sea or in or on the sea-shore; (xxxiii)
- (iii) "board" means the Quota Board established by section 15; (xxiii)
- (iv) "catch" means to take out of the sea or the sea-shore in any manner whatsoever, to remove from the sea-shore, possess in a net, whether the net is in the water or not, possess in, upon or next to a vessel, or to land; (xxxii)
- (v) "department" means the Department of Environment Affairs; (iii)
- (vi) "director-general" means the Director-General: Environment Affairs; (iv)
- (vii) "exploiter" means a person to whom a right of exploitation has been granted in terms of section 25; (xviii)

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- (viii) "factory" means any premises, vehicle or vessel on or in which fish or fish products are salted, dried, smoked, packed, chilled, frozen, canned or otherwise treated for commercial purposes, or fish is kept alive for commercial purposes, excluding a fish shop, supermarket, hotel, boarding house, restaurant, refreshment or tea room or eating house, or a fishing boat in or on which fish which is caught off such fishing boat is only gutted, salted or chilled for the preservation thereof; (v)
- 5
- (ix) "fish" means every species of sea animal, whether vertebrate or invertebrate, including the spawn or larvae of such sea animal, excluding any seal or seabird; (xxxiii)
- 10
- (x) "fisherman" means a person who catches or attempts to catch fish on a full-time or part-time basis, whether such fish is found in the sea or in or on the sea-shore, with the purpose of selling or attempting to sell or otherwise disposing or attempting to dispose of such fish at a consideration, including a person assisting therewith; (xxxvi)
- 15
- (xi) "fishery control officer" means an incumbent of a post or rank referred to in section 5; (xxxix)
- 20
- (xii) "fishing boat" means any vessel which is used for catching fish in the sea or the transport of such fish; (xxxvii)
- (xiii) "fishing harbour" means a declared fishing harbour referred to in section 26 (1); (xxxviii)
- 25
- (xiv) "fishing industry" means the whole of the trade engaged in the catching, breeding or acquisition by any other means of fish, the processing thereof and the provision or delivery for trade purposes of such fish or fish products, excluding a fish shop, supermarket, hotel, boarding house, restaurant, refreshment or tea room or eating house; (xxxiv)
- 30
- (xv) "fishing zone" means the territorial waters of the Republic and the fishing zone as defined in sections 2 and 3 of the Territorial Waters Act, 1963 (Act No. 87 of 1963), respectively; (xxxx)
- 35
- (xvi) "fish product" means any product, whether in a processed form or not, wholly or partly derived from fish; (xxxv)
- 40
- (xvii) "fund" means the Sea Fishery Fund referred to in section 27; (vi)
- (xviii) "high-water mark" means the highest line reached by the water of the sea during ordinary storms during the most stormy period of the year, excluding an exceptional or abnormal flood; (xi)
- 45
- (xix) "implement" means any net or other apparatus or means used for or in connection with the catching of fish; (xxxiv)
- 50
- (xx) "licence" means the document which may on application periodically be issued by the State and which authorizes the use of an object which has to be licensed in terms of this Act; (xvi)
- 55
- (xxi) "local authority" means any institution or body referred to in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961); the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), and the Natal Parks, Game and Fish Preservation Board established under the Natal Parks, Game and Fish Preservation Ordinance, 1974 (Ordinance No. 15 of 1974), of Natal; (xxi)
- 60
- (xxii) "low-water mark" means the lowest line to which the water of the sea recedes during periods of ordinary spring tides; (xv)
- 65
- (xxiii) "master" means the person having command or control of a fishing boat or vessel; (vii)
- (xxiv) "Minister" means the Minister of Environment Affairs and of Water Affairs; (xvii)

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- (xxv) "nautical mile" means the international nautical mile of 1 852 metres; (xxvii)
- (xxvi) "officer" means an officer as defined in section 1 (1) of the Public Service Act, 1984 (Act No. 111 of 1984); (ii)
- 5 (xxvii) "permit" means the document which may on application periodically be issued by the State and in which the name of the exploiter, the name and number of the fishing boat (if any) and the species and maximum mass of fish, aquatic plants or shells which may be caught or
- 10 collected and removed during a specified period and in a defined area, as well as the conditions on which the right of exploitation has been granted, are stated; (xx)
- (xxviii) "police officer" means a member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958); (xxii)
- 15 (xxix) "prescribed" means prescribed by regulation; (xxxxii)
- (xxx) "quota" means the maximum mass of fish of a particular species allocated to an exploiter which he may catch during a specified period and in a defined area; (xiii)
- 20 (xxxi) "quota holder" means the person to whom a quota has been allocated in terms of section 18; (xiv)
- (xxxii) "regulation" means a regulation made under this Act; (xxiv)
- (xxxiii) "Republic" means the provinces mentioned in section 1 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983), the harbour and settlement of Walvis Bay and the islands and rocks mentioned in Schedule 2; (xxv)
- 25 (xxxiv) "right of exploitation" means a right granted on certain conditions by the Minister to a person in terms of section 25 to have access to the sea for a specified period in order to catch fish or to collect and remove aquatic plants or shells; (xix)
- 30 (xxxv) "sea" means the water and the bed of the sea, including—
- 35 (a) the sea-shore; and
- (b) the water and the beds of tidal rivers and tidal lagoons; (xxvi)
- (xxxvi) "sea-shore" means the water and the land between the low-water mark and the high-water mark; (xxix)
- 40 (xxxvii) "shell" means the shell or portion of the shell of any sea animal found in the sea or on the sea-shore; (xxviii)
- (xxxviii) "territorial waters" means the sea within a distance of 12 nautical miles from the low-water mark; (xxx)
- 45 (xxxix) "this Act" includes any regulation or notice made or issued under this Act; (x)
- (xxxx) "tidal lagoon" means any lagoon in which a rise and fall of the water level takes place as a result of the tides; (ix)
- 50 (xxxxi) "tidal river" means that part of any river in which a rise and fall of the water level takes place as a result of the tides; (viii)
- (xxxxii) "vehicle" means any vehicle in, on or with which goods can be transported; (xxxxi)
- 55 (xxxxiii) "vessel" means any water-navigable craft of any type whatsoever, whether self-propelled or not; (xxxi) and
- (xxxxiv) "year" means any period of 12 consecutive months. (xii)

## PART I

## 60 GENERAL POLICY FOR CONSERVATION AND OPTIMAL UTILIZATION OF SOUTH AFRICAN LIVING MARINE RESOURCES

2. The Minister may from time to time by notice in the *Gazette* determine the general policy with regard to the conser- Minister may determine general policy.

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vation and optimal utilization of the South African living marine resources to be applied with a view to—

- 5 (a) the protection of the marine ecology; and  
 (b) the promotion, protection and sustained utilization of the sea, its living resources and derivatives thereof, to the greatest benefit of the present and future inhabitants of the Republic, regard being had to economic, social and cultural values.

## PART II

## 10 APPLICATION AND ADMINISTRATION OF ACT

3. This Act shall not apply in respect of—

Application of Act.

- (a) fish found in water which does not at any time during the year form part of the sea;  
 15 (b) the catching of fish in a tidal lagoon, tidal river or estuary along the coast of the province of Natal or from the sea-shore along the said coast, excluding that part of the said coast in an area which consists of land referred to in section 21 (1) of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or in a scheduled Black area as defined in section 49 of the said Act; or  
 20 (c) 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).  
 25

4. (1) The Minister may—

Delegation of powers.

- (a) delegate any powers conferred upon him by or under this Act, excluding the power to make regulations and a power referred to in paragraph (b), to any officer of the department on the conditions determined by him;  
 30 and  
 (b) by notice in the *Gazette* delegate, in respect of any particular species of fish, aquatic plants, or shells, in general or in respect of a defined area, any power conferred upon him by or under this Act, excluding the power to make regulations, to any person, including a local authority or body of persons.  
 35

(2) Any person to whom any power has been delegated under subsection (1) may, with the written approval of the Minister, 40 delegate that power to any person to whom the Minister could have delegated it.

(3) The director-general may delegate any powers conferred upon him by or under this Act to an officer in the department on the conditions determined by him.

45 (4) No power in respect of land in an area referred to in section 21 (1) of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or in a scheduled Black area as defined in section 49 of the said Act, shall be delegated under subsection (1) or (2) unless the Minister of Constitutional Development and 50 Planning consents thereto.

5. (1) The Minister may, subject to the provisions of the Public Service Act, 1984 (Act No. 111 of 1984), designate posts in the department of which the incumbents shall be fishery control officers.

Fishery control officers.

55 (2) The Minister may by notice in the *Gazette* and with the concurrence of—

- 60 (a) the Administrator of a province, subject to the provisions of the Public Service Act, 1984 (Act No. 111 of 1984), designate posts in that administration or a statutory body under the control of such Administrator;

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- (b) the South African Bureau of Standards referred to in section 2 of the Standards Act, 1982 (Act No. 30 of 1982), designate posts in that Bureau;
- 5 (c) a local authority or statutory body, designate posts in such local authority or statutory body;
- (d) the National Parks Board of Trustees established in terms of section 5 (1) of the National Parks Act, 1976 (Act No. 57 of 1976), designate posts in that Board, of which the incumbents shall be fishery control officers.
- 10 (3) The Minister may by notice in the *Gazette*—
- (a) with the concurrence of the Minister of Defence, designate a particular rank or ranks in the South African Navy; and
- 15 (b) with the concurrence of the Minister of Justice, designate a particular rank or ranks in the Prisons Service, of which the incumbents shall be fishery control officers, and may so alter or cancel such designation.
- (4) The Minister may, with the concurrence of the Minister of Finance, determine the additional remuneration (if any) which is
- 20 payable to the incumbents of posts designated under subsection (2).
- (5) The incumbents of posts designated under subsections (1) and (2) shall be furnished by the director-general or any other officer designated by the director-general for that purpose with a
- 25 prescribed identity card, and whenever such incumbent exercises any power or performs any duty or function in terms of this Act, he shall, at the request of any person affected thereby, produce that identity card to such person for inspection.
6. (1) The director-general may by written notice to any per-
- 30 son, appoint such person as an honorary fishery officer. Honorary fishery officers.
- (2) An honorary fishery officer shall be invested with the prescribed powers.
- (3) The director-general may at any time, without giving reasons, withdraw the appointment of an honorary fishery of-
- 35 ficer in writing if he deems it desirable.
- (4) Any person appointed under subsection (1) shall be furnished by the director-general or any other officer designated by the director-general for that purpose with a certificate of ap-
- 40 pointment, and whenever such person exercises any power or performs any duty or function in terms of this Act, he shall, at the request of any person affected thereby, produce that certificate to such person for inspection.

## PART III

## SEA FISHERY ADVISORY COMMITTEE

- 45 7. The Minister shall establish a committee called the Sea Fishery Advisory Committee, to advise him in relation to—
- (a) any matter on which he has to consult the advisory committee in terms of this Act;
- 50 (b) any matter which the Minister refers to the advisory committee for investigation and advice.
8. (1) The advisory committee shall consist of the number of persons, but at least five, appointed by the Minister who in his opinion possess the necessary expertise in their relevant fields of study to make a substantial contribution towards the functions of
- 55 the advisory committee. Constitution of advisory committee.
- (2) The Minister shall appoint an alternate member for each member of the advisory committee, and any alternate member so appointed may attend and take part in the proceedings at any meeting of the advisory committee during the absence, or vacancy
- 60 in the office, of the member for whom he has been appointed as alternate member.



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- (3) (a) The Minister shall appoint the chairman and vice-chairman of the advisory committee for the period and subject to the conditions determined by him.
- (b) If the chairman cannot act as chairman for one or other reason the vice-chairman shall act as chairman and shall execute the functions of the chairman.

9. (1) A member or alternate member of the advisory committee holds office for such period, but not exceeding three years, as the Minister may determine at the time of his appointment, and may be appointed again at the end of his term of office.

Term of office and vacating of office by members or alternate members of advisory committee.

(2) A member or alternate member of the advisory committee shall vacate his office if he—

- (a) becomes insolvent;
- (b) becomes mentally disturbed;
- (c) is convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (d) is absent from three consecutive meetings of the advisory committee without leave of the chairman;
- (e) resigns by written notice to the Minister; or
- (f) is removed from office under subsection (3).

(3) The Minister may at any time remove a member or alternate member of the advisory committee from office if in his opinion there are sufficient reasons for doing so.

(4) If a member or alternate member of the advisory committee ceases to hold office for some or other reason, the Minister may appoint a person in his place for the unexpired period of his term of office.

10. (1) The first meeting of the advisory committee shall be held at a time and place determined by the chairman, and thereafter the advisory committee shall meet at such times and places as the advisory committee may from time to time determine.

Meetings of advisory committee.

(2) The chairman may at any time convene a special meeting of the advisory committee at the time and place determined by him.

(3) The Minister shall determine the number of members of the advisory committee who shall form a quorum for a meeting.

(4) If both the chairman and the vice-chairman are absent from a meeting of the advisory committee, the members present shall elect a person from among their number to preside at the meeting.

(5) The decision of the majority of the members of the advisory committee present at a meeting shall constitute a decision of the advisory committee, and, in the event of an equality of votes on any matter, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) No decision taken by the advisory committee or act performed under the authority of the advisory committee shall be invalid merely by reason of a vacancy on the advisory committee or because any person not entitled to sit as a member of the advisory committee, sat as such a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the advisory committee present at the time and who were entitled to sit as members.

(7) For the purposes of this section "member" includes an alternate member present at the relevant meeting of the advisory committee during the absence, or vacancy in the office, of the member for whom he has been appointed as alternate member.

11. (1) The advisory committee may constitute one or more subcommittees of the advisory committee, which may, subject to the directions of the advisory committee, perform such functions of the advisory committee as the advisory committee may determine.

Subcommittees.

(2) A subcommittee shall consist of one or more members of the advisory committee and, if the advisory committee deems it necessary, one or more persons whom the advisory committee may deem fit, and the advisory committee may at any time dissolve or reconstitute such subcommittee.

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(3) One of the members of a subcommittee shall be designated by the advisory committee as chairman of the subcommittee.

12. The director-general may pay to a member and alternate member of the advisory committee, and a member of a subcommittee, who is not in the full-time employment of the State, from moneys appropriated by Parliament for the purpose, the allowances and remuneration which the Minister may determine in general or in a specific case, with the concurrence of the Minister of Finance.

Allowances and remuneration of members of advisory committee and subcommittees and alternate members of advisory committee.

## PART IV

## INDUSTRIAL BODIES AND INTEREST GROUPS IN DIFFERENT BRANCHES OF FISHING INDUSTRY

13. The Minister may, by notice in the *Gazette*, recognize 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 branch, as industrial body or interest group of that branch.

Recognition of industrial bodies and interest groups by Minister.

14. An industrial body or interest group recognized under section 13, shall have the power to furnish information and to advise the advisory committee in respect of any matter in the fishing industry on which it is consulted by the advisory committee.

Powers of industrial bodies and interest groups.

## PART V

## QUOTA BOARD

15. There shall be a board called the Quota Board, which shall be a juristic person.

Establishment of Quota Board.

16. The board shall consist of the number of members appointed by the Minister, but any person who has a direct or indirect interest in any manner whatsoever in the fishing industry, or whose spouse or child has such an interest, or a person in the employment of the State, shall subject to section 17, (2) not be appointed as a member or alternate member of the board.

Constitution of board.

17. (1) The provisions of sections 8 (2) and (3), 9 (1), (3) and (4), 10 and 12 shall apply *mutatis mutandis* to the board, and for the purposes of such application a reference in the said sections to the advisory committee or subcommittee shall be construed as a reference to the board.

Alternate members, chairman and vice-chairman, term of office, removal from office, filling of vacancies, meetings, allowances and remuneration, and vacating of office.

(2) The chairman of the board shall be—  
(a) a judge, retired judge or senior advocate of the Supreme Court of South Africa; or  
(b) a magistrate or retired magistrate of at least 10 years experience as a magistrate.

(3) (a) A member or alternate member of the board shall vacate his office if he or his spouse or child acquires a direct or indirect interest in any manner whatsoever in the fishing industry or that member is employed by the State.

(b) The provisions of section 9 (2) are applicable *mutatis mutandis* to a member or alternate member of the board.

18. (1) The functions of the board are to—  
(a) recommend to the Minister for his approval guide-lines for the determination of quotas; and  
(b) allocate quotas on application to exploiters in the different branches of the fishing industry, subject to subsection (3) and section 19, and in accordance with the approved guide-lines.

Functions of board.

(2) Application for the allocation of quotas shall be made on the prescribed form.

(3) Quotas to foreign states desiring to exercise fishing activities within the fishing zone, excluding the territorial waters, may only be allocated by the Minister.

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19. The Minister shall from time to time, after consultation with the advisory committee, determine, on the conditions that he may deem fit, the maximum mass of fish of a particular species which is available for the allocation of quotas by the board.
- Determination of maximum mass of fish available for quotas.
20. (1) If a quota holder—
- (a) furnishes information which is not true or complete in connection with his application for the allocation of a quota;
- (b) contravenes or fails to comply with a condition subject to which a permit has been issued;
- (c) contravenes a provision of this Act or fails to comply therewith;
- (d) is at any time convicted of any offence or for any other reason is not a proper person to perform the business with regard to the quota allocated to him,
- the board may request the quota holder by way of a written notice sent by registered post to his last known address, to furnish reasons in writing within a period of 21 days from the date of the notice, why the quota which has been allocated to him, should not be suspended, cancelled or reduced.
- (2) If after the lapse of the period referred to in subsection (1), no reasons have been furnished or the board is of the opinion that the reasons furnished are not well-founded or acceptable, as the case may be, and that the relevant quota should be suspended, cancelled, or reduced, the board shall recommend to the Minister that he—
- (a) suspends the quota in question;
- (b) cancels the quota in question with effect from a certain date; or
- (c) reduces the quota in question.
- (3) The Minister may—
- (a) suspend the quota in question for the period determined by him;
- (b) cancel the quota in question from a date determined by him;
- (c) reduce the quota in question; or
- (d) decide not to suspend, cancel or reduce the quota.
- (4) On the suspension of a quota under subsection 3 (a), the quota holder shall be deemed not to be a quota holder for the period for which the quota has been so suspended.
- (5) A suspension, cancellation or reduction of a quota shall be recorded by the director-general in the register referred to in section 23.
21. (1) The board may with regard to the allocation of quotas request the director-general to inquire into any matter in order to enable the board to perform its functions properly.
- (2) For the purposes of such inquiry the director-general may appoint a committee to conduct the inquiry.
- (3) Such committee may—
- (a) order any person who in its opinion may be able to give information of material importance concerning the subject of the inquiry, or who is believed to have in his possession or custody or control any register, book, document or thing which may have a bearing on that subject, to appear before such committee with such register, book, document or thing;
- (b) call upon, and administer an oath to, or accept an affirmation from, any person present at the inquiry, whether he has been or could have been ordered under paragraph (a);
- (c) interrogate or require any person who has been called upon under paragraph (b) to produce a register, book, document or thing referred to in paragraph (a).
- (4) An order for the attendance before such committee shall be in the form determined by such committee, and shall be signed by the chairman, who shall be appointed for the purpose of the inquiry by the director-general.
- Suspension, cancellation and reduction of quotas.
- Inquiries in connection with quotas.

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(5) The law relating to privilege as applicable to a person summoned to give evidence or to produce a register, book, document or thing before a court of law, shall be applicable in respect of the interrogation of, or production of a register, book, document or thing by, a person referred to in subsection (3).

22. (a) If any person is aggrieved by a decision of the board with regard to the allocation or non-allocation of a quota, the board shall, at the written request of such person to the board within 30 days after the publication of such decision, reconsider such decision, and the decision of the board after such reconsideration shall be final.
- 10
- (b) Any person referred to in paragraph (a) shall be entitled to appear before the board and be heard, whether personally or by means of a representative, and to give evidence himself and call other persons as witnesses.
- 15

Reconsideration of decisions of board.

23. The director-general shall keep a register of all quotas allocated under section 18, and such register shall contain the prescribed particulars, and shall be available for inspection by the public at the prescribed places and times.

20

Keeping of register of quotas.

24. (1) A quota or a part of a quota allocated in terms of section 18 is transferable in accordance with the guide-lines determined by the Minister after consultation with the Competition Board established by section 3 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), and announced in a manner that he may deem fit.
- 25
- (2) Guide-lines referred to in subsection (1) may provide for the transfer of quotas—
- 30 (a) in the fishing industry in general; or
- (b) in respect of a particular branch of the fishing industry.
- (3) If a quota holder desires to transfer his quota or a part thereof to any other person, he shall, at least 21 days prior to the date on which the transfer is proposed to take place, apply in the prescribed manner to the director-general for such transfer and supply the prescribed information.
- 35
- (4) If the proposed transfer complies with the guide-lines referred to in subsection (1), the director-general may approve the application and amend the register referred to in section 23 accordingly.
- 40

Transferability of quotas.

## PART VI

## GRANTING AND TERMINATION OF RIGHTS OF EXPLOITATION

25. (1) The Minister shall on application in the prescribed manner grant a right of exploitation to a person who at the date of commencement of this Act either had access to the sea in any branch of the fishing industry or had such access in the industry of collecting aquatic plants or shells, and such grant shall be made on the basis of such person's historical performance in the said industry.
- 45
- (2) New entrants to any branch of the industries referred to in subsection (1), shall apply to the Minister for the granting of a right of exploitation in the prescribed manner, and the Minister may approve such application subject to the conditions determined by him or refuse it.
- 50
- (3) A right of exploitation—
- 55 (a) shall be granted by the Minister for a specified period on the conditions determined by him, and the exploiter

Granting and termination of rights of exploitation by Minister.

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shall, before the lapse of such period, apply in the prescribed manner for the extension of such right;

- 5 (b) shall only be alienated with the prior approval of the Minister on the conditions determined by him, and such alienation may only take place if the quota (if any), or a portion thereof connected with the right of exploitation, is also transferred to the same person; and
- 10 (c) may be suspended or terminated by the Minister if he is of the opinion that a conviction of an exploiter of an offence in terms of this Act, is such that his continued participation is no longer in the interest of either the resource in question or the industry in question or the resource and the industry.

## PART VII

## 15 PROMOTION OF FISHING INDUSTRY

26. (1) (a) Subject to paragraph (b) 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 sea-shore, to be a fishing harbour. Development of fishing harbours and other facilities.
- 20 (b) If the Minister desires to declare a commercial harbour or a portion of such harbour to be a fishing harbour, he shall obtain the prior approval of the Minister of Transport therefor.
- (2) The Minister may within or outside any fishing harbour, in 25 the sea, on the sea-shore or on adjacent land, from funds appropriated for that purpose by Parliament, erect or acquire and maintain and control the use of buildings, works and facilities which in the opinion of the Minister are necessary for the promotion of the interests of the fishing industry, and may allow 30 that such buildings, works and facilities be erected, acquired, maintained or controlled by another person.
27. (1) The Sea Fisheries Research Fund established by section 19 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973), shall continue to exist, under the name the Sea Fishery Fund, notwithstanding the repeal of the said Act by section 55, and into 35 that fund there shall be paid—
- (a) moneys in respect of levies collected by virtue of the provisions of section 29;
- 40 (b) moneys appropriated by Parliament for the realization of the objects of the fund;
- (c) interest on investments;
- (d) moneys which, with the approval of the Minister and with the concurrence of the Minister of Finance, may accrue to the fund from any other source; and
- 45 (e) interest recovered under section 29 (2) (d).
- (2) (a) The fund shall be administered by the director-general with the concurrence of the Minister of Finance, in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister 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.
- 50 (b) The director-general shall be the accounting officer charged with the responsibility of accounting for moneys received and expenditure incurred by the fund.
- 55 (3) The director-general shall invest moneys in the fund not required for immediate use with the Public Investment Commissioners.
- 60 (4) 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.
- (5) The Auditor-General shall annually audit the books and accounts of the fund.

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28. (1) The Minister may, from moneys available in the fund, undertake research and development in connection with sea fishery, including research and development with relation to—
- Appropriation  
of fund.
- 5 (a) the utilization, conservation and protection of the living resources of the sea;
- (b) the utilization of the sea and the sea-shore in so far as they may be necessary to protect the living resources of the sea;
- 10 (c) improved methods for the catching of fish;
- (d) the breeding of fish or the cultivation of aquatic plants; and
- (e) the manufacturing of fish products or products wholly or partially obtained from aquatic plants and the packing, processing and marketing of such products.
- 15 (2) The Minister may, from moneys available in the fund, arrange for the undertaking of research and development contemplated in subsection (1) by any competent institution of State or any person or body, or grant financial assistance in connection therewith on the conditions determined by him with the concurrence of the Minister of Finance.
- 20 (3) The moneys in the fund shall be appropriated for the purposes referred to in this section by the Minister on the recommendation of the advisory committee and with the concurrence of the Minister of Finance.
- 25 29. (1) The Minister may, after consultation with the advisory committee and with the concurrence of the Minister of Finance, by notice in the *Gazette* impose a levy on all fish or fish of a species specified in the notice which is landed by fishermen, and any product thereof, and aquatic plants and shells collected and removed from the sea-shore or the sea.
- Levy on fish and fish  
products and certain  
other marine re-  
sources.
- (2) Such a notice—
- 35 (a) shall contain the amount of the levy, the names of the exploiters or participants in the industry in question by whom the levy is payable and the name of the person charged with the recovery thereof, and may contain such other directions by the Minister as he may deem necessary for the collection of the levy and the payment thereof into the fund (including the manner in which the mass of fish or fish products shall be determined for the purposes of the calculation of the levy), and the Minister may so withdraw or amend such notice;
- 40 (b) may impose different levies in respect of different species of fish, different fish products, aquatic plants or shells, or different exploiters or participants in the relevant industry, or different areas;
- 45 (c) may contain an exemption from payment of the levy in respect of fish, fish products, aquatic plants or shells landed at a place or in an area specified in the notice, if the proceeds of the levy, in the opinion of the Minister, would not justify the expenses of collecting such levy;
- 50 (d) may prescribe that interest is payable at the rate determined in the notice on any levy which is received after the date on which such levy was payable; and
- 55 (e) may prescribe penalties which do not exceed the penalties prescribed by section 47, for any contravention of or failure to comply with the provisions of the notice.
- (3) The director-general may recover the amount in respect of a levy and any interest which is due and payable in terms of a notice under subsection (1), in a competent court of law.
- 60 (4) The director-general may by notice sent by registered post—
- (a) direct any person who is liable for payment of a levy, to furnish the director-general with the particulars men-

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tioned in the notice within a period specified in the notice; and

- (b) require any person who is liable for payment of a levy, to render returns to the director-general, and prescribe the form in which and the times when the returns shall be rendered, the particulars the returns shall contain and the statements which shall accompany the returns.

## PART VIII

## CONTROL OVER CATCHING, PROCESSING, EXPORT AND DISPOSAL OF FISH

30. (1) Subject to the provisions of section 52, no person may use any vessel as a fishing boat or, as the case may be, any premises, vehicle or vessel as a factory unless it has been licensed in terms of this section. Licensing of fishing boats, and premises, vehicles or vessels as factories.
- (2) Any person desiring to use any vessel, premises or vehicle as a fishing boat or a factory, as the case may be, shall apply in the prescribed manner to the director-general for the issue of a licence to him therefor.
- (3) If the director-general is convinced that the applicant has a right to the vessel, premises or vehicle in question, he shall, subject to the provisions of subsection (4), approve the application, and upon payment of the prescribed fee issue the licence in the name of the applicant in question subject to the conditions determined in or in terms of subsection (5).
- (4) (a) The director-general may refuse to approve an application for a licence if he is satisfied that—
- (i) information furnished in the application is incorrect or incomplete; or
  - (ii) the vessel in question is not intended for use as a fishing boat.
- (b) If the Minister is satisfied that—
- (i) it is in the interest of the fishing industry or a resource in question in the fishing industry, that the further licensing of vessels as fishing boats, in general or in respect of a specified area or place, should not be allowed;
  - (ii) the harbour facilities in a specified fishing harbour are inadequate to accommodate more fishing boats than the number already making use of those facilities; or
  - (iii) the harbour, landing, storing or handling facilities in a particular fishing harbour are inadequate to deal satisfactorily with more than the catch of the fishing boats already making use of that harbour,
- he may direct the director-general to discontinue, until he directs otherwise, the licensing of further vessels in general or, as the case may be, in respect of that area, place or fishing harbour.
- (5) (a) A licence is valid for the period mentioned therein, which period shall be determined by the director-general.
- (b) A licence is issued by the director-general subject to the conditions determined by him, including conditions with relation to—
- (i) the allocation of a registration number to a fishing boat and the manner in which it shall be displayed on that vessel;
  - (ii) the use of the harbour, landing, storing or handling facilities in a particular fishing harbour;
  - (iii) the area within which or the place where the vessel may be used as a fishing boat;
  - (iv) fish belonging to a particular species which may not be caught by means of the use of that fishing boat; and

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- (v) such other matters as the Minister may determine in general or in respect of a particular fishing boat.
- (6) The licensee of a licensed fishing boat shall within 21 days after—
- 5 (a) the changing of his name or address;
  - (b) an alteration to the fishing boat in question, including the change of the name thereof, in such a manner that the description thereof in the licence is incorrect or inapplicable; or
  - 10 (c) he has sold the vessel or ceased to use it as a fishing boat,
- furnish the director-general with particulars of such change in writing.
- (7) The director-general may—
- 15 (a) if the licensee of a fishing boat fails to comply with the provisions of subsection (6); or
  - (b) in the case of a second or subsequent conviction of such licensee of any offence in terms of this Act in respect of a fishing boat,
- 20 by notice sent by registered post to his last known address, cancel or suspend the licence in question for such period as he may deem fit.
- (8) If the owner or lessee of a vessel registered in a foreign state is a South African citizen or, in the case of a company, is a
- 25 company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), or, in the case of a close corporation, is a corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984), or is the owner or lessee of any
- 30 boat which is permitted to catch fish in the fishing zone, excluding the territorial waters, the Minister may, notwithstanding the provisions of section 52 and on the application of such owner or lessee, direct the director-general to issue a licence or permit, as the case may be, in respect of that vessel for such period and area as may be determined by the Minister.
- 35 31. The Minister may by notice in the *Gazette* prohibit the use of any implement for the catching of fish or fish belonging to a particular species, within a defined area, unless the implement is licensed in the prescribed manner. Licensing of implements.
- 40 32. (1) The Minister may by notice sent by registered post to an owner of an implement referred to in section 31 or an implement belonging to a particular category of implements, exempt such owner from the provisions of section 31 on the conditions set out in the notice. Exemption from licensing.
- 45 (2) The Minister may at any time cancel an exemption granted under subsection (1) or make the continued validity of the exemption subject to conditions determined by him, either by imposing further or new conditions or by the cancellation or amendment of existing conditions.
- 50 33. (1) The Minister may, after consultation with the advisory committee, by notice in the *Gazette* prohibit— Protection of fish.
- (a) the catching or disturbing of fish or fish belonging to a particular species—
    - (i) in general or in a defined area, indefinitely or for a specified period;
    - 55 (ii) by a specified person or a person belonging to a particular category of participants in the fishing industry;
  - (b) the landing of fish in general or fish belonging to a particular species, at a place other than a specified place;
  - 60 (c) any person from catching, removing from one place to another, possessing, offering for sale or disposing of in any other manner, for own use or for another purpose, more than a specified quantity of fish or fish belonging to a particular species or more than a specified quantity



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according to mass, and may in such a notice determine conditions subject to which fish which may be caught, shall be caught;

- 5 (d) the catching or possessing of fish belonging to a particular species and which is less than a specified size or which does not conform to any other specified biological characteristic;
- 10 (e) the removal from one place to another of fish or fish belonging to a particular species or a product thereof, with a view to the protection of the relevant fish resource, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him in the permit;
- 15 (f) the catching of fish or fish belonging to a particular species by any person other than a fisherman to whom a licence has been issued in terms of this Act;
- 20 (g) fishing boats, including fishing boats of foreign states which are authorized to fish in any manner in the fishing zone, excluding the territorial waters, from catching fish unless—
- (i) the master of such fishing boat furnishes the director-general with specific information as set out in the notice, concerning the type of fishing boat, statistics relating to the catch and catching efforts as well as the geographical position of the relevant boat during catches;
- 25 (ii) an observer or learner-observer designated by the director-general is present on the fishing boat; and
- 30 (iii) the total catch or a portion of the catch by such a fishing boat is landed in a harbour in the Republic determined by the director-general;
- 35 (h) the supply or arrangements for the supply of ships' stores, excluding medical supplies, without the approval of the Minister of Finance, to a fishing boat, factory or vessel registered or licensed in a foreign state and used as a fishing boat or factory.

(2) A notice under subsection (1) (h) may, with the approval of the Minister of Finance, impose a levy on ships' stores to which it applies and may determine the manner in which and the person by whom the levy shall be collected.

(3) A notice under subsection (1) is applicable to both local and foreign fishing boats: Provided that the Minister may in that notice on the conditions determined by him grant exemption from the provisions of such notice in respect of specified quantities of fish caught for a specified purpose.

34. (1) The Minister may by notice in the *Gazette*—

Marine reserves.

- (a) set aside an area as a marine reserve for the protection within such reserve, of fish in general or fish belonging to a particular species or any aquatic plant; and
- 50 (b) assign a name to such reserve in the notice.
- (2) A notice under subsection (1)—
- (a) shall contain a description of the boundaries of the area which is set aside;
- 55 (b) may stipulate which fish or aquatic plants, if any, may be caught or collected or may not be caught or collected; and
- (c) may determine the conditions on which such fish may be disturbed or caught.

(3) The stipulations contemplated in subsection (2) (b) shall be made according to a management plan approved by the Minister in respect of a marine reserve.

(4) The director-general may in a marine reserve perform any act or allow the performance of any act and take any measures

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which are not incompatible with the objects for which the reserve has been set aside.

(5) No marine reserve or any part thereof shall be withdrawn from such setting aside except with the approval, by resolution, of Parliament, and the Minister shall by notice in the *Gazette* give notice of such withdrawal.

35. (1) Notwithstanding anything to the contrary contained in this Act, the Minister may, after consultation with the advisory committee, by notice in the *Gazette*—
- 10 (a) (i) prohibit the licensees in respect of fishing boats, including fishing boats of foreign countries, from—
- (aa) catching during the course of any specified period any fish or fish belonging to a particular species; or
- 15 (bb) catching jointly during the course of any or a specified year or any other period, in general or within a defined area, a greater quantity than a specified quantity of any fish or fish belonging to a particular species;
- 20 (ii) prohibit the catching of fish or fish belonging to a particular species, in general or within a defined area, except by—
- (aa) a person mentioned in the notice (in subsection (2) referred to as an authorized person) and in the quantity, during the period and in accordance with the other conditions set out in the notice; or
- 25 (bb) a person who is in possession of a permit issued by the Minister which authorizes him to catch a specified quantity of fish or fish belonging to a particular species, during the period and in accordance with the other conditions set out in the permit;
- 30 (b) prohibit or regulate the delivery of any fish, in general or within a defined area, fish belonging to a particular species or a product thereof, to any person or persons belonging to a particular category of persons, irrespective of whether the delivery takes place by a person who caught the fish or who acquired it from some other person;
- 35 (c) (i) prohibit the owner of a factory or a factory belonging to a particular category of factories specified in the notice, or another person in charge of such a factory, from—
- 40 (aa) receiving, processing or manufacturing in that factory during the course of any or a specified year or any other period, any fish, fish belonging to a particular species or a specified product thereof; or
- 45 (bb) jointly receiving, processing or manufacturing in that factory during the course of any or a specified year or any other period, a greater quantity of any fish, fish belonging to a particular species or any specified product thereof, than a quantity specified;
- 50 (ii) prohibit the receiving, processing or manufacturing, as the case may be, of fish, fish belonging to a particular species or a specified product thereof, except in—
- 55 (aa) a factory specified in the notice (in subsection (2) referred to as an authorized factory) and in the quantity, during the period and in accordance with the other conditions specified in the notice; or
- 60 (bb) a factory in respect of which a permit has been issued by the Minister, authorizing the receiving or processing in the quantity, during the
- 65

Restrictions on quantity of fish which may be caught or processed.

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- period and in accordance with the other conditions specified in the permit, of fish or fish belonging to a particular species or the manufacturing of a specified product thereof;
- 5 (d) prohibit any person or persons belonging to a particular category of persons from using, in general or in any defined area and outside any period referred to in paragraph (a) (i) (aa) of this subsection, any fishing boat or other vessel for the catching or processing of fish belonging to a particular species or for the manufacturing of a specified product thereof.
- 10
- (2) If an authorized person referred to in subsection (1) (a) (ii) (aa), a person to whom a permit referred to in subsection (1) (a) (ii) (bb) has been issued, the owner or person in charge of an
- 15 authorized factory referred to in subsection (1) (c) (ii) (aa) or the holder of a permit in respect of a factory referred to in subsection (1) (c) (ii) (bb)—
- (a) contravenes or fails to comply with any condition stipulated in the notice in question or permit, as the case may be; or
- 20 (b) is convicted of any other offence in terms of this Act, the Minister may by notice sent by registered post to such person—
- (i) cancel the authority in question;
- 25 (ii) cancel the permit in question; or
- (iii) reduce the quantity of fish which may in terms of the authority or permit in question be caught, received or processed.

36. (1) The Minister may by notice in the *Gazette*—
- 30 (a) prohibit any fisherman from delivering any fish or fish belonging to a particular species to any person other than a person approved by the Minister for this purpose or belonging to a particular category of persons so approved by him, or from offering for sale and delivering any such fish in the ordinary course of trade, except under the authority of a permit issued by the Minister;
- 35 (b) prohibit an approved person or a person belonging to an approved category of persons referred to in paragraph (a) from acquiring fish or fish belonging to a particular species from any person other than a fisherman entitled to catch it;
- 40 (c) prohibit an approved person or a person belonging to an approved category of persons referred to in paragraph (a), any other person or the owner or person in charge of a factory, from disposing of fish or fish belonging to a particular species or any product thereof acquired by him, otherwise than under the authority of a permit issued by the Minister;
- 45 (d) prohibit a person or persons belonging to a particular category of persons, from acquiring fish belonging to a particular species or a product thereof, for own use or for sale, from any person other than the person approved or a person belonging to an approved category of persons referred to in paragraph (a);
- 50 (e) prohibit an approved person or a person belonging to an approved category of persons referred to in paragraph (a), from disposing during a specified period more than a specified quantity of fish belonging to a particular species or a product thereof; and
- 55 (f) prohibit an approved person or a person belonging to an approved category of persons referred to in paragraph (a), from acquiring from or delivering to any person fish belonging to a particular species or a product thereof.
- 60
- 65

Control over disposal of fish.

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- (2) (a) A notice under subsection (1) may apply in general or in respect of any defined area.
- (b) The Minister may in writing and subject to the conditions determined by him, exempt any person from any provision of a notice under subsection (1).
- (3) A notice under subsection (1) (a) or (c) may prescribe the fees which are payable in respect of the issue of a permit referred to in that subsection.
- (4) A permit referred to in subsection (1) (a) or (c) may specify the period for which it shall be valid, the quantity of fish or fish products which may be sold, delivered or disposed of for sale, the manner in which and conditions on which it may be so sold, delivered or disposed of and the fees payable at the issue of the permit.
- (5) If the holder of a permit referred to in subsection (1) (a) or (c)—
- (a) contravenes or fails to comply with any condition on which the permit was issued; or
- (b) is convicted of an offence in terms of this Act or the Standards Act, 1982 (Act No. 30 of 1982), pertaining to the fish or fish products in question,
- the Minister may by notice sent by registered post to the holder of such permit—
- (i) amend any condition of the permit;
- (ii) reduce the quantity of fish or fish products which in terms of the permit may be delivered or disposed of for sale; or
- (iii) cancel the permit.
- (6) If the conviction by virtue of which steps were taken in terms of subsection (5) is set aside, such steps shall become annulled on the date on which the conviction is set aside.
- (7) (a) The Minister may, at the request of all parties involved in an agreement, if the parties cannot agree on a price, determine the minimum price at which fishermen may deliver fish belonging to a particular species or a product thereof, to a quota holder.
- (b) A determination of a minimum price by the Minister under paragraph (a) is final.

37. (1) The Minister may, subject to the provisions of any other law pertaining to the import and export of goods and with a view to the protection and utilization of any fish resource, by notice in the *Gazette* prohibit that fish, fish belonging to a particular species or a particular fish product be exported in general or to a specified country or area—
- (a) except on the authority of a permit issued by him; or
- (b) unless it has been approved for export by a person assigned by him for that purpose.
- (2) The Minister may by notice sent to him by registered post order any person who exports or has exported fish, to furnish the director-general or any other person mentioned in the notice, at specified times, with the particulars mentioned within a specified period in respect of fish or fish products which such person has available for export.
- (3) A permit referred to in subsection (1) (a) may determine—
- (a) the quantity of fish or fish products which may be exported;
- (b) the period within which, the place from where, the country or area to where and the manner in which the export shall take place; and
- (c) such other conditions as the Minister may deem fit.
- (4) The provisions of section 36 (5) and (6) are applicable *mutatis mutandis* in respect of a permit issued in terms of subsection (1) (a), the export of any fish or fish products in accordance with such permit and the issue of a permit.

Control over export of fish.

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## PART IX

## CONTROL OVER CERTAIN OTHER MARINE RESOURCES

38. (1) Notwithstanding the provisions of the Sea-shore Act, 1935 (Act No. 21 of 1935), and subject to the provisions of any regulation made under section 45, no person shall collect and remove or cause to be collected and removed any aquatic plants or shells from the sea or the sea-shore, except for his own use and in the prescribed quantities, without being the holder of a permit issued by the Minister and otherwise than in accordance with the conditions contained in the permit.

Control over collection and removal of aquatic plants and shells.

(2) The Minister may, subject to such conditions and on payment of such fees as determined by him with the concurrence of the Minister of Finance, on application by any person, issue a permit for the collection and removal of aquatic plants or shells from the sea or the sea-shore: Provided that—

- (a) before issuing a permit in respect of an area situated in or bordering on the area of jurisdiction of a local authority, he shall consult that local authority;
- (b) if he is of opinion that the issue of a permit will encroach upon the enjoyment of the sea or the sea-shore by the general public or upon the rights of an interested person in the area concerned, he shall direct the applicant to—
  - (i) notify the interested person in writing of his application; and
  - (ii) cause a notice drawing the attention of the public to his application to be published in an Afrikaans and English newspaper circulating in the area in question,

in which they are requested to submit in writing to the director-general for the Minister's decision within a specified period of at least 30 days from the date of the notice, any objections to his application.

(3) A permit, concession or agreement with relation to the collection or removal of aquatic plants or shells from the sea or from the sea-shore or a delegation of any power to a local authority in respect thereof in terms of the Sea-shore Act, 1935 (Act No. 21 of 1935), the Sea Fisheries Act, 1940 (Act No. 10 of 1940), or the Sea Fisheries Act, 1973 (Act No. 58 of 1973), which was still in force immediately before the commencement of this Act, shall be deemed respectively to be a permit issued or a delegation made in terms of this Act.

39. (1) A permit issued to any person authorizing the performance of any act which under this Act may be performed under the authority of such permit, shall—

Issue of permits.

- (a) be issued for an indefinite or specified period;
- (b) be issued subject to the conditions determined by the Minister or the director-general, as the case may be, which shall be contained in the permit;
- (c) be issued subject to the payment of the prescribed fees (if any), or the fees determined by agreement with the approval of the Minister of Finance, as the case may be.

(2) A permit referred to in subsection (1) may at any time be amended or cancelled by the Minister or the director-general, according to who issued it.

40. (1) Notwithstanding any provision to the contrary contained in any law, no person to whom a licence or permit has been issued in terms of any provision of this Act, may transfer such licence or permit to any other person without the consent of the director-general, and then only subject to the conditions determined by him.

Transfer of permits and appeal to Minister.

(2) Any person who has applied in accordance with the provisions of this Act for the issue of a licence or permit by the direc-

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director-general, and who feels aggrieved by the decision of the director-general in relation to—

- (a) the refusal to issue a licence or permit in accordance with such application; or  
 5 (b) a condition on which such licence or permit has been issued,

may appeal against such decision to the Minister in the prescribed manner and within the prescribed period, and such person shall furnish the reasons on the basis of which the appeal is  
 10 made.

(3) The Minister shall consider an appeal under subsection (2) and may, subject to the conditions determined by him, ratify, set aside or amend the decision, and the director-general shall notify the appellant of such ratification, setting aside or amend-  
 15 ment in writing.

## PART X

## MISCELLANEOUS PROVISIONS

41. (1) The Minister may, subject to the conditions deter- Exemptions.  
 mined by him, exempt in writing—

- 20 (a) any person who conducts scientific investigation, experimentation or research; or  
 (b) a particular category of persons who may or shall perform any act under any other law which would be or might result in a contravention of this Act,

25 from any of or all the provisions of this Act in conducting such investigation, experimentation or research or in the performance of any such act, and may at any time so cancel or amend an exemption so granted by him.

(2) If in the opinion of the Minister there are sound reasons  
 30 for doing so, he may, subject to the conditions determined by him, in writing exempt any person or local authority from a provision of this Act, and he may at any time cancel or amend an exemption so granted.

42. The Minister may, subject to the provisions of the Statis- Obtaining of infor-  
 35 tics Act, 1976 (Act No. 66 of 1976), direct any person or particular category of persons carrying on any business or engaging in any activity in connection with the catching, transportation, treating, processing, refrigeration, freezing, collection or removal, as the case may be, of fish, fish products, aquatic plants  
 40 or shells, to furnish him within the period specified in the direction with such information in respect of that business or activity as may be so specified and may be considered necessary for the purposes of the administration of the provisions of this Act.

43. (1) The State President may by proclamation in the *Ga- Adoption or ratifica-  
 45 zette* add to this Act any Schedule in which a translation of any convention, treaty or agreement relating to sea fishery matters which has been accepted by the Republic or adopted or ratified on behalf of the Republic is included.

(2) The State President may do all things necessary—  
 50 (a) to ratify or cause to be ratified on behalf of the Republic any amendment of any convention, treaty or agreement referred to in subsection (1); or  
 (b) to ratify or cause to be ratified on behalf of the Republic any convention, treaty or agreement which may  
 55 from time to time be adopted in substitution of a convention, treaty or agreement accepted or ratified on behalf of the Republic; and

may by proclamation in the *Gazette*—

- (i) amend the appropriate Schedule to this Act to give ef-  
 60 fect to any amendment ratified under paragraph (a); and  
 (ii) substitute for the convention, treaty or agreement appearing in the appropriate Schedule to this Act, the convention, treaty or agreement which has been ratified in terms of paragraph (b).  
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(3) The Minister shall lay a copy of any proclamation issued under subsection (1) or (2), on the Table in Parliament within 14 days after publication of such proclamation in the *Gazette* if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

44. Any person who feels aggrieved by a decision of a person to whom any power has been delegated under section 4 (1), (2) or (3), may appeal in the prescribed manner and within the prescribed period to the director-general or the Minister, according to who delegated the power, and shall furnish the prescribed information at the time of appeal.

Appeal by aggrieved person.

## PART XI

## REGULATIONS, TARIFFS AND FEES

45. (1) The Minister may make regulations with regard to— Regulations.

(a) any matter which in terms of this Act shall or may be prescribed by regulation;

(b) the nature and construction of any implement or apparatus which may or shall be used in connection with the catching of fish and the handling, or determination of the mass, thereof at a factory or which may not be so used;

(c) the methods whereby fish or fish belonging to a particular species shall be caught or may not be caught;

(d) the manner in which the size of fish shall for the purposes of this Act be determined;

(e) the method by which the mass of fish which has been caught shall be determined, the condition or form in which such fish shall be when landed and the mass is determined, and the apparatuses which shall be used for the landing, or the determination of the mass, of fish;

(f) the manner in which boundary beacons, buoys, notices, notice boards or other marks used in connection with the catching or protection of fish shall be placed, maintained, used, protected and controlled;

(g) the circumstances in which fish which has been caught shall be returned to the sea or may not be returned to the sea or shall be released from an implement or may not be released;

(h) the disposal of fish seized or forfeited or declared forfeited in terms of this Act;

(i) the control over and management of a fishing harbour;

(j) the use of a fishing harbour or any part thereof by vessels other than fishing boats or factories licensed in terms of this Act;

(k) the prohibition from entering or access to any fishing harbour of any fishing boats or other vessels registered or licensed in any foreign state or owned by the citizens thereof or in which a foreign state or its citizens have a controlling interest or which a foreign state or its citizens hold under charter;

(l) the regulation and control of fishery development and fishery research, fish, fish resources, fishing techniques or the marine environment;

(m) any other matter which he may deem desirable for the conservation or protection of fish or fish food;

(n) the making of surveys and the gathering of information regarding—

(i) the requirements and demand in respect of fish products;

(ii) the potential of fish resources; and

(iii) the catching, transport, treating, processing, refrigeration, freezing or removal of fish, fish products, aquatic plants or shells,

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including regulations providing for—

- (aa) the registration of persons involved in any of the said activities;
- 5 (bb) the inspection of any fishing boat or factory;
- (cc) the collection of data by persons involved in the said activities, the records which shall be kept and the returns which shall be rendered to the director-general by such persons and the times when such returns shall be submitted;
- 10 (o) the constitution, quorum, functions and procedure at meetings of a committee appointed by the director-general under section 21 (2), the term of office of the members thereof and, with the concurrence of the Minister of Finance, the allowances and remuneration payable to such members not in the full-time employment of the State;
- 15 (p) the identification of fish or products of fish which are packed, in order to exercise control over the utilization of a fish resource; and
- 20 (q) the application of the provisions of any convention, treaty or agreement with relation to sea fishery matters which has been adopted or ratified on behalf of the Republic or has been accepted by the Republic.

(2) Different regulations may be made under subsection (1) in respect of different areas or different species of fish or different fish products or such other matters as the Minister may deem necessary.

(3) A regulation made under subsection (1) may provide that a person who contravenes or fails to comply with a provision thereof, shall be guilty of an offence and on conviction be liable to a fine not exceeding R6 000 or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

46. The Minister may, with the concurrence of the Minister of Finance, determine the fees payable in respect of—

- 35 (a) the issuing of any licence or permit required in terms of this Act and in respect of which fees are payable;
- (b) the use of a fishing harbour or the facilities available in such harbour; and
- 40 (c) levies on fish, fish products or the other marine resources to which this Act is applicable.

## PART XII

## OFFENCES AND PENALTIES, FORFEITURE AND SEIZURE, AND PAYMENT OF REMUNERATION TO INFORMANT

47. (1) Any person who—
- 45 (a) catches or kills fish by means of any poison or narcotic substance;
- (b) catches or kills fish by detonating any substance in the sea;
- 50 (c) catches fish by means of any implement other than an implement prescribed in respect thereof;
- (d) catches fish by means of any method other than a method prescribed in respect thereof;
- 55 (e) catches or has in his possession any fish of which the size is less than the size prescribed in respect thereof or which does not comply with the other biological requirements or characteristics prescribed in respect thereof;
- (f) possesses, sells or displays or offers for sale any fish or any portion of fish the catching of which is prohibited by this Act;
- 60 (g) contravenes the provisions of sections 30 (1) and (6), 31 and 38 (1) or of a notice issued in terms of section 33,

Offences and penalties.



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- 35 or 36 or fails to comply with an order referred to in section 21 (3) (a);
- (h) without being the holder of a permit as provided by this Act, performs any act for which a permit is required or contravenes or fails to comply with a condition on which the permit was issued;
- (i) returns to the sea or abandons in any other place any edible and marketable dead fish;
- (j) exports or imports any live fish, except in terms of a permit issued by the Minister or his delegate, or otherwise than in accordance with the conditions on which the permit was issued;
- (k) dumps or allows to enter or permits to be dumped or discharged in the sea anything which is or may be injurious to fish, fish food or aquatic plants, or which may disturb or change the ecological balance in any area of the sea, or which may detrimentally affect the marketability of fish or aquatic plants, or which may hinder the catching of fish;
- (l) fails to comply with any requirement or order by a fishery control officer, police officer or honorary fishery officer under this Act, or gives any false information in response to such a requirement or order;
- (m) resists or hinders any fishery control officer, police officer or honorary fishery officer in the exercise of any power or the performance of any duty in terms of this Act;
- (n) falsely represents himself to be a fishery control officer or an honorary fishery officer;
- (o) uses any fishing boat without the consent of the owner or master thereof;
- (p) allows any fishing boat of which he is the licensee to be used for the catching of fish in contravention of the provisions of this Act,
- shall be guilty of an offence and liable on conviction to a fine not exceeding R15 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
- (2) (a) If any person is convicted of an offence in terms of this Act, the court shall summarily enquire into and determine the monetary value of any advantage which he may have gained in consequence of that offence, and, in addition to any other punishment that may be imposed in respect of that offence, impose a fine equal to the amount so determined and, in default of payment thereof, imprisonment for a period not exceeding one year.
- (b) A magistrate's court shall have jurisdiction to impose an additional penalty referred to in paragraph (a), even though that penalty may, either alone or together with any other punishment imposed by the court, exceed the punitive jurisdiction of a magistrate's court.

48. (1) The court convicting any person of an offence in terms of this Act may, in addition to any other penalty it may impose—
- (a) in the case of a first conviction, declare any fish, aquatic plants, shells or implement in respect of which the offence was committed or which was used in connection with the commission thereof, or any rights of the convicted person thereto, to be forfeited to the State; and
- (b) in the case of a second or subsequent conviction, declare such fishing boat, vessel or vehicle so used, or any rights of the convicted person thereto, to be forfeited to the State, and cancel, or suspend for such period as the court may think fit, any registration done in respect of the convicted person or any licence or permit issued or granted to him in terms of this Act.
- Forfeiture and seizure.

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- (2) (a) A declaration of forfeiture in terms of section (1) shall not affect any rights which any person other than the convicted person may have to such boat, vessel, vehicle or implement, if it is proved that he had taken all reasonable steps to prevent the use thereof in connection with the offence or could not have prevented the commission of the offence.
- (b) The provisions of section 35 (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall *mutatis mutandis* apply in respect of any such rights.
- (3) Any fish, aquatic plants, shells, fishing boat, vessel, vehicle or implement or any right thereto forfeited to the State under the provisions of this section, may be sold or destroyed or may be dealt with in such other manner as the Minister may direct.
49. The director-general may, from moneys appropriated by Parliament for the purpose and with the concurrence of the Minister of Finance, pay to any person, excluding a person in the employment of the State, who furnished him with any information or material of proof with relation to an offence in terms of this Act, irrespective of whether such information or material of proof has led to a prosecution and conviction before a competent court, a remuneration in cash which, in the opinion of the director-general, is reasonable and fair in the circumstances.

Payment of remuneration to informant.

## PART XIII

25 JURISDICTION, EVIDENCE, LIMITATION OF LIABILITY, FOREIGN VESSELS IN FISHING ZONE, POWERS OF FISHERY CONTROL OFFICERS AND POLICE OFFICERS, AND APPLICATION OF ACT

50. (1) If any person is charged with having committed any offence in terms of this Act on or in the sea, any court whose area of jurisdiction borders on or includes any part of the sea in the vicinity where the offence has allegedly been committed, shall be competent to try the charge, and the offence shall, for all purposes connected with or consequential upon the trial of the charge, be deemed to have been committed within the area of jurisdiction of that court.
- (2) If any fishing boat, vessel or vehicle has been used in connection with any offence in terms of this Act, or if any fish or implement in respect of or by means of which an offence in terms of this Act has been committed, is found or proved to have been upon or in any fishing boat, vessel or vehicle, any person who was on board such fishing boat or vessel or in or on the vehicle at the time when the offence was committed, shall be deemed to be guilty of that offence, unless he proves that he did not commit the offence, did not take part in the commission thereof and could not have prevented the commission thereof.
- (3) In any prosecution for a contravention of this Act—
- (a) based on any act alleged to have been performed in a particular area, the act in question shall be deemed to have been performed in such area;
- (b) any information obtained by means of any instrument or chart used to determine any distance or depth, shall be deemed to be correct, unless the contrary is proved.
- (4) If in any prosecution for an offence in terms of this Act it is proved that in any area in the sea within a distance of eight kilometres from any factory, including any factory other than that defined in section 1, or any other installation, any fish or fish food has been or is being injured or has died or is dying or the marketability thereof or of aquatic plants has been or is being adversely affected, or the ecological balance has been or is being disturbed or changed, it shall be presumed, until the con-

Jurisdiction and evidence.

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trary is proved, that it has been or is being caused by something discharged from that factory or installation into the sea.

(5) In any prosecution for an offence in terms of this Act, it shall be no defence that the accused had no knowledge of some fact or other or did not act intentionally.

51. (1) The State, the Minister, a member of the board or any person in the employment of the State shall not be liable by virtue of anything done in good faith under the provisions of this Act. Limitation of liability.

10 (2) The State, the Minister or any person in the employment of the State 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 duty or function in terms of this Act or any other law—

- 15 (a) makes use of any aircraft, fishing boat, vessel or vehicle which is the property or under the control of the State;  
 (b) is present in any fishing harbour or on an island; or  
 (c) leaves any fishing boat or vessel or any other property in a fishing harbour or makes use of the facilities of a  
 20 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 aircraft, fishing  
 25 boat, vessel or vehicle 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).

52. (1) Subject to the provisions of sections 29, 31, 33 and 35, the State President may on the conditions determined by him enter into an agreement with a foreign state whereby a vessel registered in that foreign state are permitted, subject to the provisions of this section, to operate as a fishing boat or factory within the fishing zone, excluding the territorial waters. Use of foreign vessels as fishing boats and factories in fishing zone.

35 (2) If an agreement contemplated in subsection (1) provides that a vessel registered in the foreign state in question may be used as a fishing boat or factory within the fishing zone, excluding the territorial waters, the Minister may direct the director-general to issue on application by the owner of that vessel a permit in respect of that vessel authorizing it to be so used as a  
 40 fishing boat or factory.

(3) A permit contemplated in subsection (2) shall be issued for such period, subject to such conditions and restrictions and against payment of such fees as may be determined by the Minister with the concurrence of the Minister of Finance, and the  
 45 Minister may at any time and at his own discretion cancel such permit and so amend or alter such conditions, restrictions or fees.

(4) Any person who uses a vessel registered in a foreign state as a fishing boat or factory—

- 50 (a) within the territorial waters;  
 (b) within the fishing zone, excluding the territorial waters, without a permit being issued in terms of subsection (2);  
 55 (c) within the fishing zone, excluding the territorial waters, in contravention of or non-compliance with any condition on which a permit has been issued in terms of subsection (2) in respect thereof,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding  
 60 ing seven years or to both such fine and such imprisonment.

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53. (1) A fishery control officer generally or specially authorized thereto by the Minister, and a police officer may—
- Powers of fishery control officers and police officers.
- (a) board any fishing boat or vessel, enter any factory, any premises or place used for the storage or sale of fish, fish products, aquatic plants or shells and enter any vehicle used for the transport or sale of fish, fish products, aquatic plants or shells, and perform on such fishing boat, premises, place, vessel or vehicle or in that factory such acts as may be necessary to ascertain whether the provisions of this Act were or are being complied with;
- (b) examine any implement or object which he has reasonable grounds to suspect is being used or intended for use in the catching or handling of fish, the processing of fish products or the collection of aquatic plants or shells;
- (c) subject to the provisions of subsection (3), if he has reasonable grounds to suspect that an offence in terms of this Act has been committed in respect of fish, fish products, aquatic plants or shells or has been or is about to be committed in respect of or by means of any implement, and that such fish, fish products, aquatic plants, shells or implement is upon any premises or at any place or upon any fishing boat, vessel or vehicle or in any factory, at any time enter upon and search such premises, place, fishing boat, vessel, vehicle or factory and search any person thereupon or therein, and seize any such fish, fish products, aquatic plants or shells, implement, fishing boat, vessel or vehicle, as well as any books or other documents on or in such premises, place, fishing boat, vessel or vehicle or in such factory;
- (d) if he has reasonable grounds to suspect that any fishing boat, premises, place, vessel, vehicle or factory has been or is being used in connection with any offence in terms of this Act, or that any fish, fish products, aquatic plants or shells, or implement as to which there are reasonable grounds for suspecting that an offence in terms of this Act has been committed in respect thereof or by means thereof, is or has been on any fishing boat, premises, place, vessel or vehicle or in any factory, require the persons on such fishing boat, premises, place, vessel or vehicle or in such factory, to furnish him with their names and addresses or require the licensee of such fishing boat to furnish him with the names and addresses of the master and of the members of the crew of such fishing boat;
- (e) by a prescribed signal order the master of a fishing boat to stop such boat or to sail to a harbour indicated by the fishery control officer or police officer;
- (f) order the master of a fishing boat to remove it at a specified time from a fishing harbour or not to bring it into a fishing harbour—
- (i) if the fishing boat is a fishing boat referred to in this subsection; or
- (ii) if, irrespective of where the fishing boat is registered, any person who is or at any time was a member of the crew of such fishing boat, was at any time convicted, in terms of a law which is or was in force in the Republic, of any offence committed on such fishing boat while it was within the fishing zone; or
- (iii) if, irrespective of where the fishing boat is registered, the fishing control officer or police officer is satisfied, upon reasonable grounds, that such

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- fishing boat was at any time used within the fishing zone in connection with any activity that constituted an offence in terms of any law;
- (g) question any person who, in his opinion, may be capable of furnishing any information which he may require, and for that purpose require a fishing boat, vessel or vehicle to be stopped;
- (h) require any person to produce to him any invoices, delivery notes or other documents in his possession in connection with any fish or fish products which are or in his opinion may be the subject of any criminal case in terms of this Act, and in his discretion seize such invoices, notes or other documents for submission to and disposal of by a court;
- (i) require any person employed on a fishing boat, vessel or vehicle or at or in a factory, to assist him in the examination of any container, implement or fish on such fishing boat, vessel or vehicle or in such factory, in order to ascertain whether the provisions of this Act have been complied with in connection therewith.
- (2) A fishery control officer shall in the exercise of his powers under subsection (1), be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (3) Whenever any fishery control officer or police officer exercises any of his powers under this section, he may only enter or search a dwelling in accordance with the provisions of the Criminal Procedure Act, 1977.
- (4) The powers conferred by subsection (1) may, in respect of any fishing boat licensed in terms of this Act or any vessel used as a fishing boat in the fishing zone, and in respect of any person or any fish or implement thereon, be exercised also outside the fishing zone.
- (5) Any fish, fish products, aquatic plants or shells or implement seized under subsection (1) (c), shall be forfeited to the State: Provided that—
- (a) in the event of the fish, fish products, aquatic plants or shells or implement forming the subject of a prosecution, the court may set aside the forfeiture; and
- (b) in any other case the Minister may set aside the forfeiture, if the owner of the fish, fish products, aquatic plants or shells or implement, as the case may be, satisfies the Minister, within 30 days after the seizure, that no offence was committed by him or by any other person with his knowledge or consent, in respect of the fish, fish products, aquatic plants or shells or by means of the implement:
- Provided further that fish, fish products, aquatic plants or shells so seized may be sold or destroyed at any time after the seizure, and if the forfeiture is set aside in terms of paragraph (a) or (b), the proceeds of the sale (if any) shall be handed over to the owner.

## 54. This Act shall also apply to—

- (a) the Prince Edward Islands as defined in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948);
- (b) the harbour and settlement of Walvis Bay; and
- (c) the islands and rocks mentioned in Schedule 2.

Application of Act to Prince Edward-Islands, Walvis Bay and certain islands and rocks.

## PART XIV

## 60 REPEAL OF LAWS, AND SAVINGS, SHORT TITLE AND COMMENCEMENT

55. (1) Subject to the provisions of subsection (2) the laws mentioned in Schedule 1 are hereby repealed to the extent indicated in column 3 thereof.
- Repeal of laws, and savings.

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(2) A registration of, or any licence in respect of, a fishing boat, factory or implement and any 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 5 be deemed to be an appropriate registration, licence, permit 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.

56. (1) This Act shall be called the Sea Fishery Act, 1988, and 10 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.

(2) Different dates may be determined in terms of subsection (1) in respect of different provisions of this Act.

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## Schedule 1

No. and year of law	Short title	Extent of repeal
Act 58 of 1973 .....	Sea Fisheries Act, 1973	The whole.
Act 57 of 1975 .....	General Laws Amendment Act, 1975	Sections 44 and 45.
Act 22 of 1976 .....	Sea Fisheries Amendment Act, 1976	The whole.
Act 99 of 1977 .....	Sea Fisheries Amendment Act, 1977	The whole.
Act 86 of 1978 .....	Fishing Industry Development Act, 1978	In so far as it has not been repealed by any previous Act.
Act 61 of 1979 .....	Sea Fisheries Amendment Act, 1979	The whole.
Act 33 of 1983 .....	Sea Fisheries Amendment Act, 1983	The whole.

## Schedule 2

Name or description of island	Situation
1. Bird Island .....	Algoa Bay.
2. Stag Island .....	Algoa Bay.
3. Seal Island .....	Algoa Bay.
4. Black Rocks .....	Algoa Bay.
5. St. Croix Island .....	Algoa Bay.
6. Brenton Rock .....	Algoa Bay.
7. Jahleel Island (also known as Jackell Island) .....	Algoa Bay.
8. Seal Point .....	Near Krommebaai, Humansdorp district.
9. Cape Seal .....	Plettenberg Bay.
10. Walker Point and Seal Ledges .....	Knysna district.
11. Seal Island .....	Mossel Bay.
12. Rocks at mouth of Ratel River .....	Bredasdorp district.
13. Voëlstone .....	Near Buffeljacht, Bredasdorp district.
14. Quoin Rock .....	Bredasdorp district.
15. Dyer Island .....	Bredasdorp district.
16. Geysers Island .....	Bredasdorp district.
17. Seal Rock (also known as Voëlsteen) .....	Frikiesbaai, Caledon district.
18. Seal Island .....	False Bay.
19. Duikerklip .....	Hout Bay.
20. Robbersteen (also known as Seal Ledges) .....	Bellville district.
21. Vogelsteen .....	Blouberg Beach, Cape district.
22. Dassen Island .....	Malmesbury district.
23. Yzerklip (also known as Meeuw Rock) .....	Malmesbury district.
24. Jutten Island .....	Saldanha Bay.
25. Marcus Island .....	Saldanha Bay.
26. Malagas Island (also known as Malgas Island) .....	Saldanha Bay.
27. Meeuwen Island (also known as Meeu Island) .....	Saldanha Bay.
28. Schaapen Island .....	Saldanha Bay.
29. Vondeling Island .....	Near Saldanha Bay.
30. Jacob's Rock .....	Near Saldanha Bay.
31. Paternoster Rocks (also known as Paternoster Island) .....	At Great Paternoster Point, near Saldanha Bay, Hopefield district.
32. Penguin Island (also known as Lambert's Bay Island) .....	Lambert's Bay.
33. Elephant Rock .....	Near mouth of Olifants River, Vanrhynsdorp district.
34. Little Roastbeef Island .....	In Dernburg Bay, coast of South West Africa.
35. Sinclair Island .....	Near Baker Bay, coast of South West Africa.
36. Plumpudding Island .....	Near Baker Bay, coast of South West Africa.
37. Pomona Island .....	Near Jammer Bay, coast of South West Africa.
38. Albatross Rock .....	Near Prince of Wales Bay, coast of South West Africa.
39. Possession Island .....	Near Elizabeth Bay, coast of South West Africa.
40. Long Islands .....	Near Wolf Bay, coast of South West Africa.
41. Halifax Island .....	Near Luderitz Bay.
42. Penguin Island (also known as Pikkewyn Island) .....	Luderitz Bay.
43. Seal Island (also known as Rob Island) .....	Luderitz Bay.
44. Ichaboe Island .....	Near Douglas Bay, coast of South West Africa.
45. Mercury Island .....	Spencer Bay, coast of South West Africa.
46. Hollamsbird Island .....	Coast of South West Africa.