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DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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23 FEBRUARY 2016

CORRECTION NOTICE:

GOVERNMENT NOTICE 78 OF 2016 THAT APPEARED IN GOVERNMENT GAZETTE No. 39713 DATED 19 FEBRUARY 2016 IS HEREWITH WITHDRAWN AND REPLACED WITH GOVERNMENT NOTICE

PUBLICATION OF AND INVITATION TO COMMENT ON THE DRAFT AQUACULTURE BILL

I, Senzeni Zokwana, Minister of Agriculture, Forestry and Fisheries, hereby invite interested and affected parties to submit written comments on the Draft Aquaculture Bill by no later than 31 March 2016 by post, by hand, e-mail or telefax. Please note that comments received after the closing date may be disregarded.

By Post: DDG: Fisheries Attention: Asanda Njobeni Private Bag x2 Roggebaai Cape Town 8000	By Hand: DDG: Fisheries Foretrust Building Martin Hammerschlag Way Cape Town Attention: Asanda Njobeni	By E-mail: DDG: Fisheries Attention: Asanda Njobeni aquabillcomments@daff.gov.za	By Telefax: DDG: Fisheries Fax nr: 021 402 3690 Attention: Asanda Njobeni
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Minister of Agriculture, Forestry and Fisheries

REPUBLIC OF SOUTH AFRICA

AQUACULTURE BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. 39723 of 23 February 2016)

(The English text is the official text of the Bill.)

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B --- 2015]

AQUACULTURE BILL

[DRAFT 1]

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BILL

To promote the development of an equitable, diverse, viable and competitive aquaculture sector; to create a harmonised enabling regulatory environment within a framework of sustainable development; to improve coordination in the regulation of the aquaculture sector; to promote the participation of historically disadvantaged individuals in the aquaculture sector; to establish an aquaculture development fund; and to provide for related matters.

Preamble

WHEREAS aquaculture has the potential to contribute to food security, job creation and economic development and to create export opportunities for South African businesses;

AND WHEREAS appropriate legislation and institutions, and co-ordination between organs of state is required to ensure responsible aquaculture development and the establishment of a sustainable and responsible aquaculture sector;

AND WHEREAS section 27 (1) (b) of the Constitution provides that everyone has the right to have access to sufficient food and water;

AND WHEREAS section 27(2) of the Constitution requires the State to take reasonable legislative measures to achieve the progressive realisation of this right;

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

CHAPTER ONE: INTRODUCTORY MATTERS

Definitions

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

“**aquaculture**” means the farming of aquatic organisms, including crocodiles, in controlled or selected aquatic environments (marine, brackish or

freshwater), involving:

- (a) a degree of human intervention in the rearing process to enhance production which may include propagation, breeding,¹ regular stocking, feeding or protection from predators; and
- (b) individual or corporate ownership of the stock being farmed,

and includes ranching.²

“aquaculture activity” includes—

- (a) engaging in aquaculture, including holding of broodstock and operating a hatchery;
- (b) the operation of an aquaculture processing facility;
- (c) transportation of aquaculture products;
- (d) ranching;
- (e) the collection of broodstock for aquaculture;
- (f) the import of live aquaculture organisms;
- (g) import of formulated feed for use in aquaculture; and
- (h) the export of aquaculture products.

“aquaculture annual production” means output from aquaculture activities which are designated for final harvest

“aquaculture development zone” means an area declared for dedicated aquaculture use in terms of section 19 **[Aquaculture development zones]**;

“aquaculture drug” means a substance or mixture of substances intended or offered to be used, or purporting to be suitable for use, or manufactured or sold for use, in connection with aquaculture organisms for the diagnosis, prevention, treatment or cure of any disease, infection or other unhealthy condition, or for the maintenance or improvement of health, growth or

¹ “Display” has not been included as suggested as it does not relate to farming which is the focus of the definition. The definition does not limit the uses to which aquaculture products will/can be put.

² The definition of aquaculture does not specify the purpose for which the aquaculture is being undertaken. Therefore regulation of aquaculture in the Bill encompasses the farming of aquatic organisms for consumption as well as for ornamental, display and therapeutic use.

production, or for curing, correcting or modifying any somatic or organic function, or for correcting or modifying behavior, but excludes any substance in so far as it is controlled under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 or under the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965);

“aquaculture facility” means a purpose-built structure in a geographically defined area of water and/or land (whether or not submerged) used for aquaculture and includes all buildings, structures and equipment within that area that are used for aquaculture;

“aquaculture feed” means any solid or liquid substance or product, whether processed, partially processed or unprocessed, which is intended to be used to feed aquaculture organisms but does not include a substance or product:

- (a) which a person who keeps aquaculture organisms for domestic consumption, or for purposes other than food production, produces to feed those aquaculture organisms;³ or
- (b) to the extent that it is controlled under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947);

“aquaculture inspector” means a person designated as such by the Minister in terms of section 74 [**Designation of aquaculture inspectors**];

“aquaculture sector” means aquaculture and all of the associated industries in the aquaculture value chain including feed manufacture and supply, stock supply, labour supply; processing and marketing of aquaculture products and trade in aquaculture products and aquaculture research institutions;

“aquaculture organism” means any live aquatic animal or plant, coming from an aquaculture facility or which has been captured in the wild and is intended for use in undertaking an aquaculture activity.;

“aquaculture licence” means an aquaculture licence referred to in section 24;

“aquaculture processing facility” means any vehicle, vessel, premises or place where an aquaculture product is produced from an aquaculture organism by any method, including the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving, or where

³ Definition based on that in the draft Feeds Regulations under Act 36 of 1947 provided to us by DAFF on 8 June 2015. The regulations govern all farm feeds including those fed to fish and specifically include mollusca and crustacea spp.

aquaculture organisms are canned, packed, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale in or outside the territory of the Republic, excluding retailers;

“aquaculture product” means any live or dead aquaculture organism or product derived therefrom that is offered for sale, sold or otherwise traded;

“aquatic organism” means any animal including its eggs and gametes, any plant or other living matter that lives wholly or predominantly in water for all or part of its lifecycle, and includes crocodiles, but excludes mammals and birds and any other organism deemed by the Minister in regulations not to be an aquatic organism for the purposes of this Act;⁴

“coastal use permit” means a coastal use permit as defined in the Integrated Coastal Management Act;

“commercial aquaculture” means aquaculture that is undertaken with the primary purpose of producing aquaculture products for sale and a person will be deemed to be engaged in commercial aquaculture (unless they prove to the contrary) if that person is either a juristic person or employs five or more people in the aquaculture operations, or both;

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“Department” means the national department responsible for aquaculture;

“Director-General” means the director-general of the Department;

“exhibition facility” means a structure in an earmarked space or area whose primary purpose is the display of live aquatic organisms and or products thereof and includes aquariums;

“historically disadvantaged individual” means a person who is -

- (a) a black person for the purposes of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);⁵

⁴ This provision allows the Minister to exclude a species or category of organism from the ambit of the Act.

⁵ “Black person” in that Act means means “Africans, Coloureds and Indians—
(a) who are citizens of the Republic of South Africa by birth or descent; or
(b) who became citizens of the Republic of South Africa by naturalisation—
(i) before 27 April 1994; or
(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

- (b) female; and/or
- (c) has a disability.

“Integrated Coastal Management Act” means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

“licensing authority” means an entity or person referred to in section 23 [Licensing authority] who is authorised to issue aquaculture licences and permits under this Act;

“Marine Living Resources Act” means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

“MEC” means the Member of the Executive Council of a province to whom the Premier has assigned responsibility for aquaculture;

“Minister” means the Minister responsible for aquaculture;

“National Environmental Management Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“National Water Act” means the National Water Act, 1998 (Act No. 36 of 1998);

“ranching” means aquaculture in which aquatic organisms are intentionally released, without restriction, into the natural aquatic environment for the purpose of harvesting them when they reach market size with the intention of individual or corporate ownership of the ranched stock;

“responsible aquaculture development” means aquaculture development that—

- (a) promotes the entry and participation of historically disadvantaged individuals and communities and the youth in the aquaculture sector;
- (b) promotes sound labour practices;
- (c) protects the environment by avoiding significant adverse environmental impacts including impacts on wild fish populations, or where these cannot be avoided, minimising and rectifying them;
- (d) allows access to land, water and other aquaculture resources on a fair basis;
- (e) does not negatively affect the livelihoods of local communities;

- (f) promotes the health and welfare of aquaculture animals during husbandry including good practice regarding the types of substances, feeds and drugs used in aquaculture; and
- (g) ensures the safety and quality of aquaculture products;⁶

“small-scale aquaculture” means aquaculture that is undertaken with less than 10 employees; an annual production of less than 20 tonnes per annum and an annual turn-over of less than R2 million;

“South African waters” means—

- (a) the South African internal waters, territorial waters, exclusive economic zone and continental shelf as described in the Maritime Zones Act, 1994 (Act No. 15 of 1994); and
- (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).⁷

“stock enhancement” means the release of aquatic organisms into the aquatic environment without the intention to benefit an exclusive user and with the aim of supplementing or sustaining the recruitment of one or more aquatic species and raising the total production or the production of selected elements of a fishery beyond a level which is sustainable through existing natural processes;⁸

“subsistence aquaculture” means aquaculture that is undertaken with the primary purpose of providing food for the farmer and his or her family and contributing to their livelihoods by producing aquaculture products for sale or barter but not for profit making;

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates otherwise.

Objects of Act

2. The objects of this Act are to—

⁶ See FAO Technical Guidelines on Aquaculture Certification and NASF.

⁷ This is effectively the same area of application as the MLRA.

⁸ This definition is based on FAO definition but narrower – only includes the release of stock and not other aspects of stock ranching such as “fertilization; environmental engineering including habitat improvements and modification of water bodies; altering species composition including elimination of undesirable species or constituting an artificial fauna of selected species; genetic modification and introduction of non-native species or genotypes.” Further discussion is needed on whether DAFF wishes to regulate all of these activities as well, many of which are regulated in other legislation.

- (a) promote responsible aquaculture development;
- (b) promote the development and management of an aquaculture sector that:
 - (i) is diverse;
 - (ii) enhances food security in the Republic;
 - (iii) contributes to the production of aquaculture products that are safe for human consumption;
 - (iv) contributes to the management and control of aquatic diseases;
 - (v) contributes to income generation and sustainable livelihoods;
 - (vi) is domestically and internationally competitive; and
 - (vii) is ecologically, socially and economically sustainable;
- (c) promote coordination of aquaculture research and development activities;
- (d) enable the aquaculture sector to be regulated more effectively; and
- (e) promote transformation of the aquaculture sector.

Application of Act

3. (1) This Act applies to the Republic, including South African waters.

(2) Subject to section 91 **[Transitional arrangements]**, this Act applies to all aquaculture activities whether they commenced before or after the commencement of this Act.

(3) This Act binds all organs of state.

Conflicts with other Acts

4. (1) If any conflict arises relating to aquaculture management between a section of this Act and any other legislation existing when this Act takes effect, except for the Constitution of the Republic of South Africa, 1996, then the section of this Act prevails.

(2) Draft national legislation directly or indirectly amending this Act, or providing for the enactment of subordinate legislation that may conflict with this Act, may be introduced in Parliament—

- (a) by the Minister only; or
- (b) only after the Minister has been consulted on the contents of the draft legislation.

CHAPTER TWO: INSTITUTIONAL ARRANGEMENTS

Establishment of Intergovernmental Authorisations Committee

5. (1) The Intergovernmental Authorisations Committee is hereby established to facilitate the development and implementation of integrated, efficient and effective processes for obtaining all the authorisations necessary under applicable legislation in order to carry out aquaculture activities.

(2) The authorisations committee must—

- (a) develop and facilitate the implementation of the intergovernmental agreement and protocol referred to in section 0 [**Integrated Aquaculture Authorisation**]; and
- (b) facilitate ongoing high-level discussion and cooperation between national, provincial and municipal organs of state in relation to the promotion and regulation of aquaculture.

(3) The Intergovernmental Authorisations Committee comprises the nominated officials in any sphere of government responsible for granting any authorisation necessary to carry out aquaculture activities.

(4) The Department will be responsible for convening, chairing and providing secretariat services to the Intergovernmental Authorisations Committee.

(5) The Minister may appoint a panel of advisors to provide specialist advice to the Intergovernmental Authorisations Committee when required.

National Aquaculture Intergovernmental Forum⁹

6. (1) The Minister may establish a National Aquaculture Intergovernmental Forum to promote coordination of aquaculture development and management in the

⁹ This body could be combined with the national aquaculture advisory committee.

Republic.

- (2) The national aquaculture intergovernmental forum consists of—
- (a) representatives of the Department;
 - (b) representative(s) of each national government department that is responsible for administering matters that materially affect aquaculture development, including the departments responsible for trade and industry, science and technology, economic development, the environment, water, health, rural development, land, public enterprises and public works; and
 - (c) a representative of each Provincial Aquaculture Intergovernmental Forum.
- (3) The National Aquaculture Intergovernmental Forum must—
- (a) facilitate and monitor the implementation of the national aquaculture development plan and national aquaculture policy;¹⁰
 - (b) ensure that the national aquaculture development plan is integrated into planning instruments and frameworks administered by each organ of state represented in the forum; and
 - (c) ensure better management of national government programmes aimed at the development of the aquaculture sector by—
 - (i) facilitating joint planning and implementation of aquaculture infrastructure, projects, development zones, parks and/ or special economic zones for aquaculture; and
 - (ii) co-ordinating and facilitating the provision of support services and other resources, monitoring, evaluation and oversight in respect of those programmes.¹¹

Provincial Aquaculture Intergovernmental Forums

7. (1) Each MEC may establish a Provincial Aquaculture Intergovernmental forum to

¹⁰ See terms of reference for current AIF. In terms of the NASF and Action Plan, the AIF is responsible for operationalisation of the strategy (page 37). In terms of the NAPF, the AIF will also assist with implementing the NAPF .

¹¹ In terms of the NASF and Action Plan, the AIF is responsible for operationalisation of the strategy (page 37). In terms of the NAPF, the AIF will also assist with implementing the NAPF

promote responsible aquaculture development in the province.

- (2) A Provincial Aquaculture Intergovernmental forum consists of—
- (a) representative(s) of the Department; and
 - (b) representative(s) of each provincial organ of state that is responsible for administering matters that materially affect aquaculture development in the province, including agriculture, economic development, the environment, water, health and public works.
- (3) A Provincial Aquaculture Intergovernmental Forum must—
- (a) facilitate and monitor the implementation of the national aquaculture development plan as it applies to the province, the provincial aquaculture development plan for the province and any other national or provincial aquaculture policy; and
 - (b) ensure better management of national and provincial government programmes aimed at the development of the aquaculture sector by facilitating joint planning, coordination, the provision of support services and other resources, monitoring, evaluation and oversight of those programmes.

National Aquaculture Industry Liaison Forum

8. (1) The Minister may establish a national aquaculture industry liaison forum and determine its composition.

(2) The purpose of the national aquaculture industry liaison forum is to promote and maintain liaison and communication between the Department and the aquaculture industry on any matter pertaining to the management and development of the aquaculture sector including—

- (a) the promotion of partnerships between government and industry; and
- (b) the regulation of aquaculture.

Aquaculture Extension Officers

9. An MEC must appoint Aquaculture Extension Officers to provide extension, advisory and support services to the aquaculture sector.

Recognition of industry associations

10. (1) An aquaculture industry association that wishes to be recognised by the Department must apply in writing to the Minister in the prescribed manner.

(2) The Minister may approve an application in terms of subsection (1) if—

- (a) in the opinion of the Minister, the industry body is representative of a specific body or group which has a common interest within the aquaculture sector value chain; and
- (b) the industry body has a clear policy that promotes the inclusion of all interested parties as members.¹²

(3) The Minister may collaborate with industry associations on aquaculture development and assign functions.

Establishment of national reference laboratory for aquatic animal diseases

11. (1) The Minister may establish a national reference laboratory for aquatic animal diseases.

(2) The purpose of the national reference laboratory is to provide a reference laboratory service to the aquaculture sector by—

- (a) developing expertise for diagnostics in aquatic animal health;
- (b) standardising diagnostic techniques and validating results from other laboratories;
- (c) providing internationally acceptable results for certification of imports and exports of aquatic organisms and aquaculture products;
- (d) providing assistance and expert advice on disease surveillance and control;
- (e) coordinating and undertaking research in the field of aquatic animal diseases; and
- (f) providing technical training on aquatic organism health matters to both the private and public sectors.

¹² This section is included in accordance with the drafting instructions. There are no other consequences in the Bill for recognition or non-recognition of industry associations beyond that DAFF is more likely to consult with recognised industry associations.

Establishment of national reference laboratory for aquatic animal food safety

12. (1) The Minister may establish a dedicated national reference laboratory for aquatic animal food safety in consultation with the Ministers responsible for health and trade.

(2) The purpose of the national reference laboratory is to provide a reference laboratory service to the aquaculture sector by—

- (a) developing expertise in the testing of hazardous substances and pathogenic organisms that may contaminate the aquaculture food product;
- (b) standardising diagnostic techniques and validating results from other laboratories;
- (c) coordinating and undertaking research in the field of testing of hazardous substances and pathogenic organisms that may contaminate the aquaculture food product;
- (d) coordinate, the activities of official laboratories responsible for the analysis of aquaculture food product samples;
- (e) where appropriate, organise comparative tests between the national laboratories and ensure an appropriate follow-up of such comparative testing; and
- (f) provide scientific and technical assistance to the competent authority for the implementation of coordinated control plans adopted.

CHAPTER THREE: AQUACULTURE DEVELOPMENT FUND¹³**Establishment of the aquaculture development fund**

13. (1) The Minister may, after consultation with the Ministers responsible for finance, trade, science and technology, economic development, environmental affairs and rural development, establish the aquaculture development fund to streamline funding for aquaculture development.

(2) The fund will be made up of the following:

- (a) all interest and fees collected in terms of this Act;

¹³ Consultation with Treasury is necessary before this section can be finalised.

- (b) any money appropriated by Parliament for the purposes of the aquaculture sector;
- (c) any money paid into the Fund at the direction or with the approval of the Minister and the National Treasury;
- (d) any income from investment of money belonging to the Fund;
- (e) any money paid into the Fund under any other Act;
- (f) donations, with the approval of the Minister in consultation with the Minister of Finance;
- (g) money which, with the approval of the Minister in consultation with the Minister of Finance, may accrue to the Fund from any other source including money from other Departments for the purposes of developing or supporting the aquaculture sector;
- (h) any levy on aquaculture products imposed and collected in terms of this Act to be utilised for providing support services to the aquaculture sector;¹⁴ and
- (i) money paid in respect of fines, penalties and interest for any offence committed in terms of this Act.

(3) The Minister must appoint an administrator for the fund in consultation with the Minister responsible for Finance.

(4) The Fund may be used for the purposes of—

- (a) funding or providing loans to projects and initiatives relating to the development of the aquaculture sector and in particular facilitating the entrance of historically disadvantaged individuals and communities and the youth into the aquaculture sector;
- (b) funding research aimed at the development of the aquaculture sector;
- (c) providing compensation for destruction of aquaculture organisms or products in terms of section 53 [**Compensation for destruction of aquaculture organisms**];

¹⁴ Further instructions are needed on the imposition of levies from the Task Team.

- (d) providing support services to the aquaculture sector; or
- (e) meeting the costs of administration of this Act.

(5) The Minister may, with the concurrence of the Minister responsible for Finance, make regulations regarding—

- (a) additional sources of money for the fund;
- (b) the administration and management of the fund; and
- (c) criteria for distribution of money from the fund.

CHAPTER FOUR: AQUACULTURE PLANS

Preparation of national aquaculture development strategy¹⁵

14. (1) The Minister—

- (a) must within two years of the commencement of this Act, adopt a national aquaculture development plan for achieving the objects of this Act;
- (b) must review the strategy at least once every five years; and
- (c) may, when necessary, amend the strategy.

(2) Before adopting a strategy contemplated in subsection (1) (a) the Minister may by notice in the *Gazette* invite members of the public to submit written representations on or objections to the strategy.

(3) The Minister must, within 60 days of the adoption of the national aquaculture development strategy or of any substantial amendment to it—

- (a) give notice to the public—
 - (i) of the adoption of the strategy; and
 - (ii) that copies of, or extracts from, the strategy are available for public

¹⁵ DAFF has already developed a National Aquaculture Strategic Framework which incorporates a National Aquaculture Action Plan. This plan can form the basis of the national aquaculture plan for the purposes of the Bill.

inspection at specified places; and

- (b) publish a summary of the final strategy .

Contents of national aquaculture development strategy

15. (1) The national aquaculture development strategy—

- (a) is informed by the national policy on the development and management of the aquaculture sector; and
- (b) must provide for an integrated and co-ordinated approach to the development and management of the aquaculture sector by organs of state in all spheres of government, non-governmental organisations, the private sector and local communities.

(2) The national aquaculture development strategy must include the following components—¹⁶

- (a) the national vision for the development of the aquaculture sector in the Republic;
- (b) goals for realising the national vision;
- (c) an action plan for achieving the goals;
- (d) a framework for co-operative governance in the development of the aquaculture sector that—
- (i) identifies the responsibilities of different organs of state including their responsibilities in relation to historically disadvantaged individuals and communities; and
- (ii) facilitates co-ordinated and integrated regulation of aquaculture; and
- (e) any other matter that the Minister considers necessary for achieving the objects of this Act.

¹⁶ These are based on the existing National Aquaculture Strategic Framework.

Preparation of provincial aquaculture development plans

16. (1) An MEC of each province—

- (a) must within two years of the commencement of this Act, develop and or adopt a provincial aquaculture development plan for the province;
- (b) must review the plan at least once every five years; and
- (c) may, when necessary, amend the plan.

(2) Before adopting a plan contemplated in subsection (1) (a), the MEC may, by notice in the *Gazette*, invite members of the public to submit written representations on or objections to the plan.

(3) An MEC must, within 60 days of the adoption of a provincial aquaculture development plan—

- (a) give notice to the public—
 - (i) of the adoption of the plan; and
 - (ii) that copies of, or extracts from, the plan are available for public inspection at specified places; and
- (b) publish a summary of the final plan.

(4) The provincial aquaculture development plan may form part of a provincial development plan, programme or strategy.

Contents of provincial aquaculture development plans

17. (1) A provincial aquaculture development plan—

- (a) is informed by the provincial policy on the development of the aquaculture sector in the province;
- (b) must provide for an integrated, coordinated and uniform approach to the development and management of the aquaculture sector in the province; and
- (c) must be consistent with the national aquaculture development plan.

(2) A provincial aquaculture development plan must include—

- (a) a vision for the development of the aquaculture sector in the province, including the sustainable use of natural resources;
- (b) goals for realising the vision in the province; and
- (c) a provincial aquaculture strategic plan for achieving the goals of the national aquaculture development plan applicable in the province.

Alignment of integrated development plan with aquaculture development plans

18. Each municipality must ensure that its integrated development plan in terms of the Municipal Systems Act, 2000 (Act No. 32 of 2000) or other applicable municipal legislation recognises and includes the national aquaculture development plan and any applicable provincial aquaculture development plan; where suitable.

CHAPTER FIVE: AQUACULTURE ZONES

Aquaculture development zones

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

- (a) declare any area on land and within the waters of the Republic of South Africa as an aquaculture development zone if the Minister is satisfied that the:
 - (i) area is particularly suitable for aquaculture of a specific type or types;
 - (ii) declaration is consistent with responsible aquaculture development; and
 - (iii) declaration is consistent with any applicable national policies and law.
- (b) determine the location and define the physical boundaries of an aquaculture development zone;
- (c) determine the physical boundaries of a buffer zone for the aquaculture development zone;
- (d) determine measures for the management of land, water and other resources for aquaculture in the aquaculture development zone;

- (e) determine and implement support measures, including incentive schemes in collaboration with the Ministers responsible for industry development and finance, the provisions of essential services for aquaculture activities within an aquaculture development zone; and
- (f) in order to protect aquaculture activities undertaken in an aquaculture development zone, specify restrictions and conditions on the conduct of activities and uses in—
 - (i) the aquaculture development zone;
 - (ii) the waters draining into an aquaculture development zone; and
 - (iii) any buffer zone for an aquaculture development zone.

(2) Before declaring an area as an aquaculture development zone or determining a buffer zone, the Minister must—

- (a) consult with relevant national government department(s) having jurisdiction in the proposed aquaculture development zone;
- (b) in consultation with the national Minister responsible for the environment, consider whether the area may—
 - (i) also be declared as a special management area in terms of section 23 of the Integrated Coastal Management Act; or
 - (ii) be delisted in terms of section 24B of the National Environmental Management Act; and
- (c) in consultation with the national Minister responsible for industry development, consider whether the area may also be designated a special economic zone in terms of sections 23 or 24 of the Special Economic Zones Act, 2014 (Act No. 16 of 2014).

(3) The Minister must, for the purposes of identifying aquaculture development zones and buffer zones—

- (a) develop criteria and a methodology for determining whether an area is suitable for aquaculture of specific type or types; and
- (b) conduct environmental assessments, in consultation with the Minister responsible for environment, to identify suitable areas.

Aquaculture Disease Zones

20. The Minister may declare a specific geographic area or areas as aquaculture disease zones for the purpose of prescribing measures for the prevention, management and control of diseases affecting aquaculture in the Republic.

CHAPTER SIX: AQUACULTURE INFORMATION SYSTEM

Establishment of national aquaculture information system

21. (1) The Minister must establish a national aquaculture information system to facilitate the effective management and development of the aquaculture sector.

(2) The national aquaculture information system must—

- (a) store, verify, analyse and evaluate data and information; and
- (b) provide information to—
 - (i) government for the development and implementation of the national aquaculture development plan and provincial aquaculture development plans and the implementation of this Act;
 - (ii) persons undertaking aquaculture activities; and
 - (iii) the public.

(3) The national aquaculture information system must include a register of, and information related to—

- (a) the holders of aquaculture licences;
- (b) the holders of aquaculture permits;
- (c) aquaculture development zones;
- (d) registered aquaculture drugs; and
- (e) registered aquaculture feeds.

(4) The aquaculture information system may include—

- (a) the results of aquaculture research undertaken using public funds;

- (b) results of water quality monitoring undertaken by the Department;
- (c) information about disease notification, surveillance and control;
- (d) records regarding the use of aquaculture feeds or drugs;
- (e) movement control records of aquaculture activities for traceability purposes;
- (f) records of the movement of aquatic organisms and aquaculture products within the Republic and into and out of it;
- (g) information about trade in or marketing of aquaculture products;
- (h) records regarding compliance with this Act; and
- (i) any other information that the Minister deems necessary for the effective administration of this Act.

(5) The national aquaculture information system may be implemented incrementally.

Provision of, and access to, information

22. (1) The Minister may require any person to provide, within a reasonable time or on a regular basis, any data, information, documents, samples or materials to the Minister that are reasonably required for the purposes of the national aquaculture information system or for achieving the objectives of this Act.

(2) Information contained in the national aquaculture information system must be made available by the Minister, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and the Protection of Personal Information Act of 2013, (Act No. 4 of 2013) and the payment of any reasonable charge determined by the Minister.

CHAPTER SEVEN: LICENCES AND PERMITS

Activities for which aquaculture licences are required

23 (1) Subject to subsection (2) a person may not engage in aquaculture or operate an aquaculture processing facility—

- (a) without an aquaculture licence and or permit issued by the Minister; or
- (b) contrary to any condition of such a licence.

(2) A person does not require an aquaculture licence to—

- (a) keep aquatic organisms in an exhibition facility only for display purposes; or
- (b) keep, buy or sell aquatic organisms for non-consumptive, display purposes;
- (c) undertake subsistence or small scale aquaculture involving indigenous aquatic organisms; or
- (d) manufacture aquaculture feed.

(3) A person engaging in aquaculture activities specified in subsection (2) must register with the Minister in the prescribed manner and must comply with any conditions imposed by the Minister.

Application for aquaculture licence

24. (1) A person who requires an aquaculture licence must apply to the Minister in the prescribed manner and pay the prescribed licence fees.¹⁷

(2) A person may, at any time, apply for an aquaculture licence to—

- (a) operate a research facility;
- (b) undertake commercial aquaculture;
- (c) undertake pilot scale aquaculture in order to assess the financial, economic, technical, social and/ or environmental viability of an aquaculture project at a specific place;
- (d) to convert a pilot scale aquaculture licence into a commercial aquaculture licence; or
- (e) operate an aquaculture processing facility.

(3) The Minister—

- (a) may by written notice require an applicant, at the applicant's cost, to obtain and provide it within a specified period with any other information

¹⁷ The application process will be the subject of regulations which should deal with among other things: the prescribed form of application, any licence fee and time-frames for the Minister to respond to and decide the application.

the Minister reasonably requires to make a decision on the application;

- (b) must consult with other organs of state that have an interest in the granting of the licence; and
- (c) must allow the applicant an opportunity to make representations on any objections to the application.

(4) If the rights or interests of other parties are likely to be adversely affected by the granting of the licence the Minister may, before deciding on the application, request the applicant to conduct a consultation process, in the prescribed manner, that may be appropriate in the circumstances to bring the application to the attention of relevant organs of state, interested persons and the public.

Considerations relevant to decisions on licence applications

25. (1) In deciding an application for an aquaculture licence, the Minister must take into account all relevant matters, including, but not limited to, considering—

- (a) whether granting the licence will be consistent with—
 - (i) the objects of this Act; and
 - (ii) responsible aquaculture development; and
 - (iii) any mandatory standards, guidelines or requirements that have been set in terms of this Act
- (b) whether the applicant is a fit and proper person as contemplated in section 38;
- (c) whether the applicant is the holder of a pilot scale aquaculture licence, and if so, a report on the activities conducted by the applicant under that licence;
- (d) the applicant's submissions;
- (e) any submissions received from organs of state, interested and affected persons; and
- (f) any relevant guidelines and/ or requirements published by the Minister.

Decision of Minister on application for aquaculture licence

26. (1) The Minister may in respect of an application for an aquaculture licence—

- (a) grant the licence with conditions; or
- (b) decline the licence application.

(2) The Minister may decline a licence application where granting the application would be inconsistent with the objects of this Act.

(2) The Minister may, before making a decision to grant an aquaculture licence, request the applicant to provide it with such further information as is necessary to make the decision.

(3) After the Minister has reached a decision in respect of an application for an aquaculture licence, he/she must within 20 working days—

- (a) if the licence is not granted, notify the applicant of the decision and give written reasons for the decision;
- (b) if the decision is to approve the application, grant an aquaculture licence; and
- (c) in a manner to be determined by the Minister, instruct the applicant to notify persons who have objected to the application of the decision and the reasons for the decision.

Validity period of Aquaculture licence

27. An aquaculture licence is valid for a period of thirty (30) years and is subject to periodic review by the Minister except for a pilot scale aquaculture licence which is valid for a period of up to 10 (ten) years.

General provisions relating to aquaculture licences

28. (1) A single aquaculture licence may authorise for the undertaking of aquaculture activities—

- (a) in more than one site provided that the sites are within the same aquaculture zone; and
- (b) on the same site; and
- (c) of multiple species on the same site.

(2) An aquaculture licence issued in terms of this Act is subject to—

- (a) any general terms and conditions which may be prescribed by the

Minister generally or in respect of certain categories of aquaculture;¹⁸
or

- (b) any special terms and conditions specified in the licence and in the permit to engage in aquaculture.

Transfer of licences

29. (1) A holder of an aquaculture licence shall apply to the the Minister to transfer the licence to another person.

(2) When considering an application for the transfer of an aquaculture licence, the licensing authority may request any additional information, and must take into account all criteria required in terms of the Act.

(3) If the licensing authority decides to approve the transfer of the aquaculture licence, it must issue an amended licence which reflects the details of the new holder.

(4) The transfer of an aquaculture licence does not relieve any former holder of the licence from any liability that the former holder may have incurred while the holder of that licence.

Amendment of licences

30. (1) A licensing authority may amend an aquaculture licence on application by the holder of the licence.

(2) A licensing authority may, by written notice to the holder of an aquaculture licence, vary the licence by amending, attaching, substituting or removing a condition or requirement—

- (a) if it is necessary to prevent or reduce the spread of disease or harm to the environment;
- (b) if it is necessary or desirable to deal with changed or unforeseen circumstances;
- (c) to make a non-substantive amendment;
- (d) at the written request of the holder of the aquaculture licence; or

¹⁸ We recommend that under this provision the Minister should make general regulations requiring reporting by licence holders and the obligation to advise the licensing authority about changes to the aquaculture facility or aquaculture processing facility.

- (e) if it is reviewed in terms of section 36 [**Periodic Review of aquaculture licence**].

Renewal of licences

31. (1) A licensing authority may renew an aquaculture licence on application by the holder of the licence.

(2) The holder of an aquaculture licence must apply for the renewal of the licence before the expiry date of the licence and within the period specified in the licence by submitting an application to the licensing authority—

- (a) in the prescribed manner; and
- (b) upon payment of the prescribed fees.

(3) The provisions of section 25 [**Application for aquaculture licence**] apply with the necessary changes to applications for renewal of an aquaculture licence.

Cancellation of licences

32. (1) The Minister may cancel an aquaculture licence where —

- (a) the licence was granted on the basis of false information provided to the licensing authority;
- (b) licence holder has not commenced the aquaculture activity for which the licence was granted within 3 years from the date the licence was granted or has ceased the activity;
- (c) cancellation is necessary to prevent spread of disease or risk to the industry or risk to the environment and the risk cannot reasonably be managed or mitigated by varying the licence; or

(2) Before a Minister may cancel an aquaculture licence in terms of subsection (1) he/she must give written notice to the licence holder –

- (a) setting out reasons why he/she intends to cancel the licence;
- (b) providing the licence holder with a period within which to make representations about the proposed cancellation; and
- (c) providing the licence holder with an opportunity to rectify any non-

compliance.

Integrated aquaculture authorisations¹⁹

33. (1) If an activity requiring an authorisation in terms of this Act is also regulated in terms of another law, the authority empowered under that other law to authorise that activity and the issuing authority empowered under this Act to issue an authorisation in respect of that activity may, through the Intergovernmental Authorisations Committee established in terms of section 5—

- (a) exercise their respective powers jointly; and
- (b) issue a single integrated authorisation instead of a separate authorisation.

(2) An authority designated in terms of this Act may issue an integrated authorisation for the activity in question if that authority is designated in terms of another law to issue an authorisation for that activity in terms of that other law.

(3) An integrated authorisation may be issued only if—

- (a) the relevant provisions of this Act and that other law have been complied with; and
- (b) the authorisation specifies the—
 - (i) provisions in terms of which it has been issued; and
 - (ii) the authority or authorities that have issued it.

Periodic Review of aquaculture licences

34. (1) The Minister must review an aquaculture licence—

- (a) at intervals specified in the licence, or
- (b) if the Minister has reason to believe that—
 - (i) circumstances have arisen which may justify the review;

¹⁹ The Minister must conclude an agreement with the authorities responsible for the granting of any other authorisations that are necessary for the undertaking of an aquaculture activity to develop and implement an integrated authorisations process which may encompass, for example: environmental authorisation, waste management licence, Alien and Invasive Species permit, Threatened or Protected Species permit, CITES permit, GMO authorisation, coastal waters discharge permit; coastal use permit water use licence – abstraction; discharge of effluent, rezoning, consent use or departure, food safety authorisations, animal health authorisations, access to state land.

- (ii) the conditions imposed in the licence are inadequate either to protect the environment or human health or to enable sector growth in order to realise, fully, the potential of the sector to contribute towards social and economic development.

(2) The Minister must inform the holder of the aquaculture licence, in writing, of any proposed review and the reason for the review if the review is undertaken at another interval other than is provided for in the licence.

Cessation of aquaculture

35. (1) The licence holder must inform the Minister within 30 days prior to the cessation of aquaculture activities at an aquaculture facility.

(2) The Minister must notify the Intergovernmental Authorisations Committee established in terms of section 5 within 10 working days of receipt of notice for cessation of aquaculture activities submitted in terms of subsection (1).

Fit and proper persons²⁰

36. (1) In order to determine whether a person is a fit and proper person for the purposes of an application for a licence or the renewal of a licence in terms of this Chapter, the Minister must take into account all relevant facts, including whether—

- (a) that person has previously contravened or failed to comply with this Act; and
- (b) that person has held an aquaculture licence or permit or an authorisation under any other law to undertake aquaculture that has been suspended or revoked or that person has not complied with a material condition of the aquaculture licence or authorisation.

Aquaculture permits

37. (1) A person may not—

- (a) engage in an aquaculture activity without a permit issued in terms of this Chapter;²¹

²⁰ Further discussion is needed as to whether it is desirable to widen the discretion of the licensing authority to refuse a licence on the basis of fitness of the applicant.

²¹ The effect of this provision is that all small-scale aquaculturists will require a permit which must be renewed every two years unless they are farming indigenous species.

- (b) collect broodstock from the wild in South African waters without a permit issued in terms of this Chapter or any other relevant legislation; and
- (c) operate a processing establishment without a permit issued under this Chapter or any other relevant legislation.

(2) A licence holder with multiply sites for engaging in aquaculture activities as provided for in terms of section 29(1)(a) must apply for a permit for each site.

(3) A person who requires an aquaculture permit must apply to the licensing authority in the prescribed form.²²

- (4) A permit contemplated in subsection (1) and (2) must be issued—
 - (a) for a specified period;
 - (b) subject to the conditions determined by the Minister in the permit.

Validity period of permits

38. (1) The following permits will be valid for a period of two years from the date of issue—

- (a) engaging in aquaculture, including holding of broodstock and operating a hatchery;
- (b) operation of an aquaculture processing facility;
- (c) transportation of aquaculture products; and
- (d) ranching.

(2) The following permits will be valid for a period of twelve months from the date of issue—

- (a) collection of broodstock for aquaculture;

²² The application process will be the subject of regulations which should deal with among other things: the prescribed form of application, any licence fee, time-frames for the licensing authority to respond to and decide the application, requests by the licensing authority for further information.

- (b) import of live aquaculture organisms;
- (c) import of formulated feed for use in aquaculture; and
- (d) export of aquaculture products.

Suspension of certain authorised aquaculture activities

39. The licensing authority may, by written notice to the holder of an aquaculture authorisation, suspend certain authorised aquaculture activities if—

- (a) the authorised holder has not complied with a condition of licence and or permit; or
- (b) it is necessary to protect human health or the aquaculture industry or natural environment.

CHAPTER EIGHT: MAINTAINING ENVIRONMENTAL INTEGRITY

Water quality management

40. (1) The Minister may in regulations set water quality objectives and standards for aquaculture after consultation with the national Ministers responsible for the environment and for water.

(2) In order to assist with the achievement of water quality objectives, the Minister may enter into an agreement or agreements with:

- (a) the national Minister responsible for water on water use that may adversely affect freshwater aquaculture facilities.; or
- (b) the national Minister responsible for the environment for water quality objectives for aquaculture in the marine environment...

(3) The Minister may develop and implement a water quality monitoring system and must allow persons undertaking aquaculture activities access to information about any condition that may affect the health of aquatic organisms.

Protection of the aquatic environment

41. Notwithstanding the provisions of any other law, a person engaged in aquaculture must take all reasonably practical measures to—

- (a) avoid and minimise any harmful environmental impacts caused by aquaculture; and
- (b) prevent the escape of live aquaculture organisms into the aquatic environment of the Republic.

Protection of biodiversity

42. A person engaged in aquaculture activities must comply with relevant legislation and take all reasonably practical measures to prevent the—

- (a) harm of the environment by alien and invasive species; and
- (b) contamination of the environment by genetically modified organisms.

Environmental management

43. A person engaging in aquaculture must implement applicable environmental management legislation. .

Prohibition of release of live aquaculture organism

44. No person may intentionally release a live aquaculture organism into the aquatic environment other than in terms of an aquaculture licence.

Reporting of release or escape of live aquaculture organisms

45. (1) A person who releases or is responsible for the escape of a live aquaculture organism into the aquatic environment must—

- (a) immediately inform an aquaculture inspector;
- (b) comply with a directive issued by the licensing authority relating to the release and or escape;

(2) If a person fails to comply with a directive contemplated in subsection (1), the Department may take any reasonable measures to remedy the situation and recover the costs from the person who caused the release or escape.²³

²³ Liability for escape of live aquatic organisms that are genetically modified organisms is also dealt with in terms of the Genetically Modified Organisms Act.

CHAPTER NINE: HEALTH, WELFARE, SAFETY AND QUALITY OF AQUATIC ORGANISMS AND PRODUCTS²⁴

National aquatic animal health programme

46. The Minister must establish a National Aquatic Animal Health and Welfare programme..

Certification of Aquatic Animal Health

47. A certificate of aquatic animal health must be issued by an aquatic animal health specialist designated by the Minister in terms of this Act or any other animal health legislation.

Notifiable pathogens and pests affecting aquatic organisms

48. (1) The Minister may declare any pathogen or pest, that kills or causes illness in aquatic organisms, or that kills or causes illness in people who eat the infected organism, to be a notifiable pathogen or pest.

(2) Any person engaged in aquaculture or any veterinarian providing veterinary services to an aquaculture facility must report the presence of a notifiable pathogen or pest to the licensing authority or to an aquaculture inspector immediately after becoming aware of its presence.

(3) No person who knows or has reason to suspect that any aquatic animal or aquaculture product is infected with a notifiable pathogen or pest may—

- (a) sell the aquaculture product, whether alive or dead;
- (b) allow it to be eaten by humans or animals, or
- (c) deposit the aquaculture product, whether alive or dead, in any waters or land in a place where it may enter or contaminate any water.

Contingency measures

49. (1) If the Minister, reasonably believes that there is a significant risk to any

²⁴ The control of disease is one of the most important aspects of aquaculture management. Diseases can spread easily from facility to facility and to wild fish. This Chapter provides for mandatory reporting of specified diseases or harmful organisms, for control measures for diseases and risks including destruction of stock and for compensation in respect of such destruction.

aquatic organism, the aquaculture industry or to the environment may—

- (a) order the isolation, quarantine or treatment of any aquatic organism infected or thought to be infected with a pathogen or pest that is OIE (International Organisation for Animal Health) listed or of national significance;
- (b) destroy or restrict the movement of any aquatic organisms infected or thought to be infected with a pathogen or pest that is OIE listed or of national significance;
- (c) quarantine any aquaculture facility in which the Minister reasonably suspects that a pathogen or pest is present that is OIE listed or of national significance; or
- (d) take any other measures that the Minister reasonably believes are necessary to prevent the spread of the pathogen or pest that is OIE listed or of national significance.

(2) Any person engaged in aquaculture must take all possible measures to prevent the spread of a pathogen or pest in or from an aquaculture facility, including the destruction of aquatic organisms or aquaculture products and the disinfection of aquaculture facilities, and must immediately comply with any measures that the Minister may order for that purpose.

Quarantine areas

50. (1) The Minister may designate quarantine areas for aquatic organisms in any suitable place including at border posts and ports within the Republic.

(2) Each quarantine area must be under the control of a competent authority who must take appropriate measures to ensure that aquatic organisms in the centre are properly contained and monitored and that the spread of pathogens and pests is prevented.

Compensation for destruction of aquaculture organisms

51. (1) The owner of any aquatic organism or aquaculture product that has been culled or restricted in terms of this Chapter may apply to the Director-General for compensation for the loss of the organism or product based on prescribed criteria.

(2) The provisions of section 19 of the Animal Diseases Act, 1984 (Act No. 35 of 1984) apply with the necessary changes to an application for compensation for any aquatic organism or product destroyed or restricted in terms of this Chapter.

(3) A person who is not satisfied with the amount of compensation paid under subsection (1) may appeal to the Minister in terms of Chapter 13 of this Act.

Use of aquaculture drugs and feeds

52. (1) A person may not sell or use a drug or a feed in aquaculture unless that drug or feed is registered in terms of this section.

(2) A person wishing to register a drug or feed for use in aquaculture must apply to the Minister for registration in the prescribed form.

(3) The Minister must publish a list of registered aquaculture drugs and aquaculture feeds.

(4) No person may use an aquaculture drug or feed that is not registered in terms of this section unless it is registered in terms of the—

- (a) Medicines and Related Substances Control Act, 1965; or
- (b) Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947.

Provision of veterinary services to aquaculture licence holders

53. The MECs of each province must ensure that there is sufficient capacity for state veterinarians in the provincial departments responsible for agriculture to provide aquatic animal health services to the aquaculture sector.²⁵

Animal welfare

54. The Minister may prescribe minimum standards for protecting the welfare of live aquatic animals used for aquaculture activities.

Standards for aquaculture

55. The Minister must, in consultation with the Minister responsible for health and trade, establish and maintain standards for product quality, safety and traceability of

²⁵ Provision of veterinary services is an area of exclusive provincial competence.

aquaculture products.

Food Safety Monitoring Programmes

56. The Minister must, in consultation with the Ministers responsible for health and trade, establish product quality and safety programmes which conforms as far as possible with relevant local and international standards and or requirements.

Certification of Aquaculture Products

57. A certificate of food safety must be issued by a competent authority or person delegated in terms of this Act or any other food safety legislation.

Certification system

58. (1) The Minister must, in consultation with the relevant Ministers, establish a certification system of aquaculture products.

(2) The certification system must—

- (a) take account of the requirements of countries that import aquaculture products from the Republic;
- (b) provide for the certification of aquaculture products by competent authorities and third party certifying bodies;

CHAPTER TEN: IMPORT, EXPORT AND MOVEMENT OF AQUATIC ORGANISMS AND AQUACULTURE PRODUCTS

Import of aquaculture products or aquatic organisms

59. (1) Subject to subsection (2), a person may not import an aquaculture product or aquatic organism destined for use in aquaculture without a permit issued under this Act.

(2) The Minister may by notice in the Gazette waive the requirement for an importer of an aquatic organism to obtain an import permit referred to in subparagraph (1), either generally, or in certain circumstances, if the importer has an

import permit that authorised the import of those aquatic organisms in terms of –

- (a) section 3 of the Agricultural Pests Act, 1983 (Act No. 36 of 1983); or
- (b) section 6 of the Animal Diseases Act, 1984 (Act No. 35 of 1984).

(3) The Minister may prohibit the import of certain species of alien aquatic organisms or aquaculture products where it is reasonably necessary for the protection of the aquaculture sector in the Republic.

Application for import permit

60. A person wishing to import aquaculture products or an aquatic organism under section 61(1) [**Import of aquaculture products or aquatic organisms**] must apply to the licensing authority in the prescribed manner.

Decision on permit application

61. (1) The licensing authority may decline or grant the permit subject to conditions.

(2) The licensing authority may not grant the permit unless it is satisfied that the proposed importation will not pose a risk to the health of aquatic organisms within the Republic.

(3) If an application for a permit is declined, the licensing authority must notify the applicant as soon as is reasonably possible and provide reasons for the decline.

Amendment, suspension or cancellation of import permit

62. (1) A licensing authority may amend, suspend or cancel an import permit by written notice to the permit holder.

(2) A licensing authority may only amend, suspend or cancel an import permit if the licensing authority has reason to believe that the permit holder has contravened provisions of this Act.

Importation procedure

63. (1) Any consignment of live aquatic organisms destined for an aquaculture facility entering the Republic must—

- (a) be accompanied by an original valid veterinary health certificate in a form prescribed by the Minister, a phytosanitary certificate, where applicable and a certificate of origin and;
- (b) be inspected by an aquaculture inspector at the border post or port.

(2) A person may not remove any live aquatic organisms from customs unless an aquaculture inspector has cleared the consignment.

(3) The Minister may make regulations to—

- (a) set health standards for the import of live aquatic organisms;
- (b) prescribe the form of health certificate to accompany consignments of live aquatic organisms;
- (c) further regulate the inspection procedure;
- (d) prescribe the form of veterinary certificate or phytosanitary certificate that must be issued under subsection (2); and
- (e) prescribe control measures for the movement of aquatic organisms within the Republic.

Movement of aquaculture organisms and products

64. (1) If an aquaculture inspector detects in a consignment the presence of a disease likely to constitute a health hazard to humans, animals or other aquatic organisms, the inspector must issue a directive to the person in charge of the consignment prohibiting the movement of the consignment and specifying measures to be taken to reduce or prevent the risk to health.

(2) Subject to subsection (1), the aquaculture inspector may order further tests to be conducted on the consignment;

(3) The Licensing Authority may order the destruction of the consignment if the measures referred to in subsection (1) are not complied with or if a positive disease or a contaminant has been detected and it is necessary to protect human or animal

health.

(4) The Minister may establish aquatic animal health and product movement protocols or requirements for the aquaculture sector in the Republic.

Export of aquaculture products

65. (1) A person may not export an aquaculture product without an export permit issued under this Chapter.

(2) A person wishing to export aquaculture products must apply to the licensing authority in the prescribed manner.

Decision on application for export permit

66. (1) The licensing authority may issue the permit subject to conditions.

(2) The licensing authority must decline the request for a permit if:

(a) the aquaculture products in question:

- (i) are not accompanied by certificate of food safety issued by the competent authority in accordance with section **59 [Certification of aquaculture products]** where required;
- (ii) pose an unacceptable risk to human and aquatic animal health; or
- (iii) do not comply with the requirements of the importing country; or

(b) permitting the export of those aquaculture products would be inconsistent with the objects of the Act.

(3) If a request for a permit is declined, the licensing authority must notify the applicant as soon as is reasonably possible and provide reasons for the decline.

Amendment, suspension or cancellation of export permit

67. (1) A licensing authority may amend, suspend, cancel or renew an export permit by written notice to the permit holder.

(2) A licensing authority may only amend, suspend or cancel an export permit if the licensing authority has reason to believe that doing so is necessary or appropriate to achieve the objects of the Act.

CHAPTER ELEVEN: TRANSFORMATION AND SOCIAL RESPONSIBILITY

Transformation of aquaculture industry

68. The Minister may—

- (a) prescribe regulations on transformation targets for the aquaculture sector; and
- (b) develop a code of good practice for responsible aquaculture development for the aquaculture sector in the Republic.

Compliance with the BBBEE Act

69. An aquaculture licence holder must, where applicable must comply with the black economic empowerment legislation.

Good Labour Practices

70. An aquaculture licence holder must have good labour practices and comply with the relevant labour legislation.

Social Responsibility

71. An aquaculture licence holder must ensure that they are socially responsible and that the licence holder's operation does not negatively affect the livelihood of local communities.

CHAPTER TWELVE: INSPECTION AND ENFORCEMENT

Designation of Aquaculture Inspectors

72. (1) The Minister may designate an official of the Department or any other organ of State as an aquaculture inspector for the purposes of this Act.

All Fishery Control Officers appointed in terms of the MLRA, 1998 are designated as Aquaculture Inspectors

(2) The Minister, may at any time withdraw or alter a designation made under subsection (1)

Powers of aquaculture inspectors

73. (1) An aquaculture inspector may for the purposes of enforcing this Act—

- (a) enter any aquaculture facility and inspect that aquaculture facility, its infrastructure, equipment and any aquaculture product therein and any document or record required under this Act;
- (b) stop, enter and inspect any vehicle, vessel or aircraft which may be transporting aquaculture products;
- (c) question any person who, in the opinion of the inspector, may be capable of furnishing any information which the inspector may require;
- (d) require any person employed or present on any aquaculture facility to assist in the examination of such aquaculture facility or any document in order to ascertain whether this Act has been complied with;
- (e) seize any aquatic organism or aquaculture product or any sample of an aquatic organism or aquaculture product, which the inspector suspects is diseased or not safe for human consumption or has not been farmed in accordance with a licence issued under this Act or has been removed or transported from any site in contravention of this Act;
- (f) require any licensee or any person responsible for an aquaculture facility to treat or destroy any aquatic organism that is or may be diseased or that is not safe for human consumption;
- (g) convey directives in the prescribed manner to enforce the provisions of

this Act; and

- (h) conduct routine inspections, in the prescribed manner, and inspect any vehicle, vessel, building or premises for the purposes of ascertaining compliance with this Act or condition of a licence, permit or other instrument issued in terms of this Act.

(2) Where an inspector on reasonable grounds suspects that an offence under this Act has been committed, the inspector may -

(a) seize any vehicle, vessel or equipment or any other means which the inspector reasonably suspects has been used in the commission of that offence or where such seizure is reasonably necessary to preserve evidence;

- (b) require any person who may have information concerning a possible offence to furnish his or her name and address.

(3) An aquaculture inspector must—

(a) provide a receipt for—

- (i) any document, book, record or written or electronic information removed in terms of subsection (1)(d); or
- (ii) any aquaculture organism, aquaculture product, sample or other item seized in terms of subsection 1(e); or
- (iii) a vehicle, vessel or equipment seized under subsection (2)(b);

(4) If any aquatic organism or aquaculture product seized under subsection (1)(e) is found to be diseased or not safe for human consumption, the Licensing Authority

- (a) must return it to its owner or, if its return is not practicable, the Licensing Authority may dispose of it as the Licensing Authority deems fit; or
- (b) may dispose of it as the Licensing Authority deems fit.

(5) An inspector shall, before exercising any powers conferred under subsections (1) and (2), produce an official certificate of identification, issued by the Minister for that purpose, to any person in respect of whom the inspector intends to exercise any such power.

Disposal of aquaculture products and seized items

74. (1) The provisions of sections 30 to 34 of the Criminal Procedure Act apply to the disposal of anything seized in terms of this section, subject to such modifications as the context may require.

(2) When an item is seized in terms of this section, an aquaculture inspector may request the person who was in control of the item immediately before the seizure of the item, to take it to a place designated by the aquaculture inspector, and if the person refuses to take the item to the designated place, the aquaculture inspector may do so.

(3) In order to safeguard a vehicle or vessel that has been seized, the aquaculture inspector may immobilise it by removing a part.

(4) An item seized in terms of this Act, including a part of a vehicle or vessel referred to in subsection (3), must be kept in such a way that it is secured against damage.

(5) Notwithstanding the provisions of section 75(4) any aquaculture product seized under section 75 that is likely to perish may be disposed of in such a manner as the circumstances may require.

Objections to directive

75. (1) Any person who receives a directive in terms of section 75(1)(g) may object to the directive by making representations, in writing, to the Minister or MEC, as the case may be, within 30 days of receipt of the directive, or within such longer period as the Minister or MEC may determine.

(2) After considering any representations made in terms of subsection (1) and any other relevant information, the Minister or MEC, as the case may be—

- (a) may confirm, modify or cancel a directive or any part of a directive; and
- (b) must specify the period within which the person who received the directive must comply with any part of the directive that is confirmed or modified.

Failure to comply with directive

76. If a person fails to comply with a directive, the aquaculture inspector must report the non-compliance to the Licensing Authority, as the case may be, and the Licensing Authority may—

- (a) cancel or amend the relevant licence, permit or other instrument which is the subject of the directive; or

- (b) take any necessary steps and recover the costs of doing so from the person who failed to comply.

Offences

77. A person commits an offence if that person –

- (a) contravenes sections 24(1), 39(1), 46, 50(3), 54(1), 54(4), 61(1), 65(2) or 67(1);
- (b) contravenes or fails to comply with a condition subject to which a licence or permit or exemption has been granted in terms of this Act;
- (c) fails to cooperate with an Aquaculture Inspector on duty; or
- (d) fails to comply with any other provision of this Act.

Penalties

78. (1) A person convicted of an offence in terms of section 79(a) or (b) [**Offences**] is liable to a fine not exceeding R2 million or to imprisonment for a period not exceeding 2 years, or to both a fine and imprisonment.

(2) A person convicted of an offence in terms of section 79 (c) or (d) [**Offences**] is liable to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year, or to both a fine and imprisonment.

Admission of guilt fines

79. (1) The Minister may in regulations specify offences in terms of this Act 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) An aquaculture inspector who has reason to believe that a person has committed an offence specified in terms of subsection (1) may issue to the alleged offender a written notice referred to in section 56 of the Criminal Procedure Act.

(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 apply, subject to the necessary modifications, to written notices and admission of guilt fines referred to in this section.

CHAPTER THIRTEEN: APPEALS

Appeal

80. (1) A person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act.

(2) An appeal under subsection (1) must be noted and must be dealt with in the prescribed manner.

(3) The Minister may appoint an appeal panel to consider and advise the Minister on the appeal.

(4) The Minister may, after considering the appeal, confirm, set aside or amend the decision, provision, condition or directive or make any other appropriate decision.

(5) The Minister may suspend a decision pending an appeal.

CHAPTER FOURTEEN: GENERAL AND TRANSITIONAL PROVISIONS

Ownership of aquaculture animals and products

81. (1) Subject to subsection (2), aquaculture animals and aquaculture products specified in a licence or exemption notice are owned by the holder of that licence or exemption or by any other person to whom ownership has been lawfully transferred.

(2) All aquaculture animals which are lawfully released for the purpose of ranching are exclusive property of the licensee or exemption holder.

Applications for exemption

82. (1) Subject to subsection (2), the Minister may exempt any person, category of persons or organ of state from any of the provisions in terms of this Act.

(2) The Minister may not grant an exemption unless the Minister has reason to be satisfied that doing so is consistent with the attainment of the objects of this Act.

Delegation by Minister

83. (1) The Minister may delegate a power or duty vested in him or her in terms of this Act to—

- (c) A departmental official;
- (d) an MEC, by agreement with the MEC;
- (e) any organ of state, by agreement with that organ of state;

(2) A delegation referred to in subsection (1)—

- (a) must be in writing;
- (b) may be made subject to conditions;
- (c) does not prevent the exercise of the power or the performance of the duty by the Minister himself or herself;
- (d) may include the power to subdelegate; and
- (e) may be withdrawn by the Minister.

(3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC or an organ of state.

(4) The Minister may confirm, amend or revoke any decision taken in consequence of a delegation or subdelegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(5) The Minister may not delegate a power or duty vested in the Minister in terms of this Act

- (a) to make regulations;
- (b) to publish notices in the *Gazette*.

(6) The Director-General may delegate a power or duty vested in him or her by or under this Act to—

- (a) A Departmental official; or
- (b) after consultation with a provincial head of department, an official in a provincial administration or municipality.

(7) The Director-General may permit a person to whom a power or duty has been

delegated by the Director-General to delegate further that power or duty.

(8) A delegation referred to in subsection (3) and the permission referred to in subsection (4)—

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) does not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself; and
- (d) may be withdrawn by the Director-General.

Power to make Regulations

84. (1) The Minister may make regulations regarding any matter required or permitted to be prescribed in terms of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Minister may make regulations concerning—

- (a) the exclusion of species or other categories of aquatic organism from the definition of aquatic organism for the purposes of this Act;
- (b) the establishment of any forums, working groups and advisory and technical committees that are necessary to achieve the objects of this Act;
- (c) the establishment of a national aquaculture research and technology development programme and any other programmes that are necessary for the achievement of the objects of this Act;
- (d) the establishment of a national reference laboratory for aquaculture;
- (e) the administration of the aquaculture development fund;
- (f) the declaration and management of aquaculture development zones;
- (g) the conduct, management, licensing and integrated licensing of aquaculture activities;
- (h) the collection and dissemination of information concerning aquaculture

activities;

- (i) the setting of water quality objectives;
- (j) the surveillance, monitoring and prevention of diseases of aquatic organisms;
- (k) measures for controlling disease of aquatic organisms;
- (l) the registration and use of formulated feeds, aquaculture drugs and other substances for aquaculture purposes;
- (m) the movement of aquatic organisms into and within the Republic;
- (n) the export and import of aquatic organisms and aquaculture products from or into the Republic;
- (o) the traceability and quality control of aquaculture products;
- (p) the granting of exemptions from the provisions of this Act;
- (q) the imposition of fees for applications and levies on the export of aquaculture products in terms of this Act; and
- (r) any other matter necessary for the achievement of the objects of this Act.

Savings and repeal and amendment of legislation

85. (1) The laws set out in Schedule 1 are hereby repealed or amended to the extent set out in the third column of that Schedule, subject to subsections (2) and (3) of this section and section 146.

(2) Anything lawfully done or deemed to have been done under a provision repealed or amended by subsection (1) which can or must be done in terms of this Act must be regarded as having been done in terms of this Act.

(3) Anything else done or deemed to have been done under a provision repealed or amended by subsection (1) remains valid to the extent that it is consistent with this Act and must be regarded as having been made in terms of this Act..

(4) Any criminal proceedings relating to aquaculture activities which were instituted under Chapter 7 of the Marine Living Resources Act that have not been finalised on the date of coming into effect of this Act, must be finalised as if those sections of the Marine Living Resources Act and the Regulations in terms of the

Marine Living Resources Act 1998 referred to in Schedule 1 had not been repealed or amended.

Transitional arrangements

86. (1) Any person who, on the date of commencement of this Act, was authorised to undertake aquaculture in terms of a right granted in terms of section 18 of the Marine Living Resources Act or a permit granted in terms of section 13 of that Act, and all freshwater aquaculture operators must apply for an aquaculture licence and/or an aquaculture permit within 12 months of the date of commencement of this Act.

(2) Any person who is currently undertaking aquaculture activities without the relevant authorisation must apply to the licensing authority within 6 months of the date of commencement of this Act.

(3) Any person who applies for an aquaculture licence or aquaculture permit within the period referred to in subsection (1) shall be deemed to have complied with the obligation to obtain such a licence or permit until the licensing authority decides whether to grant or decline their application.

State liability

87. (1) Neither the State nor any other person working for the State is liable for any damage or loss caused by—

- (a) the exercise of any power or performance of any duty in terms of this Act; or
- (b) the failure to exercise any power or perform any duty in terms of this Act,

unless the exercise of or failure to exercise the power, the performance or failure to perform the function or duty was unlawful, negligent or in bad faith.

Short title and commencement

88. This Act is called the Aquaculture Act, 2016, and takes effect on a date or dates determined by the President by proclamation in the *Gazette*.

Schedule 1**LAWS REPEALED OR AMENDED**

(Section 90)

<i>Number and year of the law</i>	<i>Short title</i>	<i>Extent of repeal or amendment</i>
Act No. 18 of 1998	Marine Living Resources Act, 1998	<p>Amends the definition of “fishing” in section 1 by adding the words “excluding mariculture” at the end of that definition</p> <p>Amends section 1 by deleting the definition of “mariculture”.</p> <p>Amends definition of “fish processing establishment” by the addition of the words “excluding aquaculture processing facilities that do not process any fish captured in the wild.”²⁶</p> <p>Amends section 2(d) by deleting the words “and mariculture”</p> <p>Amends section 18(1) by deleting the words, “engage in mariculture”.</p>

²⁶ The effect of this amendment is that fish processing establishments that only process aquaculture organisms do not require a right under section 18 of the MLRA but any fish processing establishment that processes both wild caught fish and aquaculture organisms will require both a right in terms of the MLRA and a licence in terms of this Act. However, the Minister may exempt those facilities from the licence requirement on certain conditions.

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Amends section 34(4) by deleting the words “or mariculture”

Repeals section 77(2)(cc).

Government Notice No. R1111, 2 September 1998.

Regulations in terms of the Marine Living Resources Act, 1998

Repeals regulation 4(1)(i).

Repeals Chapter 6.

Aquaculture Bill (draft 0.1, 7 August 2015)