



REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

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# GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1241.

6 Mei 1992

No. 1241.

6 May 1992

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:—

No. 57 van 1992: Wysigingswet op Seevisserij, 1992.

No. 57 of 1992: Sea Fishery Amendment Act, 1992.

**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.

# ACT

To amend the Sea Fishery Act, 1988, so as to alter certain definitions; to redefine the power of the Minister of Environment Affairs to determine a certain general policy regarding the South African living marine resources; to make different provision in relation to the delegation of certain powers by the said Minister; to extend the powers of the Quota Board; to regulate anew the granting of certain rights of exploitation; to extend the said Minister's power in relation to the development of fishing harbours; to make different provision in relation to certain levies on fish and fish products and certain other marine resources; to extend the grounds upon which applications for certain licences may be refused and certain licences may be suspended or cancelled; to regulate anew the making of certain regulations by the said Minister; to make provision that the Director-General: Environment Affairs be furnished with certain particulars in relation to fish or fish products that have been exported; to make different provision in relation to the issue of certain permits and the determination of the fees payable for such permits; to render certain acts punishable; and to effect certain textual adjustments; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)  
(Assented to 26 April 1992.)*

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

**Amendment of section 1 of Act 12 of 1988, as amended by section 1 of Act 98 of 1990**

- 5    **1.** Section 1 of the Sea Fishery Act, 1988 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution for the definition of “fishing boat” of the following definition:
- 10                    “ ‘fishing boat’ means any vessel which is used by a fisherman for catching fish **[in the sea]** or which is used for the transport or processing of **[such]** fish caught by a fisherman;”;
- (b) by the substitution for the definition of “licence” of the following definition:
- “ ‘licence’ means a licence issued in terms of this Act;”;
- 15    (c) by the substitution for the definition of “master” of the following definition:
- “ ‘master’, in relation to a fishing boat or vessel, means—
- (a) the person having command or control of **[a]** the fishing boat or vessel; or

- (b) the person having control of the catching of fish from the fishing boat or vessel;”;
- (d) by the substitution for the definition of “Minister” of the following definition:  
 5 “Minister’ means the Minister of Environment Affairs **[and of Water Affairs]**”;
- (e) by the substitution for the definition of “permit” of the following definition:  
 10 “permit’ means a permit issued in terms of this Act;”;
- (f) by the substitution for the definition of “quota” of the following definition:  
 15 “quota’ means the maximum mass or quantity of fish of a particular species allocated to **[an exploiter]** a person which he may catch or receive or in any other manner obtain during a specified period **[and in a defined area]** and may utilize on the authority of a permit;”;
- (g) by the substitution for the definition of “right of exploitation” of the following definition:  
 20 “right of exploitation’ means a right to utilize living marine resources or aquatic plants for commercial purposes on the authority of a permit;” and
- (h) by the substitution for the definition of “sea” of the following definition:  
 25 “sea’ means the water and the bed of the sea within the fishing zone, including **[a]** the sea-shore **[and (b)]**, but excluding the water and the beds of tidal rivers and tidal lagoons;”.

#### Amendment of heading to Part I of Act 12 of 1988

2. The heading to Part I of the principal Act is hereby amended by the deletion of the word “OPTIMAL”.

#### 30 Substitution of section 2 of Act 12 of 1988

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

##### “Minister may determine general policy

35 2. The Minister may from time to time by notice in the *Gazette* determine the general policy with regard to the conservation and **[optimal]** utilization of the South African living marine resources to be applied with a view to **[(a) the protection of the marine ecology; and (b) the [promotion] protection and [sustained] sustainable** utilization of the **[sea, its] marine ecosystem and living marine** 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.”.

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#### Amendment of section 4 of Act 12 of 1988

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

“(a) delegate any power 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; and”.

#### 50 Amendment of section 18 of Act 12 of 1988

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

“(1) The functions of the board are to—

55 (a) recommend to the Minister for his approval guide-lines for the determination of quotas and the granting of rights of exploitation; **[and]**

- (b) allocate quotas on application to **[exploiters] persons** in the different branches of the fishing industry, subject to subsection (3) and section 19, on the conditions determined by the board and in accordance with the approved guide-lines;
- 5 (c) grant rights of exploitation in terms of section 25 and in accordance with the approved guide-lines."

#### Amendment of section 21 of Act 12 of 1988

6. Section 21 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- 10 "(1) The board may with regard to the allocation of quotas and the formulation of guide-lines for the allocation of quotas request the director-general to inquire into any matter in order to enable the board to perform its functions properly."

#### Amendment of section 24 of Act 12 of 1988

15 7. Section 24 of the principal Act is hereby amended—

- (a) by the substitution for subsections (3) and (4) of the following subsections, respectively:

20 "(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] board** for such transfer and supply the prescribed information.

25 (4) If the proposed transfer complies with the guide-lines referred to in subsection (1), the **[director-general] board** may approve the application **[and amend the register referred to in section 23 accordingly]**."; and

- (b) by the addition of the following subsection:

30 "(5) The board must inform the director-general of every transfer, and the director-general must amend the register referred to in section 23 accordingly."

#### Amendment of section 25 of Act 12 of 1988

8. Section 25 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

35 "(2) New entrants to any branch of the industries referred to in subsection (1), shall—

(a) where the branch concerned is not controlled by way of quotas, apply to the Minister in the prescribed manner for the granting of a right of exploitation **[in the prescribed manner]**;

40 (b) where the branch concerned is controlled by way of quotas, apply to the board in the prescribed manner for the granting of a right of exploitation,

and the Minister or the board, as the case may be, may approve such application subject to the conditions determined by **[him] the Minister or the board**, or refuse it.

45 (3) A right of exploitation—

(a) shall be granted **[by the Minister]** for a specified period **[on the conditions determined by him]**, and the exploiter shall, before the lapse of such period, apply in the prescribed manner for the extension of such right;

50 (b) shall only be alienated with the prior approval of the Minister or the board, as the case may be, on the conditions determined by **[him] the Minister or the board**, and such alienation may only take place if the quota (if any), or a portion thereof, or any permit, connected with the right of exploitation, is also transferred to the same person; and

55 (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.”.

#### Amendment of section 26 of Act 12 of 1988

5 9. Section 26 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(?) The Minister may within or outside any fishing harbour, in 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  
10 buildings, works and facilities which in the opinion of the Minister are necessary for the promotion of the interests of the fishing industry or not detrimental to such interests, and may allow that such buildings, works and facilities be erected, acquired, maintained or controlled by another person.”.

#### 15 Amendment of section 29 of Act 12 of 1988

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

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

“(a) shall contain the amount of the levy **[the names of the exploiters or participants in the industry in question by whom]** and the times and places at which 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]**.”.

(b) by the deletion of the word “and” at the end of paragraph (d) of subsection (2); and

(c) by the addition to subsection (2) of the following paragraph:

“(f) may at any time be amended or withdrawn by the Minister by notice in the *Gazette*.”.

#### Amendment of section 30 of Act 12 of 1988

35 11. Section 30 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) The director-general may refuse to approve an application for a licence if he is satisfied that—  
40 (i) information furnished in the application is incorrect or incomplete; **[or]**  
(ii) in the case of a vessel, the vessel in question is not intended for use as a fishing boat or factory; or  
45 (iii) the approval of the application will not be in the interest of the fishing industry or a resource in question in the fishing industry.”;

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

“(i) it is in the interest of the fishing industry or a resource in question in the fishing industry that the **[further]** licensing of additional vessels as fishing boats, in general or in respect of a specified area or place, should not be allowed;”;

(c) by the substitution in paragraph (b) of subsection (4) for the words following on subparagraph (iii) of the following words:

55 “he may direct the director-general to discontinue, until he directs otherwise, the licensing of **[further]** additional vessels in general or, as the case may be, in respect of that area, place or fishing harbour.”; and

(d) by the substitution for subsection (7) of the following subsection:

“(7) The director-general may—

(a) if the licensee of a fishing boat fails to comply with a condition referred to in subsection (5)(b) or 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; or

(c) if such licensee, without the written permission of the director-general, fails to use the vessel in question as a fishing boat for a continuous period of 12 months or longer,

by notice sent by registered post to **[his]** the last known address of the licensee, cancel **[or suspend]** the licence in question, or suspend it for such period as he may deem fit.”.

#### Repeal of sections 31, 32, 33 and 35 of Act 12 of 1988

12. Sections 31, 32, 33 and 35 of the principal Act are hereby repealed.

#### Amendment of section 36 of Act 12 of 1988, as amended by section 7 of Act 98 of 1990

13. Section 36 of the principal Act is hereby amended by the deletion of subsections (1), (2), (3), (4), (5) and (6).

#### Amendment of section 37 of Act 12 of 1988, as amended by section 8 of Act 98 of 1990

14. Section 37 of the principal Act is hereby amended—

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

“(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, with the particulars mentioned in respect of fish or fish products which such person has available for export or has exported.”; and

(b) by the deletion of subsection (4).

#### Amendment of section 39 of Act 12 of 1988

15. Section 39 of the principal Act is hereby amended—

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

“(a) be issued for **[an indefinite or]** a specified period, which shall be stated in the permit;” and

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

“(c) be issued subject to the payment of the **[prescribed]** fees (if any) **[or the fees]** determined by **[agreement]** the Minister with the approval of the Minister of Finance [as the case may be].”.

#### Amendment of section 41 of Act 12 of 1988

16. Section 41 of the principal Act is hereby amended by the deletion of subsection (1).

#### Amendment of section 45 of Act 12 of 1988, as amended by section 9 of Act 98 of 1990

17. Section 45 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
“The Minister may after consultation with the advisory committee make regulations with regard to—”;
- 5 (b) by the insertion of the following paragraph after paragraph (a) of subsection (1):  
“(aA) the prohibition of the possession or use of any implement or kind of implement for the catching of fish or fish belonging to a particular species or category, in general or within a defined area, indefinitely or during a specified period, unless the implement has been licensed and a permit for its use has been issued by the director-general;”;
- 10 (c) by the substitution for paragraph (j) of subsection (1) of the following paragraph:  
 15 “(j) access to, or prohibition from access to, and the use of a fishing harbour or any part thereof by [vessels other than fishing boats or factories licensed in terms of this Act] any vessel or vehicle;”;
- (d) by the insertion of the following paragraph after paragraph (k) of subsection (1):  
 20 “(kA) the regulation of and control over the artificial reproduction and breeding of marine species;”;
- (e) by the substitution for paragraph (l) of subsection (1) of the following paragraph:  
 25 “(l) research and development regarding the protection and utilization of marine resources;”; and
- (f) by the insertion of the following paragraphs after paragraph (l) of subsection (1):  
 30 “(lA) the prohibition that fish or fish belonging to a particular species or category—  
     (i) be caught or disturbed, in general or in a defined area, indefinitely or during a specified period, by any person or any category of persons;  
     (ii) be landed at a place other than a specified place;  
 35 (iii) be caught, disturbed, possessed or transported unless the fish complies with any specified requirements with regard to length, mass or any other specified biological characteristic or state;  
     (iv) be caught otherwise than in a specified manner;  
 40 (v) be caught or disturbed by means of a specified implement or in a specified manner,  
     except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him in the permit;
- 45 (lB) the prohibition that more than a specified quantity or mass of any fish, or fish belonging to a particular species or category, be caught, disturbed, possessed or transported during the course of any or a specified year or any other period, in general or within a defined area, by any person or fisherman or fishing boat or by all the participants in the fishing industry jointly, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him in the permit;
- 50 (lC) the prohibition of any fisherman or the master of any fishing boat from catching or attempting to catch fish in any manner unless—  
 55 (i) such fisherman or master furnishes the director-general with prescribed information;  
     (ii) in the case of a fishing boat, an observer designated by the director-general is present on the boat and prescribed tracking apparatus has been installed on board;
- 60 (lD) the prohibition of the supply of ships’ stores, excluding medical supplies, without the approval of the Minister or

- otherwise than in accordance with conditions determined by him, to a fishing boat, factory or vessel registered or licensed in a foreign state and used as a fishing boat or factory;
- 5 (E) the prohibition that fish or fish belonging to a particular species or category or any product of such fish, in general or in a defined area, indefinitely or during a specified period—
- 10 (i) be sold or offered for sale or delivered by any or a specified person or any category of persons to any other person or to any person belonging to any category of persons;
- 15 (ii) be purchased or acquired or received by any or a specified person or any category of persons from any person or from a person belonging to any category of persons, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him in the permit;
- 20 (F) the prohibition that fish or fish belonging to a particular species or category be processed in a factory, in general or in a defined area, indefinitely or during a specified period, except on the authority of a permit issued by the director-general and in accordance with the conditions determined by him in the permit.”.

25 **Amendment of section 47 of Act 12 of 1988, as amended by section 10 of Act 98 of 1990**

18. Section 47 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
- 30 “(g) contravenes the provisions of **[sections 30(1) and (6) and 38(1) or of a notice issued in terms of section 31, 33, 35, 36 or 37]** section 30(1) or (6) or 38(1) or of a regulation made under section 37(1) or fails to comply with an order referred to in section 21(3)(a), 37(2) or 42;”;
- 35 (b) by the substitution for paragraph (i) of subsection (1) of the following paragraph:
- 40 “(i) returns to the sea or allows to be returned to the sea or abandons in any other place any edible **[and]**, usable or marketable dead fish, either whole or in processed form, and thus causes the fish to be wasted or to create a pollution hazard;”.

**Amendment of section 48 of Act 12 of 1988, as amended by section 11 of Act 98 of 1990**

19. Section 48 of the principal Act is hereby amended by the substitution for 45 paragraphs (a) and (b) of subsection 4 of the following paragraphs, respectively:
- “(a) in the case of section 52(4)(a), declare the vessel, implement, fish **[or]** and fish products;
- (b) in the case of section 52(4)(b), declare the implement, fish **[or]** and fish products.”.

50 **Amendment of section 52 of Act 12 of 1988, as amended by section 13 of Act 98 of 1990**

20. Section 52 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) **[Subject to the provisions of sections 29, 31, 33 and 35 the]** 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]** is permitted, subject to the provisions of this section, to operate as a fishing boat or factory within the fishing zone, excluding the territorial waters.”.

**5 Substitution of long title of Act 12 of 1988**

21. The following long title is hereby substituted for the long title of the principal Act:

**“ACT**

10           To provide for the conservation of the marine **[ecology]** ecosystem 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.”.

**Short title and commencement**

15    **22.** This Act shall be called the Sea Fishery Amendment Act, 1992, and shall come into operation on a date determined by the State President by notice in the *Gazette*.