

SEA FISHERY ACT 12 OF 1988[/SAPL4]

NOTE: The whole of this Act was repealed by section 84 (1) of the Marine Living Resources Act 18 of 1998, except section 1 in its application to sections 29, 38, 47* and 50 (1), (2) and (3), section 29, section 38 except in its application to shells, section 47 except in its applications to sections 29 and 38 and sections 48 and 50 (1), (2) and (3) except in their application to shells. Sections 1, 29, 38, 47, 48 and 50 (1), (2) and (3) are reproduced below.

[ASSENTED TO 14 MARCH 1988] [DATE OF COMMENCEMENT: 1 JULY 1990]

(Unless otherwise indicated)

(English text signed by the State President)

as amended by

Sea Fishery Amendment Act 98 of 1990

Sea Fishery Amendment Act 57 of 1992

General Law Third Amendment Act 129 of 1993

Maritime Zones Act 15 of 1994

Sea Fishery Amendment Act 74 of 1995

General Law Amendment Act 49 of 1996

Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996

Regulations under this Act

CONTROL MEASURES FOR THE PROTECTION OF ABALONE AND OYSTER
CONTROL OVER AND THE MANAGEMENT OF FISHING HARBOURS
SEA FISHERY REGULATIONS

ACT

To provide for the conservation of the marine 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.

[Long title substituted by s. 21 of Act 57 of 1992.]

[a12y1988s1]1Definitions

In this Act, unless the context indicates otherwise-

'advisory committee' means the Sea Fishery Advisory Committee established in terms of section 7;

'aquatic plant' means any kind of plant, alga or other plant organism found in the sea or in or on the sea-shore;

'board' means the Quota Board established by section 15;

'catch' means to take out of the sea or the sea-shore in any manner whatsoever, to remove from the sea-shore, possess in a net, whether the net is in the water or not, possess in, upon or next to a vessel, or to land;

'department' means the Department of Environment Affairs;

'director-general' means the Director-General: Environment Affairs;

'exploiter' means a person to whom a right of exploitation has been granted in terms of section 25;

'factory' means any premises, vehicle or vessel on or in which fish or fish products are salted, dried, smoked, packed, chilled, frozen, canned or otherwise treated for commercial purposes, or fish is kept alive for commercial purposes, excluding a fish shop, supermarket, hotel, boarding house, restaurant, refreshment or tea room or eating house, or a fishing boat in or on which fish which is caught off such fishing boat is only gutted, salted or chilled for the preservation thereof;

'fish' means every species of sea animal, whether vertebrate or invertebrate, including the spawn or larvae of such sea animal, excluding any seal or seabird;

'fisherman' means a person who catches or attempts to catch fish on a full-time or part-time basis, whether such fish is found in the sea or in or on the sea-shore, with the purpose of selling or attempting to sell or otherwise disposing or attempting to dispose of such fish at a consideration, including a person assisting therewith;

'fishery control officer' means an incumbent of a post or rank referred to in section 5;

'fishing boat' means any vessel which is used by a fisherman for catching fish or which is used for the transport or processing of fish caught by a fisherman;

[Definition of 'fishing boat' substituted by s. 1 (a) of Act 57 of 1992.]

'fishing harbour' means a declared fishing harbour referred to in section 26 (1);

'fishing industry' means the whole of the trade engaged in the catching, breeding or acquisition by any other means of fish, the processing thereof and the provision or delivery for trade purposes of such fish or fish products, excluding a fish shop, supermarket, hotel, boarding house, restaurant, refreshment or tea room or eating house;

'fishing zone' means the territorial waters of the Republic and the exclusive economic zone referred to in sections 4 and 7 of the Maritime Zones Act, 1994, respectively;

[Definition of 'fishing zone' substituted by s. 15 (1) of Act 15 of 1994.]

'fish product' means any product, whether in a processed form or not, wholly or partly derived from fish;

'fund' means the Sea Fishery Fund referred to in section 27;

'high-water mark' means the highest line reached by the water of the sea during ordinary storms during the most stormy period of the year, excluding an exceptional or abnormal flood;

'implement' means any net or other apparatus or means used for or in connection with the catching of fish;

'licence' means a licence issued in terms of this Act;

[Definition of 'licence' substituted by s. 1 (b) of Act 57 of 1992.]

'local authority' means any institution or body referred to in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961), the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act 18 of 1936), and the Natal Parks Board established under the Nature Conservation Ordinance, 1974 (Ordinance 15 of 1974), of Natal;

[Definition of 'local authority' substituted by s. 1 (a) of Act 98 of 1990.]

'low-water mark' means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

'master', in relation to a fishing boat or vessel, means-

(a) the person having command or control of the fishing boat or vessel; or

(b) the person having control of the catching of fish from the fishing boat or vessel;

[Definition of 'master' substituted by s. 1 (c) of Act 57 of 1992.]

'Minister' means the Minister of Environment Affairs;

[Definition of 'Minister' substituted by s. 1 (d) of Act 57 of 1992.]

'nautical mile' means the international nautical mile of 1 852 metres;

'officer' means an officer as defined in section 1 (1) of the Public Service Act, 1984 (Act 111 of 1984);

'permit' means a permit issued in terms of this Act;

[Definition of 'permit' substituted by s. 1 (e) of Act 57 of 1992.]

'police officer' means a member of the Force as defined in section 1 of the Police Act, 1958 (Act 7 of 1958);

'prescribed' means prescribed by regulation;

'quota' means the maximum mass or quantity of fish of a particular species allocated to a person which he may catch or receive or in any other manner obtain during a specified period and may utilize on the authority of a permit;

[Definition of 'quota' substituted by s. 1 (f) of Act 57 of 1992.]

'quota holder' means the person to whom a quota has been allocated in terms of section 18;

'regulation' means a regulation made and includes a notice issued under this Act;

[Definition of 'regulation' substituted by s. 1 (b) of Act 98 of 1990.]

'Republic'

[Definition of 'Republic' amended by s. 1 of Act 49 of 1996 and deleted by s. 1 (a) of Act 74 of 1995.]

'right of exploitation' means a right to utilize living marine resources or aquatic plants for commercial purposes on the authority of a permit;

[Definition of 'right of exploitation' substituted by s. 1 (g) of Act 57 of 1992.]

'sea' means the water and the bed of the sea within the fishing zone, including the sea-shore and the water and the bed of a tidal river, tidal lagoon and harbour and includes the internal waters referred to in section 3 of the Maritime Zones Act, 1994 (Act 15 of 1994): Provided that in the case of rivers and lagoons, internal waters shall only include tidal rivers and tidal lagoons; referred to in section 3 of the Maritime Zones Act, 1994 (Act 15 of 1994): Provided that in the case of rivers and lagoons, internal waters shall only include tidal rivers and tidal lagoons;

[Definition of 'sea' substituted by s. 1 (h) of Act 57 of 1992 and by s. 1 (b) of Act 74 of 1995.]

'sea-shore' means the water and the land between the low-water mark and the high-water mark;

'shell' means the shell or portion of the shell of any sea animal found in the sea or on the sea-shore;

'territorial waters' means the territorial waters referred to in section 4 of the Maritime Zones Act, 1994 (Act 15 of 1994);

[Definition of 'territorial waters' substituted by s. 1 (c) of Act 74 of 1995.]

'this Act' includes any regulation or notice made or issued under this Act;

'tidal lagoon' means any lagoon in which a rise and fall of the water level takes place as a result of the tides;

'tidal river' means that part of any river in which a rise and fall of the water level takes place as a result of the tides;

'vehicle' means any vehicle in, on or with which goods can be transported;

'vessel' means any water-navigable craft of any type whatsoever, whether self-propelled or not; and

'year' means any period of 12 consecutive months.

[S. 1 repealed by s. 84 (1) of Act 18 of 1998, except in its application to ss. 29, 38, 47 and 50 (1), (2) and (3).]

[a12y1988s29]29 Levy on fish and fish products and certain other marine resources

(1) The Minister may, after consultation with the advisory committee and with the concurrence of the Minister of Finance, by notice in the Gazette impose a levy on all fish or fish of a species specified in the notice which is landed by fishermen, and any product thereof, and aquatic plants and shells collected and removed from the sea-shore or the sea.

(2) Such a notice-

(a) shall contain the amount of the levy and the times and places at which the levy is payable, 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);

[Para. (a) substituted by s. 10 (a) of Act 57 of 1992.]

(b) may impose different levies in respect of different species of fish, different fish products, aquatic plants or shells, or different exploiters or participants in the relevant industry, or different areas;

(c) may contain an exemption from payment of the levy in respect of fish, fish products, aquatic plants or shells landed at a place or in an area specified in the notice, if the proceeds of the levy, in the opinion of the Minister, would not justify the expenses of collecting such levy;

(d) may prescribe that interest is payable at the rate determined in the notice on any levy which is received after the date on which such levy was payable;

(e) may prescribe penalties which do not exceed the penalties prescribed by section 47, for any contravention of or failure to comply with the provisions of the notice;

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

[Para. (f) added by s. 10 (c) of Act 57 of 1992.]

(3) The director-general may recover the amount in respect of a levy and any interest which is due and payable in terms of a notice under subsection (1), in a competent court of law.

(4) The director-general may by notice sent by registered post-

(a) direct any person who is liable for payment of a levy, to furnish the director-general with the particulars mentioned in the notice within a period specified in the notice; and

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

[Date of commencement of s. 29: 1 September 1989.]

[a12y1988s38]38 Control over collection and removal of aquatic plants and shells

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

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

(a) before issuing a permit in respect of an area situated in or bordering on the area of jurisdiction of a local authority, he shall consult that local authority;

(b) if he is of opinion that the issue of a permit will encroach upon the enjoyment of the sea or the sea-shore by the general public or upon the rights of an interested person in the area concerned, he shall direct the applicant to-

and (i) notify the interested person in writing of his application;

(ii) cause a notice drawing the attention of the public to his application to be published in an Afrikaans and English newspaper circulating in the area in question,

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

(3) A permit, concession or agreement with relation to the collection or removal of aquatic plants or shells from the sea or from the sea-shore or a delegation of any power to a local authority in respect thereof in terms of the Sea-shore Act, 1935 (Act 21 of 1935), the Sea Fisheries Act, 1940 (Act 10 of 1940), or the Sea Fisheries Act, 1973 (Act 58 of 1973), which was still in force immediately before the commencement of this Act, shall be deemed respectively to be a permit issued or a delegation made in terms of this Act.

[S. 38 repealed by s. 84 (1) of Act 18 of 1998, except in its application to shells.]

[a12y1988s47]47 Offences and penalties

(1) Any person who-

(a) catches or kills fish by means of any poison or narcotic substance;

(b) catches or kills fish by detonating any substance in the sea, except on the authority of a permit issued by the director-general and in accordance with the conditions of such a permit;

[Para. (b) substituted by s. 67 of Act 129 of 1993.]

(c) catches fish by means of any implement other than an implement prescribed in respect thereof;

(d) catches fish by means of any method other than a method prescribed in respect thereof;

(e) catches or has in his possession any fish of which the size is less than the size prescribed in respect thereof or which does not comply with the other biological requirements or characteristics prescribed in respect thereof;

(f) possesses, sells or displays or offers for sale any fish or any portion of fish the catching of which is prohibited by this Act;

(g) contravenes the provisions of 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;

[Para. (g) substituted by s. 10 (a) of Act 98 of 1990 and by s. 18 (a) of Act 57 of 1992.]

(h) without being the holder of a permit as provided by this Act, performs any act for which a permit is required or contravenes or fails to comply with a condition on which the permit was issued;

(i) returns to the sea or allows to be returned to the sea or abandons in any other place any edible, 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;

[Para. (i) substituted by s. 18 (b) of Act 57 of 1992.]

(j) exports or imports any live fish, except in terms of a permit issued by the Minister or his delegate, or otherwise than in accordance with the conditions on which the permit was issued;

(k) dumps or allows to enter or permits to be dumped or discharged in the sea anything which is or may be injurious to fish, fish food or aquatic plants, or which may disturb or change the ecological balance in any area of the sea, or which may detrimentally affect the marketability of fish or aquatic plants, or which may hinder the catching of fish;

(l) fails to comply with any requirement or order by a fishery control officer, police officer or honorary fishery officer under this Act, or gives any false information in response to such a requirement or order;

(m) resists or hinders any fishery control officer, police officer or honorary fishery officer in the exercise of any power or the performance of any duty in terms of this Act;

(n) falsely represents himself to be a fishery control officer or an honorary fishery officer;

(o) uses any fishing boat or any implement without the consent of the owner or master thereof;

[Para. (o) substituted by s. 10 (b) of Act 98 of 1990.]

(p) allows any fishing boat or any implement of which he is the licensee to be used for the catching of fish in contravention of the provisions of this Act,

[Para. (p) substituted by s. 10 (b) of Act 98 of 1990.]

shall be guilty of an offence and liable on conviction to a fine not exceeding R50000 or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 10 (c) of Act 98 of 1990.]

(2) (a) If any person is convicted of an offence in terms of this Act, the court shall summarily enquire into and determine the monetary value of any advantage which he may have gained in consequence of that offence, and, in addition to any other punishment that may be imposed in respect of that offence, impose a fine equal to three times the amount so determined and, in default of payment thereof, imprisonment for a period not exceeding one year.

[Para. (a) substituted by s. 10 (d) of Act 98 of 1990.]

(b) A magistrate's court shall have jurisdiction to impose an additional penalty referred to in paragraph (a), even though that penalty may, either alone or together with any other punishment imposed by the court, exceed the punitive jurisdiction of a magistrate's court.

[S. 47 repealed by s. 84 (1) of Act 18 of 1998, except in its application to sections 29 and 38.]

[a12y1988s48]48 Forfeiture and seizure
Cases

(1) The court convicting any person of an offence in terms of this Act may, in addition to any other penalty it may impose-

(a) in the case of a first conviction, declare any fish, aquatic plants, shells or implement in respect of which the offence was committed or which was used in connection with the commission thereof, or any rights of the convicted person thereto, to be forfeited to the State; and

(b) in the case of a second or subsequent conviction, declare such fishing boat, vessel or vehicle so used, or any rights of the convicted person thereto, to be forfeited to the State, and cancel, or suspend for such period as the court may think fit, any registration done in respect of the convicted person or any licence or permit issued or granted to him in terms of this Act.

(2) (a) A declaration of forfeiture in terms of section (1) shall not affect any rights which any person other than the convicted person may have to such boat, vessel, vehicle or implement, if it is proved that he had taken all reasonable steps to prevent the use thereof in connection with the offence or could not have prevented the commission of the offence.

(b) The provisions of section 35 (4) of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall mutatis mutandis apply in respect of any such rights.

(3) Any fish, aquatic plants, shells, fishing boat, vessel, vehicle or implement or any right thereto forfeited to the State under the provisions of this section, may be sold or destroyed or may be dealt with in such other manner as the Minister may direct.

(4) The court convicting any person of an offence in terms of section 52 (4) shall, in addition to any other penalty it may impose-

(a) in the case of section 52 (4) (a), declare the vessel, implement, fish and fish products;

[Para. (a) substituted by s. 19 of Act 57 of 1992.]

(b) in the case of section 52 (4) (b), declare the implement, fish and fish products,

[Para. (b) substituted by s. 19 of Act 57 of 1992.]

which were used in connection with the commission of the offence or in respect of which the offence was committed, as the case may be, to be forfeited to the State, unless the fish or fish products have been forfeited to the State in terms of section 53 (5), and cancel or suspend for such period as the court may think fit any licence or permit issued or granted to him in terms of this Act.

[Sub-s. (4) added by s. 11 of Act 98 of 1990.]

[S. 48 repealed by s. 84 (1) of Act 18 of 1998, except in its application to shells.]

[a12y1988s50]50 Jurisdiction and evidence

(1) If any person is charged with having committed any offence in terms of this Act on or in the sea, any court whose area of jurisdiction borders on or includes any part of the sea in the vicinity where the offence has allegedly been committed, shall be competent to try the charge, and the offence shall, for all purposes connected with or consequential upon the trial of the charge, be deemed to have been committed within the area of jurisdiction of that court.

[Sub-s. (1) repealed by s. 84 (1) of Act 18 of 1998, except in its application to shells.]

(2) If any fishing boat, vessel or vehicle has been used in connection with any offence in terms of this Act, or if any fish, aquatic plants, shells or implement in respect of or by means of which an offence in terms of this Act has been committed, is found or proved to have been upon or in any fishing boat, vessel or vehicle-

(a) any person who was on board such fishing boat or vessel or in or on the vehicle at the time when the offence was committed, shall be deemed to be guilty of that offence, unless he proves that he did not commit the offence, did not take part in the commission thereof and could not have prevented the commission thereof; and

(b) the offence shall, unless the contrary is proved, be deemed to have been committed in respect of all fish, aquatic plants, shells or implements which were found or are proved to have been upon or in such fishing boat, vessel or vehicle at such time.

[Sub-s. (2) substituted by s. 12 of Act 98 of 1990 and repealed by s. 84 (1) of Act 18 of 1998, except in its application to shells.]

(3) In any prosecution for a contravention of this Act-

(a) based on any act alleged to have been performed in a particular area, the act in question shall be deemed to have been performed in such area;

(b) any information obtained by means of any instrument or chart used to determine any distance or depth, shall be deemed to be correct,

unless the contrary is proved.

[Sub-s. (3) repealed by s. 84 (1) of Act 18 of 1998, except in its application to shells.]