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## GENERAL NOTICE

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### NOTICE 434 OF 2013

#### MARINE LIVING RESOURCES ACT, 1998 (Act No. 18 of 1998)

#### PUBLICATION OF AND INVITATION TO COMMENT ON THE DRAFT MARINE LIVING RESOURCES AMENDMENT BILL, 2013

I, Tina Joemat-Pettersson, Minister of the Department of Agriculture, Forestry and Fisheries give notice that I intend introducing the draft Marine Living Resources Amendment Bill, 2013, in Parliament.

Interested and affected parties are invited to submit written comments on the draft Bill to the Department by no later than **10 June 2013** by post, by hand, e-mail or telefax . Please note that comments received after the closing date may be disregarded.

<u>By telefax</u> Fax Number (021) 421 5151 DDG: Fisheries Attention: Dennis Fredericks	<u>By Post</u> DDG: Fisheries Attention: Dennis Fredericks Private Bag X2 Roggebaai Cape Town 8001	<u>By E-mail</u> DDG: Fisheries Attention: Dennis Fredericks mlracomments@daff.gov .za	<u>By Hand</u> DDG: Fisheries Foretrust Building, Martin Hammerschlag Way, Cape Town Attention: Dennis Fredericks
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The draft Marine Living Resources Amendment Bill, 2013 is also available on the Department's website [www.daff.gov.za](http://www.daff.gov.za)

**MINISTER OF AGRICULTURE FORESTRY AND FISHERIES**

**REPUBLIC OF SOUTH AFRICA**

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**MARINE LIVING RESOURCES AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75))  
(The English text is the official text of the Bill)*

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(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B XX—2013]

**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

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**BILL**

To amend the Marine Living Resources Act, 1998, so as to provide for a new Long Title; to provide for the amendment of the Arrangement of Sections; to provide for public trusteeship of the nation's marine living resources; to provide for the insertion of new definitions; to provide for the assignment of administration, the delegation of powers and the assignment of duties to provincial Members of the Executive Council; to provide for the inventory of assignments and delegations; to provide for assignment between spheres of government; to provide for the legal effect of

delegation of power; to provide for delegation proceedings to be in writing; to provide for a record of delegations; to provide for monitoring, evaluation and assessment and reporting; to provide for performance auditing; to provide for the national monitoring of provinces; to provide for the applicability of intergovernmental relations framework policy and legislation; to provide for the establishment of governance and other structures; to provide for categories, powers, functions and duties, as well as the dissolution and reconstitution of governance and other structures; to provide for the establishment of the Intergovernmental Forum on Marine Living Resources; to provide for the powers, functions and duties of the Intergovernmental Forum on Marine Living Resources; to provide for the establishment and functioning of the Marine Living Resources Review Board; to provide for the submission of review applications to the Marine Living Resources Review Board; to provide that decisions of the Marine Living Resources Review Board are final; to provide for appeals against decision by the Marine Living Resources Review Board to the High Court; to provide for public participation and coordination; to provide for administrative justice; to provide for the promotion of access to information; to provide that the Act, Regulations and Notices must be maintained and copies be made available; and to provide for matters connected therewith.

#### **Amendment of the Long Title of Act 18 of 1998**

1. The Long Title of Act 18 of 1998 (hereinafter referred to as the "principal Act") is hereby amended by the substitution for the Long Title of the following:

**"To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa; to provide for public trusteeship of the nation's marine living resources; to provide for definitions; to provide for the assignment of administration, the delegation of powers and the assignment of duties to provincial Members of the Executive Council; to provide for the inventory of assignments and delegations; to provide for assignment between spheres of government; to provide for the legal effect of delegation of power; to provide for delegation proceedings to be in writing; to provide for a record of delegations; to provide for monitoring, evaluation and assessment and reporting; to provide for performance auditing; to provide for the national monitoring of provinces; to provide for the applicability of intergovernmental relations framework policy and legislation; to provide for the establishment of governance and other structures; to provide for categories, powers, functions and duties, as well as the dissolution and reconstitution of governance and other structures; to provide for the establishment, composition, powers, functions and duties of the Intergovernmental Forum on Marine Living Resources; to provide for the establishment and functioning of the Marine Living Resources Review Board; to provide for the submission of review applications to the Marine Living Resources Review Board; to provide that decisions of the Marine Living Resources Review Board are final; to provide for appeals against decision by**

**the Marine Living Resources Review Board to the High Court; to provide for public participation and coordination; to provide for administrative justice; to provide for the promotion of access to information; to provide that the Act, Regulations and Notices must be maintained and copies be made available; and to provide for matters connected therewith.**

### **Amendment of the Arrangement of Sections of Act 18 of 1998**

2. The Arrangement of Sections of the principal Act is hereby amended by the substitution for the Arrangement of Sections of the following:

“1. Definitions

1A. Public trusteeship of nation's marine living resources

2. **[Objectives and p]Principles**

2A. Objectives

3. Application of Act

4. Conflict with other acts

5. Establishment of Forum

6. Functions of Forum

7. Composition of Forum

8. Industrial bodies and interest groups

9. Fishery control officers and honorary marine conservation officers

10. Marine Living Resources Fund

11. Appropriation of Fund

12. Register

13. Permits

14. Determination of allowable catches and applied effort

15. Fisheries management areas

16. Emergency measures

17. Priority fishing areas

18. Granting of rights

19. Subsistence fishing

20. Recreational fishing

21. Commercial fishing

22. **[Leasing of rights]...**

23. Local fishing vessel licence

24. Reduction of rights

24A. Performance measuring

25. Fees

26. Recovery of interest and fees

27. Fishing harbours

28. Cancellation and suspension of rights, licences and permits

29. **[Establishment of Fisheries Transformation Council]...**

30. **[Main object of Council]...**

31. **[Allocation of rights to and by Council]...**

32. **[Powers of Council]...**

33. **[Management and control]...**

34. **[Composition of Council]...**
35. **[Staff]...**
36. **[Reporting]...**
37. **[Abolishment of Council]...**
38. International agreements
39. Foreign fishing vessel licences
40. Prohibition of high seas fishing
41. High seas licences
42. Implementation of international conservation and management measures
43. Marine protected areas
44. Prohibited fishing methods
45. Possession of prohibited gear
46. Interference with gear
47. Interference with gear
48. Fish aggregating devices
49. Stowage of gear
50. Observers
51. Powers of fishery control officers
52. Powers of fishery control officers beyond South African waters
53. Seizure of vessels
54. Seizure of vehicles or aircraft
55. Immobilisation of vessels, vehicles or aircraft
56. Co-operation with officials
57. Duty to report
58. Offences and penalties
59. Limitation of liability
60. Destruction of evidence
61. Payment for information leading to conviction
62. Security for release of vessel, vehicle or aircraft
63. Disposal of perishables
64. Treatment of things detained or seized
65. Application of security
66. Liability for loss, damage or deterioration of things in custody
67. Removal from custody
68. Forfeiture orders by court
69. Disposal of forfeited things and discharge of forfeiture orders
70. Jurisdiction of courts
71. Documentary evidence
72. Validity of certificates
73. Certificate as to location of vessel
74. Designated machines
75. Photographic evidence
76. Observation devices
77. Power to make regulations
78. **[Assignment to provinces]**Assignment of administration of matters pertaining to marine living resources to MECs
- 78A. Delegation of powers and assignment of duties by Minister to MECs
- 78B. Inventory of assignments and delegations

- 78C. Assignment between spheres of government  
78D. Legal effect of delegation of power  
78E. Delegation proceedings in writing  
78F. Record of delegations  
 79. **[Delegation of powers]...**  
80. [Appeal to Minister] Establishment of Marine Living Resources Review Board  
80A. Operation of Marine Living Resources Review Board  
80B. Submission of review applications to Marine Living Resources Review Board  
80C. Decisions of Marine Living Resources Review Board  
80D. Appeals from decisions of Marine Living Resources Review Board  
 81. Exemptions  
 82. Inquiries  
 83. Scientific investigations and practical experiments  
 84. Repeal of laws, and savings  
 85. Transitional measures  
85A. Monitoring, evaluation and assessment and reporting  
85B. Performance auditing  
85C. National monitoring of provinces  
85D. Applicability of intergovernmental relations framework policy and legislation  
85E. Governance and other structures  
85F. Categories of structures  
85G. Powers, functions and duties of structures  
85H. Dissolution and reconstitution of structures  
85I. Establishment and composition of Intergovernmental Forum on Marine Living Resources  
85J. Powers, functions and duties of Intergovernmental Forum on Marine Living Resources  
85K. Public participation and coordination  
85L. Administrative justice  
85M. Promotion of access to information  
85N. Act, Regulations and Notices to be maintained and copies to be made available  
 86. Short title and commencement”

### **Amendment of section 1 of Act 18 of 1998**

#### **3. Section 1 of the principal Act is hereby amended—**

- (a) by the insertion after the definition of “aquatic plant” of the following definition:  
 “**“assignment”** means—  
(a) the transfer of a power, duty, role or function from the functional domain of national government to one or more provincial governments, and  
(b) of the administration of a matter listed in Schedule 4 (Part A) of the Constitution,  
 and **“assign”** has a corresponding meaning;”;
- (b) by the insertion after the definition of “commercial fishing” of the following definition:  
 “**“community”** means any group of persons or a part of such a group who share common interests, and who regard themselves as a community;”;
- (c) by the insertion after the definition of “Constitution” of the following definition:

“contiguous zone” means a band of water extending from the outer edge of the territorial waters to 24 nautical miles from the baseline, i.e. the mean low water mark;”;

(d) by the insertion after the definition of “driftnet fishing activities” of the following definition:

“ecological sustainability” means that the fishery is managed using an ecosystems approach which incorporates the ecological, social and economic aspects of the fishery;”;

(e) by the insertion after the definition of “ecological sustainability” of the following definition:

“ecosystem” means a dynamic complex of animal, plant and micro-organism communities and their non-living environment interacting as a functional unit.”;

(f) by the insertion after the definition of “ecosystem” of the following definition:

“estuary” means a body of surface water–

(a) that is part of a water course that is permanently or periodically open to the sea;

(b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the water course is open to the sea; or

(c) in respect of which the salinity is measurably higher as a result of the influence of the sea.”;

(g) by the substitution for the definition of ‘fisheries management area’ of the following definition:

“fisheries management area” means [a fisheries management] demarcated areas declared in terms of section 15(1);”;

(h) by the addition after the definition of ‘fishing harbour’ of the following:

“fishing harbour” means a declared fishing harbour contemplated in section 27(1) including private slipways and any slipway that can be used to gain access to the sea or inland water for any purpose;”;

(i) by the addition after the definition of ‘fish processing establishment’ of the following definition:

“fish processing establishment” means any vehicle, vessel, premises or place where any substance or article is produced from fish by any method, including the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving of fish, or where fish are canned, packed, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale in or outside the territory of the Republic, which exclude fishmongers, restaurants, fish shops, large chain stores, cold stores, the drying of legally caught fish, the cleaning, gilling and tailing of fish on board an authorised fishing vessel and authorised fishing vessels that only pack fish in crates or use ice to land fresh fish;”;

(j) by the substitution for the definition of ‘gear’ of the following definition:

“gear” means, in relation to fishing, any equipment, implement or other object that can be used in fishing, including any net, ringnet, rope, line, float, trap, hook, winch, aircraft, boat or craft carried on board a vessel, aircraft or other craft;”;

(k) by the insertion after the definition of “high seas fishing vessel licence” of the following definition:

“inland water” means rivers, streams, lakes, wetland, public and private dams or catchment areas;”;

(l) by the insertion after the definition of “international conservation and management measures” of the following definition:

““IUU” means Illegal, Unreported and Unregulated fishing;”;

(m) by the insertion after the definition of “Minister” of the following definition:

““National Environmental Management: Biodiversity Act” means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);”;

(n) by the addition after subsection (e) of the definition of ‘related activities’ of the following definition:

“(f) discharging or offloading of fish and fish products;”;

(o) by the insertion after the definition of “related activities” of the following definitions:

““RFMO” means a Regional Fisheries Management Organisation;”; and

““right holder” means a person holding a commercial fishing right in terms of section 18;”;

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

““small-scale fisher” means any persons that fish to meet food and basic livelihood needs, or are directly involved in harvesting / processing or marketing of fish, traditionally operate on or near shore fishing grounds, predominantly employ traditional low technology or passive fishing gear, usually undertake single day fishing trips, and are engaged in the sale or barter or are involved in commercial activity;

“small scale fisheries” means the use of marine living resources on a full-time, part-time or seasonal basis in order to ensure food and livelihood security. For the purposes of this policy, fishing also means the engagement (by men and women) in ancillary activities such as, (pre and post harvesting, including preparation of gear for harvesting purposes), net making, boat-building, (beneficiation, distribution and marketing of produce) which provide additional fishery-related employment and income opportunities to these communities);”;

(q) by the addition after subsection (d) of the definition of ‘South African person’ of the following:

“(e) a body corporate or unincorporated where the majority of the beneficial interests are held by persons who are South African citizens in terms of the South African Citizenship Act, 1995 (Act 88 of 1995);”;

(r) by the insertion after the definition of “subsistence fisher” of the following definition:

““supporting activities” include refuelling, providing supplies, transshipping gear or fish or supplies;” and

(s) by the substitution for the definition of ‘transship’ of the following definition:

““transship” means transferring fish, fish products or gear from one vessel to another;”.

#### **Insertion of Section 1A in Act 18 of 1998**

4. The following section is inserted in the principal Act after section 1:

##### **“Public trusteeship of nation's marine living resources**

**1A.(1) As the public trustee of the nation's marine living resources the National Government, acting through the Minister, must ensure that these resources, together with the coastal and marine ecosystems which they inhabit, are protected, conserved,**



developed, regulated, managed, controlled and utilised in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional and developmental mandate of government.

(2) Without limiting subsection (1), the Minister is ultimately responsible to ensure that marine living resources are equitably accessed and used beneficially and in the public interest, while—

(a) ensuring long term—

(i) sustainability of all marine living resources together with the coastal and marine ecosystems which they inhabit; and

(ii) food security; and

(b) promoting economic and social development.”.

### **Substitution of heading of section 2 of Act 18 of 1998**

5. The following heading is hereby substituted for the heading of section 2 of the principal Act:

**“[Objectives and p]Principles”**

### **Amendment of section 2 of Act 18 of 1998**

6. The following section is hereby substituted for section 2 of the principal Act:

**“2. The Minister and any organ of state [shall]must, in exercising any power under this Act, have regard to the following [objectives and]principles:**

(a) recognise, protect and support the rights of small-scale fishers in line with national and international instruments;

(b) adopt an integrated and holistic approach which is based on human rights principles;

(c) recognise an approach which contributes to alleviation of poverty, food security and local socio-economic development;

(d) promote biodiversity and the sustainable use and management of marine living resources and associated ecosystems;

(e) recognise the interdependency of the social, cultural, economic and ecological dimensions of small-scale fishery systems;

(f) adopt an approach of co-management empowerment that builds the capacity of the fishers through education, training and skills development in all aspects of the fishery;

(g) develop accountable and transparent structures and mechanisms;

(h) promote effective participation in policy development, management and decision-making;

(i) promote equitable access to and involvement in all aspects of the fishery in particular noting past prejudice against women and other marginalised groups;

(j) incorporate a community-based rights approach to the allocation of marine living resources;

(k) recognise that resources may be allocated through a multi-species approach; and

(l) recognise the complementary value of indigenous and local knowledge.”.

**Insertion of section 2A in Act 18 of 1998**

7. The following section is hereby inserted in the principal Act after section 2:

**Objectives**

2A. The Minister and any organ of state must, in exercising any power under this Act, have regard to the following objectives:

(a) to give formal recognition and appropriate legal protection for small-scale fishers;

(b) to promote equitable access to and benefits from, marine living resources, taking the historical background of the fisher/s into account;

(c) to improve access to marine living resources through mechanisms that allow access for small-scale fishers, including the designation of strips of land as coastal access land to secure access;

(d) to ensure the long-term sustainable use and management of marine living resources and surrounding coastal environments;

(e) to ensure the sustainable development of fisheries identified as small-scale, making sure that small-scale fishing communities maximise the benefit from those resources and are the main beneficiaries;

(f) to facilitate the establishment of appropriate institutional arrangements at different spheres of Government, in particular co-management arrangements, in order to give effect to this policy;

(g) to facilitate co-operative governance with relevant Government departments involved in fishery dependent communities to promote poverty alleviation, food security, sustainable livelihoods and local economic development;

(h) to facilitate the establishment of mechanisms that will address physical access for small-scale fishing communities to harbours, defence or other strategic facilities and marine protected areas when exercising their right to fish;

(i) to introduce measures and mechanisms that prioritise the small-scale fisheries sector within fisheries as whole; and

(j) to introduce mechanisms and structures that promotes a community orientation, co-management and community-based approach in the harvesting and management of marine living resources within the small-scale fisheries sector.”.

**Amendment of section 9 of Act 18 of 1998**

8. Section 9 of the principal Act is hereby amended by the substitution for subsection (3) of the following:

“A fishery control officer employed by the Department and an honorary marine conservation officer [~~shall~~ must be furnished by the Director-General with the prescribed identity card;”.

**Amendment of section 14 of Act 18 of 1998**

9. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following:

“The Minister **[shall]**must 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;” and

(b) by the substitution for subsection (4) of the following:

“If the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass or quantity of the increase **[shall]**must be available for allocation by the Minister.”.

#### **Amendment of section 15 of Act 18 of 1998**

10. Section 15 of the principal Act is hereby amended by the substitution for subsection (2) of the following:

“The Minister may in respect of each **[fisheries management area]**demarcated zone approve a plan for the conservation, management and development of the fisheries;”.

#### **Amendment of section 16 of Act 18 of 1998**

11. Section 16 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following:

“(1) If an emergency occurs or a change that endangers or may endanger stocks of fish or aquatic life, or any species or class of fish or aquatic life in any fishery or part of a fishery, the Minister may—

(a) suspend all or any of the fishing in that fishery or non-consumptive activity or any specified part of it;

(b) restrict the number of fishing vessels fishing in that fishery; or vessels operating in that non-consumptive sector; or

(c) restrict the mass of fish which may be taken from that fishery or restrict the effort applied in that fishery or quantity or non-consumptive sector.”;

and

(b) by the addition of the following subsection:

“(3) “emergency” for the purposes of this section includes a specific incident or change in the environment over a period of time or a decline in fish stocks or any species to a level that can no longer sustain commercial harvesting or activity.”.

#### **Amendment of section 18 of Act 18 of 1998**

12. The following section is hereby substituted for section 18 of the principal Act:

##### **Granting of rights**

**18.(1)(a)** A person may not undertake commercial fishing, small-scale fishing, operate a fishing processing establishment or engage in non-consumptive use as determined by the Minister, 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.

**(b)** An application for any right referred to in subsection (1)(a) must be submitted to the Minister in the manner prescribed by the Minister.

(2) The Minister must, after consideration of applicable existing policies relating to small-scale fishing communities and any amendments thereof, within a period not exceeding three months after the commencement of this Act, publish, by notice in the Gazette, a framework determining the —

(a) procedures in respect of —

(i) an application by a community to be considered for declaration as a small-scale fishing community;

(ii) the consideration by the Minister of such application;

(iii) the verification by the Minister and an independent third party of the list of members of such community;

(iv) the approval by the Minister of such application;

(v) the declaration by the Minister of such community as a small-scale fishing community for purposes of this Act;

(vi) access by any individual who has a direct interest in, or is aggrieved by, any decision relating to the declaration of such small-scale fishing community taken by the Minister, to the Marine Living Resources Review Board contemplated in section 80 of this Act,

(b) establishment, for such declared small-scale fishing community, of an appropriate—

(i) legal entity; and

(ii) business entity in accordance with business entity legislation of the Department of Trade and Industry;

(c) procedures for the submission, consideration and approval of an equitable small-scale fisheries community benefit distribution plan;

(d) granting of rights in accordance with the provisions of the Act; and

(e) criteria, norms and standards, and guidelines to be complied with or followed, as the case may be, in respect of paragraphs (a) to (d).

(3) The Minister may require an environmental impact assessment report to be submitted by the applicant in terms of Chapter 5 of the National Environmental Management Act.

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

(5) In granting any right referred to in subsection (1), the Minister **[shall]** must, in order to achieve the objectives contemplated in section 2, have particular regard to the need to permit new entrants, particularly those from historically disadvantaged sectors of society.

(6) All rights granted in terms of this section shall be valid for the period determined by the Minister, which period shall not exceed 15 years, whereafter it shall automatically terminate and revert back to the State to be reallocated in terms of the provisions of this Act relating to the allocation of such rights.

(7)(a) If the Minister has granted a right contemplated in subsection (6) to a person for a period not exceeding three years, the Minister may once only, at the expiration of

such period, extend the period of validity of the right for a further period not exceeding two years on such terms and conditions as he or she may impose.

(7)(b) The Minister may extend the period of validity of the right in whole or in part, but must have regard to any change in the total allowable catch, the total applied effort determined in terms of section 14 or to both such change and effort.

(8) The Minister may determine sustainable conservation and management measures, including the use of a particular type of vessel or gear, or area of fishing, to which a right may be subject.” and;

(9) A right, licence, permit or exemption which expires or is revoked or cancelled in terms of section 28 of this Act reverts to the state.

(10) The Minister may reallocate rights cancelled or revoked in terms of section 28 of the Act and consider the criteria used when the rights were initially allocated in reallocating those rights or the Minister may refrain from reallocating the rights.

(11) A right in terms of this Act is not a real right and may not be sold, leased, donated or otherwise alienated except with the written approval of the Minister as contemplated in section 21 of the Act.”.

### **Amendment of section 19 of Act 18 of 1998**

13. Section 19 of the principal Act is hereby amended—

(a) by the substitution for the heading of section 19 of the following:

“**19. [Subsistence]Small-scale** fishing“;

(b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) establish areas or zones where **[subsistence]small-scale** fishers may fish; and”;

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) **[after consultation with the Forum, ]**declare—

(i) a specified community to be a fishing community, from which inhabitants may be declared to be **[subsistence]small-scale** fishers; or

(ii) any other person to be a **[subsistence]small-scale** fisher; or”;

(b) by the addition to subsection (1) of the following paragraph:

“**(c) No small-scale fishing right of access or permit shall be transferrable except with the approval of and subject to the conditions determined by the Minister.**”; and

(c) by the substitution for subsection (2) of the following subsection:

“**[No subsistence fishing permit shall be transferable except with the approval of and subject to the conditions determined by the Minister]**The Minister—

(a) must prescribe methods and gear which are approved for small-scale fishing purposes; and

(b) may prescribe methods or gear which may not be used by any person engaged in small-scale fishing.”.

**Amendment of section 21 of Act 18 of 1998**

14. Section 21 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“An application to transfer a commercial fishing right of access or a part thereof **[shall]must** be submitted to the Minister in the manner that the Minister may determine, and subject to the provisions of this Act and any applicable regulation, the Minister may, in writing, approve the transfer of the right of access or a part thereof.”;

(b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) the formula by which a commercial fishing right of access as a portion of the allowable commercial catch, the total applied effort, or a combination thereof, **[shall]must** be determined;”;

(c) by the substitution for paragraph (g) of subsection (3) of the following:

“(g) subject to the provisions of the **[Labour Relations Act, 1995 (Act No. 66 of 1995)]**, number of percentage of the employment of South African persons on board fishing vessels that are used for the utilisation of any right of access;”.

**Amendment of section 22 of Act 18 of 1998**

15. Section 22 of the principal Act is hereby repealed.

**Amendment of section 24 of Act 18 of 1998**

16. The following section is inserted in the principal Act after section 24:

**Performance measuring**

**24A.** The Minister may institute performance measuring processes during the period of any right to ensure that the objective of the fishery or sector are met and may set specific criteria for performance measuring, which may include—

(a) transformation;

(b) investment in vessels or gear;

(c) job creation, fishing performance;

(d) compliance with relevant laws and regulations;

(e) compliance with original right allocation criteria; and

(f) any other relevant criteria.”.

**Amendment of section 25 of Act 18 of 1998**

17. Section 25 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) All rights, permits **[and]**, licences or exemptions in terms of this Act **[shall]must** be granted or issued against the payment of the fees determined by the Minister in consultation with the Minister of Finance.”; and

- (b) by the substitution for subsection (2) of the following subsection:  
 “(2) An application for any right, permit **[or]**, licence or exemption in terms of this Act **[shall] must** be accompanied by an application fee determined by the Minister in consultation with the Minister of Finance.”.

### **Amendment of section 28 of Act 18 of 1998**

18. The following section is hereby substituted for section 28 of the principal Act:

#### **“Cancellation and suspension of rights, licences and permits**

**28.(1) If a holder of any right, licence, permit or exemption in terms of this Act, or their agent or employee—**

(a) has furnished information in the application for that right, licence, permit or exemption, or has submitted any other information required in terms of this Act, which is not true or complete;

(b) contravenes or fails to comply with a condition imposed in the right, licence, permit or exemption;

(c) contravenes or fails to comply with a provision of this Act;

(d) is convicted of an offence in terms of this Act;

(e) fails to utilise that right, licence, permit or exemptions to the satisfaction of the Department; (f) fails to report any changes in the composition or structure of that holder after a right, licence, permit or exemption was granted, and were the changes may have lowered the score given to that holder in the right allocation, licence, permit or exemption process;

(g) no longer meets the criteria in terms of which his or her application for a right was considered in terms of the process used to assess applicants and, if currently assessed in terms of that criteria, his or her application would be unsuccessful;

(h) fails to meet the criteria specified in the sector for a performance review in terms of section 24A for right holders in that sector; or

(i) fails to comply with any payment agreement entered into with the Department for outstanding levies or fees imposed in terms of this Act or other relevant laws,

the Director-General may issue a written notice delivered or sent by registered post to the holder’s last known address.

(2) The Director-General must, in the notice contemplated in subsection (1),—

(a) advise the holder that the Director-General is considering revoking, suspending, amending or reducing the right, licence, permit or exemption;

(b) give reasons why the Director-General considers that doing so is necessary or desirable and specifies the grounds referred to in subsection (1) on which the Director-General relies; and

(c) invite the holder to make representations to the Director-General in relation to the proposed notice referred to in subsection (1) within the period specified in the notice.

(3) The Director-General must after expiry of the period referred to in subsection (2) refer the matter, together with any reason furnished by the holder in question, to the Minister for a decision by the Minister.

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

(a) revoke the right, licence, permit or exemption;

(b) suspend the right, licence, permit or exemption for a period determined by the Minister;

(c) cancel the right, licence, permit or exemption from a date determined by the Minister;

(d) amend the terms or conditions of the right, licence, permit or exemption; or

(e) decide not to revoke, suspend, reduce or amend the right, licence, permit or exemption.

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

**Amendment of section 29 of Act 18 of 1998**

19. Section 29 of the principal Act is hereby repealed.

**Amendment of section 30 of Act 18 of 1998**

20. Section 30 of the principal Act is hereby repealed.

**Amendment of section 31 of Act 18 of 1998**

21. Section 31 of the principal Act is hereby repealed.

**Amendment of section 32 of Act 18 of 1998**

22. Section 32 of the principal Act is hereby repealed.

**Amendment of section 33 of Act 18 of 1998**

23. Section 33 of the principal Act is hereby repealed.

**Amendment of section 34 of Act 18 of 1998**

24. Section 34 of the principal Act is hereby repealed.



**Amendment of section 35 of Act 18 of 1998**

25. Section 35 of the principal Act is hereby repealed.

**Amendment of section 36 of Act 18 of 1998**

26. Section 36 of the principal Act is hereby repealed.

**Amendment of section 37 of Act 18 of 1998**

27. Section 37 of the principal Act is hereby repealed.

**Amendment of section 39 of Act 18 of 1998**

28. Section 39 of the principal Act is hereby amended by the addition of the following subsections:

“(6) no foreign fishing vessel, even if it has been placed on the South African ships register, shall be used to fish for South Africa or in South Africa’s waters if the vessel has been listed as an IUU vessel by any RFMO or country.

“(7) Foreign vessels shall only be licenced to fish for South Africa or in South Africa’s water subject to the approval from the relevant flag state authority of the foreign vessel and under provision of a relevant RFMO.”.

**Amendment of section 42 of Act 18 of 1998**

29. Section 42 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

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

(a) seize, confiscate vessels and products of foreign fishing vessels that have contravened management and conservation measures to which South Africa is a party or co-operating member;

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

([b]c) when such foreign fishing vessel is voluntarily in a port of the Republic, promptly notify the appropriate authorities of the flag state of the vessel accordingly.”; and

(b) by the addition of the following subsection:

“(5) The government of the Republic of South Africa will enforce all management and conservation measures of RFMO, to which South Africa is a party or a co-operating member, as it applies to local fishing vessels as well as foreign fishing vessels visiting any South African port.”.

### Amendment of section 43 of Act 18 of 1998

30. Section 43 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, by notice in the *Gazette*,—

(a) declare an area to be a marine protected area—

(~~(a)~~)i) for the protection of fauna and flora or a particular species of fauna or flora and the physical features on which they depend;

(~~(b)~~)ii) to facilitate fishery management by protecting spawning stock, allowing stock recovery, enhancing stock abundance in adjacent areas, and providing pristine communities for research; or

(~~(c)~~)iii) to diminish any conflict that may arise from competing uses in that area; or

(iv) to promote and regulate non-consumptive uses of marine living resources and marine ecosystems.

(b) prohibit certain activities within a marine protected area, if the Minister has reason to believe that such activities would have an adverse effect on that area; and

(c) determine rules for the conservation and management of a marine protected area.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) ~~[No]~~A person ~~[shall]~~may not in any marine protected area, ~~[without permission in terms of subsection (3)]~~subject to subsection (4)—

(a) fish or attempt to fish;

(b) take or destroy any fauna and flora other than fish;

(c) dredge, extract sand or gravel, discharge or deposit waste or any other polluting matter, or in any way disturb, alter or destroy the natural environment;

(d) construct or erect any building or other structure on or over any land or water within such a marine protected area; or

(e) carry on any activity which may adversely impact on the ecosystems of that area.”;

(c) by the addition of the following subsection:

“(4) The Minister may, by notice in the *Gazette*, establish different zones to regulate different activities in a marine protected area.”.

### Insertion of section 43A of Act 18 of 1998

31. The following section is hereby inserted in the principal Act after section 43:

#### **Release of marine living resources**

**43A.(1) A person may only harvest, catch or release a marine living resource which is capable of surviving in coastal waters, into coastal waters or in any other place from which it could enter coastal waters, with—**

**(a) a permit issued by the Minister; or**

(b) a permit issued in terms of section 65 of the National Environmental Management: Biodiversity Act in relation to an alien species.

(2) For the purposes of subsection (1) the term “release” does not include the introduction of a marine living resource into a cage or other structure that is adequate to prevent the escape and accidental release of the marine living resource into the environment.

(3) The Minister may issue a permit authorising the release of an alien species of marine living resource only if the release—

(a) has been authorised in terms of the National Environmental Management: Biodiversity Act, or

(b) is simultaneously authorised under this Act and the National Environmental Management: Biodiversity Act by means of an integrated authorisation.”

#### **Amendment of section 45 of Act 18 of 1998**

32. The following section is hereby substituted for section 45 of the principal Act:

“45. A person may not use, possess or have control of any—

(a) large-scale high seas driftnet that exceeds 2,5 kilometer in length

(b) net or trap, the mesh size of which does not conform to the prescribed minimum mesh size; or

(c) gear which—

(i) is prohibited in terms of this Act; or

(ii) does not conform to the standards that may be prescribed for that type of gear.”

#### **Amendment of section 52 of Act 18 of 1998**

33. Section 52 of the principal Act is hereby amended by the substitution for section 52 of the following:

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

(a) stop, board and search outside South African waters, any foreign fishing vessel which he or she has reasonable grounds to believe has been used in the commission of an offence in terms of this Act in South African waters or has contravened another state’s law or management and conservation measure of an RFMO to which South Africa is a party or co-operating member and bring such vessel and all persons and things on board to any place, port or harbour in the territory of the Republic; and

(b) exercise beyond South African waters all the powers conferred on a fishery control officer in terms of this Act.”

### Insertion of section 52A of Act 18 of 1998

34. The following section is inserted in the principal Act after section 52:

**“Illegal, Unregulated an Unreported fishing**

**52A.(1) A fishery control officer may, without a warrant, arrest any South African person whom he or she has reasonable grounds to suspect to have been involved in an offence or supporting activities on board of a foreign vessel engaged in IUU fishing.**

**(2) Any foreign vessel that have contravened RFMO management and conservation measures or have engaged in IUU fishing or is an IUU-listed vessel or have failed to provide information requested by the Department is denied entry to South African ports.**

**(3) A foreign fishing or reefer vessel may not enter the South African contiguous zone, territorial waters or ports without prior authorisation issued by the Department.**

**(4) A foreign fishing or reefer vessel may only enter into Cape Town, Port Elizabeth and Durban harbours with prior written authorisation issued by the Department.**

**(5) A person may not import fish or fish products that have been caught in contravention of RFMO management and conservation measures or caught illegally and in contravention of the laws of another state.”.**

### Amendment of section 58 of Act 18 of 1998

35. Section 58 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

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

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

(i) a provision of section 13 including any conditions that may be imposed by the Minister;

(ii) the conditions of any right of access, other right, licence or permit granted or issued in terms of Part 1, 2 or 3 of Chapter 3; [or]

(iii) section 43A(1);

**[(iii)](vi) an authorisation to undertake fishing or related activities in terms of Part 6 or 7 of Chapter 3, but excluding section 39(5); or**

**[vi](v) the provisions of an exemption in terms of section 81 including any conditions that may be imposed by the Minister; or**

(b) contravenes any other provision of this Act,

**[shall be]is guilty of an offence and liable on conviction to a fine not exceeding two million rand, or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.”;**

(b) by the substitution for subsection (2) of the following subsection:

“(2) Any person who contravenes—

(a) a provision of an international conservation and management measure inside or outside South African waters, or otherwise fails to comply with

any provision of Part 7 of Chapter 3, **[by means of a vessel registered in the Republic]**; or

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

**[shall be]**is guilty of an offence and liable on conviction to a fine not exceeding **[three]five** million rand or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.”;

(c) by the insertion after subsection (2) of the following:

“(2A) Subject to subsection (6), any person who imports, possesses, stores, transports, sells, buys, or exports any marine living resource or fish product or marine aquaculture product that was caught, processed, Possessed, stored, transported, sold, bought, or exported in contravention of any foreign law is guilty of an offence and liable on conviction of a fine not exceeding five million rand or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.”;

(d) by the substitution of subsection (4) of the following subsection:

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

(e) by the addition after subsection (4) of the following:

“(5) Evidence that a person was found in possession of gear within the coastal zone or marine aquaculture **[shall be]**is sufficient evidence that that person was unlawfully attempting to fish or to engage in an activity that can reasonably be expected to result in the taking of fish, unless that person proves that—

(a) he or she had a permit or other lawful authorisation to use that gear in that place; or

(b) it is reasonable possible that he or she was not engaged in such an unlawful act.

(6) It is a defence for any person charged with contravening (2A) to prove that—

(a) he or she took reasonable measures to determine whether or not the marine living resource, fish product in question had been caught, processed, possessed, stored, transported, sold, bought, or exported in contravention of any foreign law and that a reasonable person in the circumstances would have been satisfied that no such contravention had occurred; and

(b) it is reasonably possible that he or she did not know that such a contravention of foreign law had occurred.”.

### **Amendment of section 62 of Act 18 of 1998**

**36.** Section 62 of the principal Act is hereby amended by the insertion after subsection (2) of the following:

“(2A). A court may refuse to release the vessel, vehicle or aircraft on security if—

(a) that vessel, vehicle or aircraft is needed to complete the investigation;

(b) that vessel, vehicle or aircraft was or is used repeatedly in the commission of offences under this Act;

(c) the offence in terms of which that vessel, vehicle or aircraft is taken, seized or detained is, in the opinion of the court, deemed to be a serious offence, or  
(d) any other relevant factors, in the opinion of the court, warrant such refusal.”.

#### **Amendment of section 68 of Act 18 of 1998**

37. Section 68 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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

#### **Amendment of section 76 of Act 18 of 1998**

38. Section 76 of the principal Act is hereby amended by the substitution of subsection (1) for the following subsection:

“(1) The Minister must, by notice in the *Gazette*, designate any device or machine or class of device or machine as an observation device.”.

#### **Insertion of section 77A in Act 18 of 1998**

39. The following section is hereby inserted in the principal Act after section 77:

##### **“Admission of guilt fines**

77A.(1) The Minister may by regulation specify offences contemplated in section 57 in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence.

(2) A fishery control officer who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue a written notice referred to in section 56 of the Criminal Procedure Act, 1997 (Act No. 51 of 1977) to the alleged offender

(3) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount —

(a) prescribed for the offence; and

(b) which a court would presumably have imposed in the circumstances.

(4) The provisions of sections 56, 57 and 57A of the Criminal Procedure Act, 1977, apply with the necessary changes as the context may require, to written notices and admissions of guilt fines referred to in this section.”.

### **Amendment of Section 78 of Act 18 of 1998**

40. Section 78 of the principal Act is hereby amended by the substitution of the section for the following section:

**“Assignment of administration of matters pertaining to marine living resources to MECs**

**78.** The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with an MEC responsible for marine living resources, in writing assign a matter or matters relating to the administration of matters pertaining to marine living resources to the MEC concerned.”.

### **Insertion of sections 78A, 78B, 78C, 78D, 78E and 78F in Act 18 of 1998**

41. The following sections are inserted in the principal Act after section 78:

**“Delegation of powers and assignment of duties by Minister to MECs**

**78A.(1)** The Minister may, in his or her discretion, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with a MEC responsible for marine living resources, in writing delegate any power or assign any duty conferred on him or her by or under this Act, other than the power to—

**(a)** publish a notice contemplated in sections 42(4), 43, 74 and 76; and

**(b)** make regulations contemplated in sections 21(3) and 77,

to the MEC concerned.

**(2)** Such delegation or assignment, as the case may be, does not prevent the carrying out of the assigned duty by the Minister.

**(3)** The Minister may at any time withdraw or amend, in writing, a delegation or assignment as contemplated in subsection (1).

**(4)** The delegation of any power or the assignment of any duty does not divest the Minister of the accountability concerning the carrying out of the assigned duty.

**Inventory of assignments and delegations**

**78B.(1)** The Minister, and at provincial level, every MEC, must establish and maintain an inventory of all assignments and delegations made in accordance with this Act by the Minister to—

**(a)** an MEC;

**(b)** the head of the Department;

**(c)** an official of the Department;

**(d)** an official of another Department of the National Government or a Provincial Government, as the case may be; and

**(e)** an entity established as contemplated in this Act.

**(2)** The inventories contemplated in this section must also include all sub-delegations.

(3) The head of the Department and the head of every Provincial Department must publish an updated version of the inventory contemplated in this section on the departmental website concerned on the first day of every financial year.

(4) The inventories contemplated in this section must be available for inspection and copying by any person, at all reasonable times.

#### **Assignment between spheres of government**

**78C.**(1) In the event that the Minister, in his or her discretion, decides to effect an assignment as contemplated in this Act, such assignment must be in accordance with the assignment and delegation framework that must be developed by the Minister in consultation with all the MECs responsible for marine living resources, and published in the *Gazette* within a period not exceeding six months after the commencement of this Act.

(2) Any person or entity effecting an assignment must—

- (a) ensure the availability of sufficient funding and other resources required for the full and effective implementation of such assignment; and
- (b) monitor and review its implementation.

#### **Legal effect of delegation of power**

**78D.**(1) The delegation of a power does not prevent a competent authority from exercising that power, subject to subsection (3).

(2) The delegation of a power does not relieve the competent authority from accountability for the exercise of the power.

(3) When an MEC exercises a power that has been delegated to him or her, the exercise of the power has the same force as if it had been exercised by the competent authority.

(4) Any activity in the exercise of a power by an MEC, which was carried out within the scope of the delegation, remains in force and is not invalid by reason—

- (a) of the competent authority electing subsequent to the activity contemplated in this subsection, to exercise that power; or
- (b) a subsequent amendment to, or withdrawal of, the delegation.

#### **Delegation proceedings in writing**

**78E.**(1) All proceedings relating to any delegation contemplated in this Act, must be in writing.

(2) The record of proceedings contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times.



**Record of delegations**

78F.(1) Both the competent authority and the organ of state to whom a power has been delegated, must compile and maintain an updated inventory of all delegations made as contemplated in this Act, as contemplated in section 78E.

(2) The inventory contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times.”.

**Amendment of section 79 of Act 18 of 1998**

42. Section 79 of the principal Act is hereby repealed.

**Amendment of section 80 of Act 18 of 1998**

43. Section 80 of the principal Act is hereby amended by the substitution of the section for the following section:

**“Establishment of Marine Living Resources Review Board**

80.(1) The Marine Living Resources Review Board is hereby established.

(2) The Marine Living Resources Review Board is an independent body which—

(a) has jurisdiction in all the provinces of the Republic; and

(b) may conduct hearings anywhere in the Republic.

(3) The Marine Living Resources Review Board consists of a chairperson, a deputy chairperson and three other members.

(4) The Chairperson of the Marine Living Resources Review Board must have at least—

(a) an LLB degree conferred by a South African University,

(b) 15 years' legal experience as a—

(i) retired judge;

(ii) senior advocate in private practice; or

(iii) legal academic with professorial status employed at a South African University.

(5) The deputy chairperson and the other three members must have at least—

(a) an appropriate Honours degrees conferred by a South African University; and

(b) 15 years' experience in marine resources management and related fields of knowledge: Provided that the persons contemplated in this subsection may, for the last five years, not have been employed in any or more of the three spheres of government or in an organ of state, excluding a higher education institution.

(6) The chairperson, the deputy chairperson and the other members of the Marine Living Resources Review Board are appointed by the Minister.

(7) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the other members must be appointed in a part-time capacity.”

(8) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other members of the Marine Living Resources Review Board in consultation with the Minister of Finance.”.

#### **Insertion of sections 80A, 80B, 80C and 80D in Act 18 of 1998**

44. The following sections are inserted in the principal Act after section 80:

##### **“Operation of Marine Living Resources Review Board**

**80A.**(1) Administrative support for the Marine Living Resources Review Board must be provided by officials of the Department designated by the head of the department, subject to the laws pertaining to the secondment of officers in the Public Service.

(2) The expenditure of the Marine Living Resources Review Board must be defrayed out of money appropriated by Parliament for that purpose or from any other source.

(3) The Marine Living Resources Review Board, the chairperson, the deputy chairperson or any other member is not liable for an act or omission committed in good faith while performing a function in terms of this Act.

##### **Submission of review applications to Marine Living Resources Review Board**

**80B.**(1) Following a decision by the Minister or his or her delegatee, or the head of department or his or her delegatee, any person or entity who has a direct interest in such decision, may submit an application in writing in the prescribed format to the Marine Living Resources Review Board to have such matter reviewed.

(2) An application for review must be commenced within 30 days after—

- (a) notice of the decision is sent to the appellant; or
- (b) reasons for the decision are given, whichever occurs last.

(3) The chairperson must make rules which—

- (a) govern the procedure of the Marine Living Resources Review Board, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Marine Living Resources Review Board; and
- (b) must be approved and published in the *Gazette* by the Minister.

##### **Decisions of Marine Living Resources Review Board**

**80C.**A decision of the Marine Living Resources Review Board—

- (a) is final
- (b) must, together with the reasons for the decision, be communicated in writing to the all the parties involved in the review application as contemplated in section 80B.

**Appeals from decisions of Marine Living Resources Review Board**

80D.(1) A party to a matter in which the Marine Living Resources Review Board has given a decision on review under section 80C, may appeal to a High Court against that decision.

(2) The appeal must be noted in writing within 21 days after the decision of the Marine Living Resources Review Board has been communicated in accordance with subsection 4 to all the parties involved in the review application.

(3) The notice of appeal must—

(a) set out the grounds for the appeal;

(b) be lodged with the relevant High Court and with the Marine Living Resources Review Board; and

(c) be served on every party to the matter.

(4) The appeal must be prosecuted as if it were an appeal from a magistrate's court to a High Court.”

**Amendment of section 81 of Act 18 of 1998**

45. Section 81 of the principal Act is hereby amended by the substitution of subsection (2) for the following subsection:

“(2) Notwithstanding section 28(1) if in the opinion of the Minister there are sound reasons to do so, [A]an exemption granted in terms of subsection (1) may [at any time] be [cancelled]revoked, suspended, reduced or amended[ by the Minister].”

**Amendment of section 83 of Act 18 of 1998**

46. Section 83 of the principal Act is hereby amended by the substitution of the section for the following:

“The Minister may, notwithstanding the provisions of this Act, permit any scientific investigation or [practical experiment]activity.

**Insertion of sections 85A, 85B, 85C, 85D, 85E, 85F, 85G, 85H, 85I,85J, 85K, 85L, 85M and 85N in Act 18 of 1998**

47. The following sections are inserted in the principal Act after section 85:

**“Monitoring, evaluation and assessment and reporting**

**85A.** The Minister must, by notice in the Gazette and within six months after commencement of this Act, taking into account national and provincial norms and standards, publish a framework—

(a) providing for the minimum norms and standards in respect of the procedures for, and the frequency of, monitoring, evaluation and assessment of all matters relating to marine living resources; and

(b) establishing the necessary mechanisms, processes, procedures and indicators, to report on, monitor, evaluate, assess, and determine the impact of the exercise of powers, the performance of functions and the execution of duties in terms of this Act and any other law by entities in the public and private marine living resources sector.

### **Performance auditing**

**85B.**(1) All programmes and projects executed, grants allocated, funds allocated, delegations or assignments effected, service level agreements or public private partnerships entered into, or any other administrative action performed in terms of this Act, are subject to monitoring, evaluation, impact assessment and the submission of a written report by the structures as established in terms of section 85E of this Act.

(2) The structures established in terms of section 85E of this Act must—

(a) in respect of national and provincial frameworks for monitoring, evaluation and impact assessment—

(i) be guided by such frameworks;

(ii) develop structures and systems as required in terms of such frameworks; and

(iii) submit reports as required in terms of such frameworks; and

(b) take into account any written—

(i) report that must be submitted from time to time by an marine living resources organisation; and

(ii) submission, which relates to the provision of marine living services by an organisation, made by any interested party.

(3) On receipt of the written report referred to in subsection (1), every Head of a Department—

(a) may take whatever steps he or she may deem appropriate;

(b) must inform the Minister or the MEC, as the case may be, in writing of the steps he or she has taken, and of the reasons for such steps; and

(c) must inform the organisation concerned in writing of the steps he or she has taken, and of the reasons for such steps.

### **National monitoring of provinces**

**85C.**(1) The Minister must, in consultation with the MECs responsible for marine living resources, establish mechanisms, processes and procedures to monitor Provincial Governments in respect of their performance of the marine living resources function.

(2) In the event of the National Department submitting a report to the Minister in respect of the non-delivery or the insufficient delivery of marine living resources services by a Provincial Government, the Minister may, after consultation with the MEC responsible for marine living resources—

(a) issue a directive to the Provincial Government concerned describing the extent of its failure to provide the specified marine living resources service and

stating any steps the Provincial Government must follow in order to meet its required obligations; or

(b) determine that one or more specified provincial marine living resources services must be performed by the National Department or a marine service provider or a marine living resources service provider appointed by the national Department, for such period and subject to such conditions as the Minister may determine.

(3) In the event of the Minister electing to proceed in terms of subsection (2)(b), the Minister must send written notice to the Provincial Government informing the Provincial Government of—

(a) the nature and extent of services to be performed by the National Department or marine living resources service provider;

(b) the reason(s) for the taking over of the performance of the specified service(s); and

(c) the date on which the service will be taken over.

#### **Applicability of intergovernmental relations framework policy and legislation**

85D. All intergovernmental relations in respect of matters pertaining to marine living resources markets between the Department and every MEC responsible for marine living resources are governed by the relevant national policy framework and legislation, as well as provincial transversal policy framework and legislation regulating intergovernmental relations.”

#### **Governance and other structures**

85E.(1) The Minister may, at the request of an , a provincial Head of Department, or at the Minister’s own discretion, establish by notice in the *Gazette*, one or more governance and other structures to assist in the promotion of the objects and the realisation of the provisions of this Act.

(2) The notice contemplated in subsection (1) must stipulate—

(a) the composition of the structure concerned;

(b) membership of the structure;

(c) the terms of reference;

(d) procedural matters;

(e) reporting requirements; and

(f) any other matter that the Minister may deem appropriate for the effective functioning of such structure.

#### **Categories of structures**

85F. The structures contemplated in section 85E are—

(a) governance structures consisting of the National Department, Provincial Government departments, organs of state, and public entities;

(b) stakeholder consultative forums consisting of the National Department, marine living resources service providers and other interest groups, and in the

discretion of the Minister, also other provincial government departments, organs of state, and public entities; and  
(c) any other structures that the Minister may establish by notice in the *Gazette*.

### **Powers, functions and duties of structures**

**85G.** The structures established in terms of section 85E—

- (1) must, in respect of their specific functional domain, advise the Minister on—
- (a) marine living resources policy;
  - (b) achieving operational uniformity of marine living resources programmes, projects and services;
  - (c) any matter related to marine living resources or the rendering of marine services in relation to which the Minister requests advice;
  - (d) any other function related to the objects and other provisions of this Act as determined in the establishment notice of the structure concerned;
  - (e) any other matter related to the objects and other provisions of this Act as requested by the Minister; and
  - (f) the performance of any other function or the execution of any duty imposed on it by this Act or any other law;
- (2) must—
- (a) liaise with national and provincial organisations concerned with marine living resources or the rendering of marine living resources services; and
  - (b) exercise any power, perform any functions and execute any duty conferred on it by this Act or any other law; and
- (3) may generally do everything which is deemed necessary or expedient to achieve the objects of this Act as referred to in subsection (1).

### **Dissolution and reconstitution of structures**

**85H.** The Minister may, after consultation with the structure concerned, at any time, by notice in the *Gazette*, dissolve or reconstitute any of the structures provided for in section 85E.

### **Establishment and composition of Intergovernmental Forum on Marine Living Resources**

**85I.(1)** The Intergovernmental Forum on Marine Living Resources is hereby established.

(2) The Intergovernmental Forum on Marine Living Resources consists of the—

- (a) Ministers responsible for—
- (i) Agriculture, Forestry and Fisheries;
  - (ii) Environmental Affairs;
  - (iii) Finance;
  - (iv) Rural Development and Land Reform;
  - (v) Trade and Industry;
  - (vi) Health;
  - (vii) Intergovernmental Relations and Cooperation;
  - (viii) Public Works;

- (ix) Transport;
- (x) South African Police Services;
- (xi) Water Affairs; and
- (b) Chairperson of the National Planning Commission.

### **Powers, functions and duties of Intergovernmental Forum on Marine Living Resources**

85J. The Intergovernmental Forum on Marine Living Resources must ensure cooperation between national and provincial government departments responsible for, or involved in, matters pertaining to marine living resources and related matters.

#### **Public participation and coordination**

85K.(1) The Minister, in consultation with the MECs responsible for marine living resources within each province, must, in respect of the development and coordination of marine resources, as regards—

- (a) the formulation of policy;
- (b) the drafting of legislation;
- (c) the determination of priorities; and
- (d) the establishment of structures,

implement systems to provide for consultation and inclusive participation of civil society, communities, individuals, and organs of state.

(2) The Minister, in consultation with the MECs responsible for marine living resources within each province, must, in respect of the development and coordination of marine living resources at national and provincial level, take into consideration—

- (a) the national policy and statutory framework; and
- (b) the transversal provincial policy and statutory framework as applicable in the province concerned.

#### **Administrative justice**

85L. The national Department responsible for marine living resources, every provincial department responsible for marine living resources and every intergovernmental government structure established as contemplated in this Act, must exercise its powers, perform its functions and carry out its duties in full compliance with the constitutional, national legislative and common law framework relating to administrative justice.

#### **Promotion of access to information**

85M. The national Department responsible for marine living resources, every provincial department responsible for marine living resources and every intergovernmental structure established as contemplated in this Act, must comply with the constitutional and national legislative framework that promotes access to information.

**Act, Regulations and Notices to be maintained and copies to be made available**

**85N.** The Minister must ensure that an electronic version of this Act and all Regulations made under, and all notices issued in terms of, this Act, are—

- (a) maintained and updated on a monthly basis; and
- (b) made available to the public at large for their access and perusal, which may be downloaded electronically in digital format free of charge.”.

**Short title and commencement**

**48.** 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*.

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