

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
MARINE LIVING RESOURCES
BILL**

[B 94—97]

(As agreed to by the Portfolio Committee on Environmental Affairs and Tourism (National Assembly))

[B 94A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP LEWENDE
MARIENE HULPBRONNE**

[W 94—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Omgewingsake en Toerisme (Nasionale Vergadering))

[W 94A—97]

ISBN 0 621 27605 7

AMENDMENTS AGREED TO

MARINE LIVING RESOURCES BILL
[B 94—97]

CLAUSE 1

1. On page 8, in line 2, to omit “rights of access” and to substitute “commercial fishing rights”.
2. On page 8, in line 8, to omit the definition of “Company”.
3. On page 8, after line 10, to insert the following definition:
 - (vi) “Council” means the Fisheries Transformation Council established in terms of section 29;
4. On page 8, in line 25, after the first “the” to insert “marine”.
5. On page 12, in line 28, to omit “commercial fishing” and to substitute “fish”.
6. On page 12, in line 29, to omit “Part 3 of Chapter 3” and to substitute “this Act”.
7. On page 14, in line 4, to omit “Chapter 2” and to substitute “section 14”.

CLAUSE 2

1. On page 14, in line 24, after “Minister” to insert “and any organ of state”.
2. On page 14, in line 34, after “development,” to insert:

capacity building within fisheries and mariculture branches,
3. On page 14, after line 43, to insert the following paragraph:
 - (j) the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.

CLAUSE 3

1. On page 16, from line 11, to omit paragraph (b).

CLAUSE 6

1. On page 16, after line 34, to insert the following paragraph:
 - (b) in respect of the objectives and principles referred to in section 2 that in the opinion of the Forum should be brought to the attention of the Minister.

CLAUSE 7

1. On page 16, after line 41, to insert the following subsection:
 - (3) Before the members of the Forum are appointed, the Minister shall invite nominations by interested parties by notice in the *Gazette*: Provided that the Minister shall not be bound by any such nomination.
2. On page 18, in line 6, to omit “and remuneration”.

CLAUSE 9

1. On page 18, in line 21, to omit “fishery control” and to substitute “honorary marine conservation”.
2. On page 18, in line 22, to omit “fishery control officer” and to substitute “person”.

CLAUSE 13

1. On page 20, in line 14, to omit “of access or other right” and to substitute “granted in terms of section 18”.

CLAUSE 14

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 13:

Determination of allowable catches and applied effort

14. (1) The Minister shall determine the total allowable catch, the total applied effort, or a combination thereof.

(2) The Minister shall determine the portions of the total allowable catch, the total applied effort, or a combination thereof, to be allocated in any year to subsistence, recreational, local commercial and foreign fishing, respectively.

(3) In the execution of his or her powers in terms of this section, the Minister may determine that the total allowable catch, or the total applied effort, or a combination thereof, shall apply—

- (a) in a particular area, or in respect of particular species or a group of species of fish; and
- (b) in respect of the use of particular gear, fishing methods or types of fishing vessels.

(4) If the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass of the increase shall be available for allocation by the Minister.

(5) The provisions of this section shall not be construed to mean that the Minister is prohibited from determining that—

- (a) the total allowable catch;
- (b) a portion of the total allowable catch contemplated in subsection (2); or
- (c) an allocation in terms of subsection (4), shall be nil.

CLAUSE 16

1. On page 22, from line 1, to omit “for which there is no fisheries management plan, or for which a proposed plan has not yet been approved by the Minister”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 17:

Granting of rights

18. (1) No person shall undertake commercial fishing or subsistence fishing, engage in mariculture or operate a fish processing establishment unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.

(2) An application for any right referred to in subsection (1) shall be submitted to the Minister in the manner that the Minister may determine.

(3) The Minister may require an environmental impact assessment report to be submitted by the applicant.

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

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

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

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

CLAUSE 18

1. On page 22, after line 24, to insert:
 - (iii) any other fishing or related activity or the exercise of any other right in that area or zone to be prohibited.
2. On page 22, in line 26, to omit “Director-General” and to substitute “Minister”.

CLAUSE 20

Clause rejected.

CLAUSE 21

Clause rejected.

CLAUSE 22

Clause rejected.

CLAUSE 23

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Commercial fishing

21. (1) Subject to the provisions of this Act, a commercial fishing right may be leased, divided or otherwise transferred.

(2) An application to transfer a commercial fishing right or a part thereof shall be submitted to the Minister in the manner that the Minister may determine, and subject to the provisions of this Act and any applicable regulation, the Minister may, in writing, approve the transfer of the right or a part thereof.

(3) The Minister may, after consultation with the Forum, make regulations regarding—

- (a) the formula by which a commercial fishing right as a portion of the allowable commercial catch, the total applied effort, or a combination thereof, shall be determined;
- (b) guidelines or criteria concerning the transfer of any right of access, including determining limits on the transfer of rights between holders of such rights on a temporary basis;
- (c) the maximum or minimum portion of the allowable commercial catch, the total applied effort, or a combination thereof, which may be allocated or transferred to, or acquired or otherwise held by, any person;
- (d) reallocation of any right of access, having regard to any significant alteration in the long-term revenue derived from the resource being exploited or in the long-term availability of the resource;
- (e) the determination of rights to, or disposition of, by-catches in relation to any right;
- (f) the monitoring and control of the use of rights of access;
- (g) subject to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), the employment of South African persons on board fishing vessels that are used for the utilisation of any right of access;
- (h) the utilisation of South African fish processing establishments in the exercise of a right of access; and
- (i) the other measures that may be necessary or desirable to achieve the effective implementation of a scheme for rights of access.

CLAUSE 24

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Leasing of rights

22. (1) As from a date fixed by the Minister in the *Gazette*, the rights contemplated in section 18 shall, subject to section 31, be leased by the State.

(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.

(3) The method of allocation and payment contemplated in subsection (2), which may include tendering and fixed price leasing, may vary between branches of the fishing industry.

(4) With the concurrence of the Minister of Finance, a determined portion of the money paid in respect of a right leased by the State shall be paid into the Fund and the remainder shall be paid into the National Revenue Fund.

CLAUSE 26

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

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.

NEW PART 4

1. On page 26, after line 22, to insert “**PART 4: GENERAL LOCAL MATTERS**”.

CLAUSE 27

Clause rejected.

CLAUSE 28

Clause rejected.

CLAUSE 29

Clause rejected.

CLAUSE 30

Clause rejected.

CLAUSE 31

Clause rejected.

CLAUSE 32

Clause rejected.

CLAUSE 33

Clause rejected.

CLAUSE 34

Clause rejected.

CLAUSE 35

Clause rejected.

CLAUSE 36

Clause rejected.

CLAUSE 37

Clause rejected.

CLAUSE 38

1. On page 30, in line 26, to omit “of access, other rights”.
2. On page 30, in line 29, to omit “of access, other right”.

CLAUSE 41

1. On page 32, in line 1, to omit “of access, other rights”.
2. On page 32, in line 2, to omit “of access, other right”.
3. On page 32, from line 3, to omit “of access, other right”.
4. On page 32, from line 6, to omit “of access, other right”.
5. On page 32, after line 9, to insert the following paragraph:

(e) fails to effectively utilise that right, licence or permit,
6. On page 32, from line 12, to omit “of access, other right”.
7. On page 32, in line 13, after “be” to insert “revoked,”.

8. On page 32, after line 19, to insert the following paragraph:
 - (a) revoke the right, licence or permit;
9. On page 32, in line 20, to omit “of access, other right”.
10. On page 32, in line 22, to omit “of access, other right”.
11. On page 32, in line 24, to omit “of access, other right”.
12. On page 32, in line 26, after the first “to” to insert “revoke,”.
13. On page 32, in line 26, to omit, “of access, other right”.
14. On page 32, in line 31, to omit “of access, other right”.
15. On page 32, in line 31, after “permit” to insert “, revoke”.
16. On page 32, in line 32, to omit “of access, other right”.

NEW PART

1. That the following be a new Part:

PART FIVE: FISHERIES TRANSFORMATION COUNCIL

Establishment of Fisheries Transformation Council

29. The Minister shall establish a body by notice in the *Gazette*, which shall be called the Fisheries Transformation Council.

Main object of Council

30. The main object of the Council shall be to facilitate the achievement of fair and equitable access to the rights referred to in section 18.

Allocation of rights to and by Council

31. (1) The Minister may, notwithstanding the provisions of this Act, allocate rights to the Council.

(2) The Council shall lease rights, according to criteria determined by the Minister, to persons from historically disadvantaged sectors of society and to small and medium size enterprises.

Powers of Council

32. The Council may, subject to restrictions determined by the Minister—

- (a) lease commercial fishing rights;
- (b) determine the price to be paid by lessees of rights;
- (c) determine the conditions applicable to leases granted in terms of this section, which conditions shall govern the circumstances under which the lease may be revoked, cancelled, suspended or altered; and
- (d) assist in the development and capacity building of persons from historically disadvantaged sectors of society and small and medium size enterprises.

Management and control

33. For the purposes of management and control of the Council, the Minister may—

- (a) issue criteria, guidelines and instructions for the operation of the Council; and
- (b) determine that the affairs of the Council shall be managed and controlled according to a business plan approved by him or her.

Composition of Council

34. (1) The Council shall consist of at least five members, including a chairperson, appointed by the Minister for the period determined by him or her, but not exceeding three years at a time.

(2) The Minister shall ensure that the Council be broadly representative and multidisciplinary, with members qualified to make a substantial contribution towards the proper functioning of the Council.

(3) Before the members of the Council are appointed, the Minister shall invite nominations by interested parties by notice in the *Gazette*: Provided that the Minister shall not be bound by any such nomination.

(4) No person who has a direct interest in any manner whatsoever in commercial fishing or mariculture shall be appointed in terms of this section.

(5) A member of the Council shall vacate his or her office if he or she—

- (a) becomes insolvent;
- (b) becomes of unsound mind;
- (c) is convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (d) is absent from three consecutive meetings of the Council without leave of the chairperson;
- (e) resigns by written notice to the Minister; or
- (f) is removed from office by the Minister if there are sufficient reasons in the opinion of the Minister for doing so.

(6) The Director-General may pay to a member of the Council who is not in the full-time employment of an organ of state, from money appropriated by Parliament for that purpose, the allowances and remuneration which the Minister may determine in general or in a specific case, in consultation with the Minister of Finance.

(7) The Minister may prescribe the necessary matters relating to meetings of the Council.

Staff

35. The employees required for the proper performance of the Council's functions, shall be appointed subject to the laws governing the public service.

Reporting

36. (1) The Council shall annually not later than the first day of March, submit to the Minister a report on all its activities during the previous year.

(2) The report referred to in subsection (1) shall be laid upon the Table in Parliament within 14 days after it was submitted to the Minister, if Parliament is then in session, or if Parliament is not then in session, within 14 days of the commencement of the next ensuing session.

Abolishment of Council

37. The Minister may by notice in the *Gazette*, after consultation with the Forum, abolish the Council.

CLAUSE 47

1. On page 34, in line 51, after “flora” to insert:
 or a particular species of fauna or flora
2. On page 36, after line 13, to insert the following paragraph:
 (e) carry on any activity which may adversely impact on the ecosystems of that area.
3. On page 36, in line 14, after “may” to insert “after consultation with the Forum,”.

CLAUSE 48

1. On page 36, after line 26, to insert the following paragraph:
 (c) engage in a fishing or related activity by a method or in a manner prohibited by the Minister by notice in the *Gazette*.
2. On page 36, in line 28 to omit, “subsection (1)(a)” and to substitute “this Act”.

NEW CLAUSE

1. That the following be a new Clause:

Duty to report

57. A holder of a right, license or permit granted or issued in terms of this Act shall report to the Minister any contravention of the provisions of this Act by any other person.

NEW CLAUSE

1. That the following be a new Clause:

Inquiries

82. (1) The Minister may order an inquiry into any matter forming the subject matter of this Act.

(2) For the purposes of an inquiry contemplated in subsection (1), the Minister may appoint one or more persons, including a chairperson, as a committee to conduct the inquiry.

(3) A committee contemplated in subsection (2) may—

- (a) order any person who in its opinion may be able to give information of material importance concerning the subject of the inquiry, or who is believed to have in his or her possession or custody or control, any register, book, document or thing which may have a bearing on that subject, to appear before the committee with such register, book, document or thing;

- (b) call upon, and administer an oath to, or accept an affirmation from any person present at the inquiry whether he or she has been or could have been ordered in terms of paragraph (a);
- (c) interrogate or require any person who has been called upon in terms of paragraph (b) to produce a register, book, document or thing referred to in paragraph (a).

(4) An order for the attendance before a committee shall be in the form determined by that committee, and shall be signed by the chairperson.

(5) The law relating to privilege as applicable to a person to give evidence or produce a register, book, document or thing before a court of law, shall be applicable in respect of the interrogation of, or production of a register, book, document or thing by, a person referred to in subsection (3).

NEW CLAUSE

1. That the following be a new Clause:

Transitional measures

85. Notwithstanding the provisions of section 86, the Minister shall for a period of six months after the commencement of this Act, exercise the powers of all institutions established by or under any Act repealed by that section, including the Sea Fishery Advisory Committee and Quota Board established by the Sea Fishery Act, 1988 (Act No. 12 of 1988).

SCHEDULE 1

Schedule rejected.

NEW SCHEDULE

1. That the following be a new Schedule:

SCHEDULE 1

(Section 84)

No. and year of law	Short title	Extent of Repeal
Act No. 12 of 1988	Sea Fishery Act, 1988	The whole, except— (a) section 1 in its application to sections 29, 38, 47 and 50(1), (2) and (3); (b) section 29; (c) section 38 in its application to shells; (d) section 47 in its application to sections 29 and 38; (e) section 48 in its application to shells; and (f) section 50(1), (2) and (3) in its application to shells
Act No. 98 of 1990	Sea Fishery Amendment Act, 1990	The whole, except sections 1, 10(d) and 12

No. and year of law	Short title	Extent of Repeal
Act No. 57 of 1992	Sea Fishery Amendment Act, 1992	The whole, except sections 1, 10 and 18(a)
Act No. 129 of 1993	General Law Third Amendment Act, 1995	Sections 66, 67 and 68
Act No. 15 of 1994	Maritime Zones Act, 1994	Section 15(1) in respect of the amendment of the Sea Fishery Act, 1988
Act No. 74 of 1995	Sea Fishery Amendment Act, 1995	The whole, except section 5
Act No. 49 of 1996	General Law Amendment Act, 1996	Section 1 in respect of the amendment of the Sea Fishery Act, 1988
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	Sections 103 and 104