

REPUBLIC OF SOUTH AFRICA

MARINE LIVING RESOURCES AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 27489 of 22 April 2005)
(The English text is the official text of the Bill)*

(MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 16—2005]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Marine Living Resources Act, 1998, so as to delete certain definitions and substitute another; to repeal the provisions relating to the Fisheries Transformation Council and the Consultative Advisory Forum for Marine Living Resources; to further regulate the granting of rights and the leasing thereof; to further regulate the payment of certain fees; to create certain offences; to further regulate appeals; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 18 of 1998

1. Section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the deletion of the definition of “**Council**”;
 - (b) by the deletion of the definition of “**Forum**”; and
 - (c) by the substitution for the definition of “**South African person**” of the following definition:
“‘**South African person**’ means— 10
 - (a) a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
 - [(b) a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), of which the majority of shareholders, as prescribed by the Minister, are South African persons; 15
 - (c) a close corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984), of which the majority of members are South African persons; or]
 - (aA) a juristic person in which South African persons own and control a majority of its issued share capital or members’ interest and are able to control a majority of its votes, or where South African persons are otherwise effectively in control; or 20
 - (d) a trust in which—
 - (i) the majority of trustees having the controlling power at any given time are South African citizens; or 25
 - (ii) a majority of the beneficial interests are held by South African citizens;”.

Repeal of sections 5, 6, 7 and 8 of Act 18 of 1998

2. Sections 5, 6, 7 and 8 of the principal Act are hereby repealed.

Amendment of section 15 of Act 18 of 1998

3. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 5

“(3) The Minister shall, during the preparation of any plan contemplated in subsection (2), consult with **[the Forum and other]** organs of state affected by the plan.”.

Amendment of section 18 of Act 18 of 1998, as amended by section 1 of Act 68 of 2000 10

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

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

“(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.”; 15

- (b) by the substitution for subsection (5) of the following subsection:

“(5) In granting any right referred to in subsection (1), the Minister shall, **[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]** objective and principle referred to in section 2(j).”; and 20

- (c) by the substitution for subsection (7) of the following subsection:

“(7) The Minister may **[determine]** grant rights subject to conditions that he or she determines, including conditions in respect of sustainable conservation and management measures, [including] the use of a particular type of vessel or gear, or the area of fishing, to which a right may be subject.”. 25

Amendment of section 19 of Act 18 of 1998

5. Section 19 of the principal Act is hereby amended by the substitution in subsection 1(b) for the words preceding paragraph (i) of the following word: 30

“**[after consultation with the Forum,]** declare—”.

Amendment of section 21 of Act 18 of 1998

6. Section 21 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The Minister may, **after consultation with the Forum,** make regulations regarding—”. 35

Amendment of section 22 of Act 18 of 1998

7. Section 22 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) **[As from a date fixed by the Minister in the Gazette, the]** The rights contemplated in section 18 **[shall, subject to section 31,]** may be leased by the State. 40

(2) The Minister may prescribe the method of allocation and payment in respect of leases contemplated in subsection (1) **[, including criteria for the granting of the rights contemplated in section 18].**”.

Substitution for section 24 of Act 18 of 1998 45

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

“Reduction of rights

24. The Minister may in respect of any fishery, determine **[, after consultation with the Forum,]** that the portions of the total allowable

catch, the total applied effort, or a combination thereof, allocated in any year to subsistence, local commercial and foreign fishing, and rights granted in respect thereof, shall be reduced.”.

Amendment of section 25 of Act 18 of 1998

9. Section 25 of the principal Act is hereby amended by the addition of the following subsection: 5

“(3) The Minister may, instead of the application fee contemplated in subsection (2), determine a fee for issuing an application form in consultation with the Minister of Finance.”.

Repeal of sections 29, 30, 31, 32, 33, 34, 35, 36 and 37 of Act 18 of 1998 10

10. Sections 29, 30, 31, 32, 33, 34, 35, 36 and 37 of the principal Act are hereby repealed.

Amendment of section 43 of Act 18 of 1998

11. Section 43 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 15

“(3) The Minister may[, **after consultation with the Forum,**] give permission in writing that any activity prohibited in terms of this section may be undertaken, where such activity is required for the proper management of the marine protected area.”.

Amendment of section 58 of Act 18 of 1998 20

12. Section 58 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsection:

“(5) Any person who—
 (a) makes or causes or allows to be made any false statement in any application for a right, permit or licence in terms of this Act; 25
 (b) signs any application form without reasonable grounds for believing the information contained therein to be true; or
 (c) gives any false answer, whether verbally or in writing, to any request for information made under this Act by any person duly authorised to request such information, 30
 shall be 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.”.

Substitution for section 80 of Act 18 of 1998

13. The following section is hereby substituted for section 80 of the principal Act:

“Appeal to Minister” 35

80. (1) (a) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated in terms of this Act or section 238 of the Constitution.

(b) (i) Notwithstanding paragraph (a), the Minister may in writing delegate the power to hear an appeal, or a class of appeals, to an officer of the Department with the rank of deputy director-general or an equivalent rank. 40

(ii) The hearing of an appeal delegated under subparagraph (i) may not be conducted by an officer who has taken part in the decision which gave rise to the appeal. 45

(iii) Subject to section 34 of the Constitution, the decision of the officer contemplated in subparagraph (i) shall be final.

(2) An appeal under subsection (1) must be noted and shall be dealt with in the manner and in accordance with the procedure prescribed by the Minister. 50

[(3) The Minister shall consider any matter submitted to him or her on appeal, after giving every person with an interest in the matter an opportunity to state his or her case.]”.

Short title and commencement

14. This Act is called the Marine Living Resources Amendment Act, 2005, and comes into effect on a date set by the President by proclamation in the *Gazette*. 5

MEMORANDUM ON THE OBJECTS OF THE MARINE LIVING RESOURCES AMENDMENT BILL, 2005

1. BACKGROUND

The Department of Environmental Affairs and Tourism intends allocating long-term fishing rights during the second half of 2005. Approximately 7 500 applications and 3 000 appeals were received by the Department following the 2001 medium-term fishing rights allocation process. All of these applications and appeals have to be considered and full and proper reasons given for the decisions in accordance with the procedures set out in the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the Act"), and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA"). The proposed amendments to the Act are designed to further improve the manner in and efficiency with which the Department administers the applications and appeals. They also take into account decisions of the Constitutional Court and the Supreme Court of Appeal.

2. OBJECTS OF THE BILL

- 2.1 A number of the proposed amendments are aimed at improving the process of allocating fishing rights. These include:
 - refining the definition of a "South African person", so as to ensure that it includes only a juristic person in which South African persons own or control such juristic person;
 - allowing rights to be granted subject to conditions. This will be particularly useful in issuing rights subject to certain "internal transformation" targets to be reached in respect of ownership and management.
 - making it an offence to provide false or misleading information to the Department
- 2.2 The procedure for determining appeals serves a useful purpose for both the Department and persons affected by its decisions, particularly in the rights allocation process. It is proposed that the appeal provision be retained, but that it be amended so as to remove the undue administrative burden from the Minister and to allow for appeals to be dealt with speedily.
- 2.3 The proposed amendments also seek to repeal the provisions relating to the Fisheries Transformation Council (FTC) and the Consultative Advisory Forum for Marine Living Resources (CAF). The FTC was abolished by the Minister during the course of 2000 by publication of a notice in the *Government Gazette*. The sections in the Act dealing with the FTC now have to be repealed.
- 2.4 The CAF is an advisory body to the Minister on matters related to the management of fisheries in general. The additional step of referring matters to the CAF has slowed down decision making without contributing significantly to the outcome of such decisions. It should be kept in mind that the provisions of the Act were adopted before the PAJA and its regulations came into force. PAJA now contains extensive provisions relating to public participation in respect of administrative decisions which affect the public.

3. DEPARTMENTS / BODIES CONSULTED

As the proposed amendments mainly seek to improve administrative procedures, it was deemed unnecessary to consult with other Departments or fishing rights holders.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Environmental Affairs and Tourism are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.