

REPUBLIC OF SOUTH AFRICA

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# AQUACULTURE DEVELOPMENT BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill published in Government Gazette No. 41632 of 18 May 2018)  
(The English text is the official text of the Bill.)*

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(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

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# BILL

To establish an Intergovernmental Authorisations Committee; to provide for the establishment of a National Aquaculture Intergovernmental Forum; to provide for the establishment of Provincial Aquaculture Intergovernmental Forums; to provide for the establishment of the National Aquaculture Stakeholder Liaison Forum; to provide for the appointment of aquaculture extension officers; to provide for the appointment of specialists on contract; to provide for the recognition of aquaculture sector associations; to provide for the establishment of a national reference laboratory for aquatic animal diseases and food safety; to provide for the establishment of national and provincial aquaculture development funds; to provide for the adoption and content of national and provincial aquaculture development strategies; to provide for the establishment of aquaculture development zones; to provide for the establishment of national and provincial aquaculture information systems; to provide for licensing authorities; to provide for the application, transfer, amendment, renewal and cancellation of aquaculture licences and permits; to provide for integrated aquaculture authorisations; to provide for the setting of water quality objectives and standards for aquaculture; to provide for the protection of the aquatic environment; to provide for the development of a national aquatic animal health programme relating to health, welfare, safety and quality of aquatic organisms and products; to prohibit the import, export and movement of aquaculture organisms and products without permits; to provide for the transformation of the aquaculture sector; to provide for the designation of aquaculture inspectors; to provide for the powers of aquaculture inspectors; to provide for offences and penalties; to provide for appeals; to provide for ownership of aquaculture organisms and products; to provide for delegation; to provide for the making of regulations; to provide for savings, repeal and amendment of legislation; to provide for transitional arrangements; to limit state liability; and to provide for matters connected therewith.

## PREAMBLE

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

**AND WHEREAS** appropriate legislation and institutions, and coordination 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 section 27(2) of the Constitution requires the State to take reasonable legislative measures to achieve the progressive realisation of this right,

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

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## CHAPTER ONE

INTERPRETATION, OBJECTS, APPLICATION AND CONFLICT WITH  
OTHER LAWS

## Definitions

1. (1) In this Act, unless the context indicates otherwise— 5
- “**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, regular stocking, feeding or protection from predators and harvesting of cultured aquatic organisms; and 10
- (b) individual or corporate ownership of the stock being farmed, and includes ranching, but excludes stock enhancement;
- “**aquaculture activity**” includes—
- (a) engaging in aquaculture, including the holding of broodstock and operating a hatchery; 15
- (b) the operation of an aquaculture processing facility;
- (c) the transportation of live aquaculture organisms;
- (d) the collection of broodstock for aquaculture;
- (e) the import of aquaculture products or aquaculture organisms; 20
- (f) the import of formulated feed for use in aquaculture;
- (g) the manufacturing of locally formulated feed for use in aquaculture;
- (h) the export of aquaculture products; and
- (i) seeding and harvesting for ranching purposes;
- “**aquaculture annual production**” means output from aquaculture activities which are designated for final harvest; 25
- “**aquaculture development zone**” means an area declared for dedicated aquaculture use in terms of section 21;
- “**aquaculture disease zone**” means an area contemplated in section 50;
- “**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 production, or for curing, correcting or modifying any somatic or organic function or for correcting or modifying behaviour; 30 35
- “**aquaculture facility**” means a purpose-built structure in a geographically defined area of water or land, whether or not submerged, used for aquaculture, and includes all buildings, structures and equipment within that area that are used for aquaculture; 40
- “**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;
- “**aquaculture foods**” means any aquaculture product which is used or intended to be used for human consumption; 45
- “**aquaculture inspector**” means a person designated as such by the Minister in terms of section 68;
- “**aquaculture licence**” means a licence contemplated in section 26;
- “**aquaculture organism**” means any aquatic organism in or coming from an aquaculture facility or which has been captured in the wild and is intended for use in undertaking an aquaculture activity; 50
- “**aquaculture permit**” means a permit contemplated in section 32;
- “**aquaculture processing facility**” means any location where an aquaculture product is produced from an aquaculture organism by any prescribed method;
- “**aquaculture product**” means any live or dead aquaculture organism or product derived from an aquaculture organism that is offered for sale, sold or otherwise traded; 55
- “**aquaculture products certification authority**” means an organ of state designated as such by the Minister in accordance with section 59(2);

- “**aquaculture research**” means a systematic investigation into the field of aquaculture for the advancement of existing information, to ascertain facts, seek solutions and benefit society as a whole;
- “**aquaculture research facility**” means a facility dedicated to the undertaking of aquaculture research; 5
- “**aquaculture sector**” means aquaculture and all of the associated activities in the aquaculture value chain, including feed manufacture and supply, stock supply, processing and marketing of aquaculture products, trade in aquaculture products and aquaculture research institutions;
- “**aquatic animal health authority**” means the Minister; 10
- “**aquatic animal health certificate**” means a certificate issued in accordance with section 48;
- “**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, birds and any other organism prescribed not to be an aquatic organism for the purposes of this Act; 15
- “**catchment**”, in relation to a watercourse or part of a watercourse, means the area from which any rainfall will drain into the watercourse or part of a watercourse through surface flow to a common point or common points;
- “**commercial aquaculture**” means aquaculture that is undertaken with the primary purpose of making a profit and that is undertaken on a larger scale than small-scale aquaculture; 20
- “**competent authority**” means the Minister or any person or organ of state delegated by the Minister to exercise any authority in terms of this Act;
- “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977); 25
- “**Department**” means the national department responsible for agriculture, forestry and fisheries;
- “**Director-General**” means the Director-General of the Department;
- “**escape**” means accidental or unintentional release or movement of live aquaculture products from an aquaculture facility so that they are no longer subject to the control of the owner or operator of that aquaculture facility; 30
- “**exhibition facility**” means a structure in an earmarked space or area whose primary purpose is the display of live aquatic organisms and products thereof, including aquariums; 35
- “**hatchery**” means a facility for the artificial and controlled breeding, hatching and rearing of aquatic organisms through their early life stages;
- “**historically disadvantaged individual**” means a person who—
- (a) is a black person for the purposes of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); 40
- (b) is female; or
- (c) has a disability;
- “**Integrated Coastal Management Act**” means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008); 45
- “**licensing authority**” means the authority contemplated in section 25;
- “**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 agriculture, forestry and fisheries; 50
- “**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);
- “**OIE**” means the *Office International des Epizooties*, also known as the World Organisation for Animal Health; 55
- “**OIE-listed**”, in relation to agents pathogenic to aquatic animals, means a disease or pathogen listed in the OIE Aquatic Animal Health Code for the purposes of preventing their transfer via international trade in aquatic animals and their products, while avoiding unjustified sanitary barriers to trade;
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996; 60
- “**pilot scale aquaculture**” means a preliminary study conducted in order to evaluate the feasibility of a new aquaculture activity;

- “**prescribe**” means prescribe by regulation made in terms of section 80;
- “**quarantine**” means quarantine as defined in the Animal Diseases Act, 1984 (Act No. 35 of 1984);
- “**ranching**” means aquaculture activity in which a person intentionally releases aquatic organisms into an aquatic environment (marine, brackish or freshwater) in which the aquatic organisms, owned by the ranching licence holder, are not controlled or confined, with the intention of harvesting them when they reach market size; 5
- “**recreational aquaculturist**” means a person undertaking aquaculture activity for recreational or own consumption, or ornamental purposes whether or not for financial gain; 10
- “**release**”, in relation to live aquaculture organisms, means intentionally freeing the aquaculture organism from confinement in an aquaculture facility so that it can enter the external environment;
- “**Republic**” means the Republic of South Africa; 15
- “**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; 20
  - (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 25
  - (g) ensures the safety and quality of aquaculture products;
- “**small-scale aquaculture**” means aquaculture activity that is undertaken with less than 10 employees, an annual production of less than 20 tonnes per annum, wet weight, and for the purpose of making profit; 30
- “**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 35
  - (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948);
- “**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; 40
- “**subsistence aquaculture**” means aquaculture that is undertaken by a person with the primary purpose of providing food for that person and his or her family and contributing to their livelihoods by producing aquaculture products for sale or barter but not for profit making; 45
- “**this Act**” includes any regulation made thereunder; and
- “**youth**” means youth as defined in the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

## Objects of Act 50

2. The objects of this Act are to—
- (a) promote responsible aquaculture development;
  - (b) promote the development and management of an aquaculture sector that— 55
    - (i) is diverse in terms of species, scale, technology and methodology employed in production;
    - (ii) enhances food security and sovereignty in the Republic and promotes the farming of indigenous fish species as far as is reasonably practical, particularly for small-scale aquaculture;
    - (iii) contributes to the production of aquaculture products that are safe for human consumption; 60
    - (iv) contributes to the management and control of aquatic diseases;



- (v) contributes to income generation and sustainable livelihoods;
- (vi) is domestically and internationally commercially 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; 5
- (e) promote transformation of the aquaculture sector;
- (f) promote investment into the aquaculture sector;
- (g) promote aquaculture as a farming activity; and
- (h) make provision for appropriate support services.

### **Application of Act** 10

3. (1) This Act applies to the Republic, including South African waters.
- (2) This Act binds all organs of state.

### **Conflict with other laws**

4. In the event of any conflict between a provision of this Act and any other law, the provisions of this Act prevail in so far as the conflict concerns aquaculture. 15

## **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, including customary law where applicable, in order to carry out aquaculture activities. 20
- (2) The Intergovernmental Authorisations Committee must—
  - (a) develop and facilitate the implementation of an intergovernmental agreement and protocol on integration of the authorisations process for aquaculture; and 25
  - (b) facilitate on-going high-level discussions and cooperation between national, provincial and municipal organs of state, as well as traditional authorities, where applicable, in relation to the promotion and regulation of aquaculture.
- (3) The Intergovernmental Authorisations Committee is composed of the nominated officials from any sphere of government responsible for granting any authorisation necessary to carry out aquaculture activities. 30
- (4) The Department is 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. 35

#### **National Aquaculture Intergovernmental Forum**

6. (1) The Minister may, by notice in the *Gazette*, establish a National Aquaculture Intergovernmental Forum to promote coordination of aquaculture development and management in the Republic.
- (2) The Minister may, by notice in the *Gazette*, appoint the members of the National Aquaculture Intergovernmental Forum, which may include— 40
  - (a) representatives of the Department;
  - (b) a representative 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, environmental affairs, water, health, rural development, land, public enterprises and public works; and 45
  - (c) a representative of each Provincial Aquaculture Intergovernmental Forum.
- (3) The National Aquaculture Intergovernmental Forum or alternatively in its absence, the Minister, must— 50
  - (a) facilitate and monitor the implementation of the national aquaculture development strategy and national aquaculture development policy and

ensure its alignment with international best practices, guidelines and requirements;

- (b) ensure that the national aquaculture development strategy is integrated into planning instruments and frameworks administered by each organ of state represented in the National Aquaculture Intergovernmental Forum; and 5
- (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, aquaculture development zones, parks and special economic zones for aquaculture; 10
  - (ii) coordinating and facilitating the provision of support services and other resources, monitoring, evaluation and oversight in respect of those programmes; and
  - (iii) facilitating access to international markets.

### **Provincial Aquaculture Intergovernmental Forums** 15

7. (1) An MEC may by notice in the Provincial *Gazette* establish a Provincial Aquaculture Intergovernmental Forum to promote responsible aquaculture development in the province.

- (2) The Provincial Aquaculture Intergovernmental Forum—
  - (a) must include a representative of the Department; and 20
  - (b) may include representatives of provincial organs of state responsible for administering matters that materially affect aquaculture development in the province, such as agriculture, economic development, the environment, water, health and public works, appointed by the MEC by notice in the Provincial *Gazette*. 25

(3) The Provincial Aquaculture Intergovernmental Forum, or alternatively, in its absence, the MEC must—

- (a) facilitate and monitor the alignment of the provincial aquaculture development strategy with the national aquaculture development policy;
- (b) ensure better management of provincial government programmes aimed at the development of the aquaculture sector in the province by aligning them with national programmes; 30
- (c) facilitate joint planning, coordination, the provision of support services and other resources, monitoring, evaluation and oversight of the provincial government programmes; and 35
- (d) facilitate and monitor the implementation of the provincial aquaculture development strategy.

### **National Aquaculture Stakeholder Liaison Forum**

8. (1) The Minister may, by notice in the *Gazette*, establish a National Aquaculture Stakeholder Liaison Forum and may determine its composition subject to subsection (3). 40

(2) The purpose of the National Aquaculture Stakeholder Liaison Forum is to promote and maintain liaison and communication between the Department and the aquaculture sector regarding the management and development of the aquaculture sector, including— 45

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

(3) The National Aquaculture Stakeholder Liaison Forum is composed of representatives of the sector industry, organised labour and relevant civil society organisations. 50

### **Aquaculture extension officers**

9. The Minister or an MEC may appoint Aquaculture extension officers to provide advisory and support services to the aquaculture sector.

### **Appointment of specialists on contract**

**10.** (1) The Director-General may appoint specialists on contract who are not in the full-time employment of the State outside the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), when this is necessary to carry out the functions in support of the objects of this Act. 5

(2) The Director-General must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of the appointment of the specialists contemplated in subsection (1).

(3) The specialists contemplated in subsection (1) must be remunerated from monies appropriated for that purpose by Parliament. 10

### **Recognition of aquaculture sector associations**

**11.** (1) An aquaculture sector 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 contemplated in subsection (1) if—

(a) the aquaculture sector association can reasonably be regarded as a presentative of a specific body or group which has a common interest within the aquaculture sector value chain; and 15

(b) the aquaculture sector association has a clear policy that promotes the inclusion of all relevant parties as members.

(3) The Minister may collaborate with, and enter into an agreement with, an aquaculture sector association in order to promote responsible aquaculture development and related matters. 20

### **Establishment of national reference laboratory for aquatic animal diseases**

**12.** (1) The Minister may establish a national reference laboratory for aquatic animal diseases. 25

(2) The purpose of the national reference laboratory for aquatic animal diseases 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; 30

(c) providing internationally acceptable results for certification of imports and exports of 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 35

(f) providing technical training on aquatic organism health matters to both the private and public sectors.

### **Establishment of national reference laboratory for aquaculture foods safety**

**13.** (1) The Minister may, in consultation with the Ministers responsible for health and trade, establish a national reference laboratory for aquaculture foods safety. 40

(2) The purpose of the national reference laboratory for aquaculture foods safety 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 aquaculture foods;

(b) standardising diagnostic techniques and validating results from other laboratories; 45

(c) coordinating and undertaking research in the field of testing of hazardous substances and pathogenic organisms that may contaminate aquaculture foods;

(d) coordinating the activities of official laboratories responsible for the analysis of aquaculture food product samples; 50

(e) conducting comparative tests, where appropriate, between the national laboratories and ensuring appropriate follow-up of such comparative testing; and

(f) providing scientific and technical assistance to the competent authority for the implementation of coordinated control plans. 55

## CHAPTER THREE

### NATIONAL AQUACULTURE DEVELOPMENT FUND

#### Establishment of national aquaculture development fund

- 14.** (1) The Minister must, after consultation with the Ministers responsible for finance, trade, science and technology, economic development, environmental affairs and rural development, establish a national aquaculture development fund to promote responsible aquaculture development and provide funding in accordance with this section. 5
- (2) The national aquaculture development fund comprises the following: 10
- (a) All interest and fees collected in terms of this Act; 10
  - (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; 15
  - (e) any money paid into the fund under any other Act;
  - (f) donations, with the approval of the Minister in consultation with the Minister responsible for finance;
  - (g) money which, with the approval of the Minister in consultation with the Minister responsible for 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; 20
  - (h) any levy on aquaculture products imposed and collected in terms of an Act of Parliament to be utilised for providing support services to the aquaculture sector; and 25
  - (i) money paid in respect of fines, penalties and interest for any offence committed in terms of this Act.
- (3) The Minister must, in consultation with the Minister responsible for finance, appoint a board or an administrator to administer the fund and to function as the accounting authority for the fund for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 30
- (4) The national aquaculture development fund may be used for the purposes of— 35
- (a) funding or providing loans to projects and initiatives that promote responsible aquaculture development, including facilitating the entrance of historically disadvantaged individuals and communities and the youth into the aquaculture sector;
  - (b) funding aquaculture research aimed at the development of the sector;
  - (c) providing support services to the aquaculture sector; or
  - (d) meeting the costs of administration of this Act.
- (5) The Minister may, with the concurrence of the Minister responsible for finance, make regulations regarding— 40
- (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.

#### Establishment of provincial aquaculture development fund 45

**15.** An MEC may, after consultation with the Minister, establish a provincial aquaculture development fund to which the provisions of section 14 will apply with the necessary changes required by the context.

## CHAPTER FOUR

### AQUACULTURE PLANNING 50

#### Preparation of national aquaculture development strategy

- 16.** (1) The Minister—
- (a) must, within two years of the commencement of this Act, adopt a national aquaculture development strategy 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 or substantially amending the strategy contemplated in subsection (1), the Minister may, by notice in the *Gazette*, invite members of the public to submit written or oral representations on, or objections to, the strategy. 5
- (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 inspection at specified places; and 10
  - (b) publish a summary of the final strategy.

### **Contents of national aquaculture development strategy**

- 17.** (1) The national aquaculture development strategy envisaged in section 16(1)(a) must— 15
- (a) subject to the Constitution of the Republic of South Africa, 1996, be informed by international standards and the international agreements to which the Republic is a party and national policy on the development and management of the aquaculture sector; and
  - (b) provide for an integrated and coordinated approach to the development and management of the aquaculture sector by organs of state, non-governmental organisations, the private sector and local communities. 20
- (2) The national aquaculture development strategy must include—
- (a) the national vision for the development of the aquaculture sector in the Republic; 25
  - (b) goals for realising the national vision;
  - (c) an action plan for achieving the goals;
  - (d) a framework for cooperative 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, communities and the youth; and 30
    - (ii) facilitates coordinated and integrated regulation of aquaculture; and
  - (e) any other matter that the Minister considers necessary for achieving the objects of this Act. 35

### **Preparation of provincial aquaculture development strategy**

- 18.** (1) An MEC—
- (a) must, within two years of the commencement of this Act and after consultation with the Minister, develop and adopt a provincial aquaculture development strategy for the province; 40
  - (b) must review the strategy at least once every five years; and
  - (c) may, when necessary, amend the strategy.
- (2) Before adopting or substantially amending a strategy contemplated in subsection (1), the MEC may by notice in the Provincial *Gazette* invite members of the public to submit written or oral representations on, or objections to, the strategy. 45
- (3) An MEC must, within 60 days of the adoption of a provincial aquaculture development strategy—
- (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 inspection at specified places; and 50
  - (b) publish a summary of the final strategy.
- (4) The provincial aquaculture development strategy may form part of a provincial development plan, programme or strategy.

### **Contents of provincial aquaculture development strategy** 55

- 19.** (1) A provincial aquaculture development strategy envisaged in section 18(1)(a) must—

- (a) be informed by the provincial policy on the development of the aquaculture sector in the province;
  - (b) provide for an integrated, coordinated and uniform approach to the development and management of the aquaculture sector in the province; and
  - (c) be consistent with the national aquaculture development strategy. 5
- (2) A provincial aquaculture development strategy 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) an action plan for achieving the goals of the provincial aquaculture development strategy. 10

### **Alignment of integrated development plan with aquaculture development strategies**

- 20.** A municipality must—
- (a) take account of the national aquaculture development strategy and any applicable provincial aquaculture development strategy when preparing or revising its integrated development plan in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or any municipal legislation affecting aquaculture; and 15
  - (b) ensure that its integrated development plan and municipal legislation are consistent with and support the implementation of the aquaculture development strategies referred to in paragraph (a). 20

## **CHAPTER FIVE**

### **AQUACULTURE DEVELOPMENT ZONES**

#### **Aquaculture development zones 25**

- 21.** (1) The Minister may, by notice in the *Gazette*—
- (a) declare any area within the Republic, including any area within South African waters, as an aquaculture development zone if—
    - (i) the area is particularly suitable for aquaculture of a specific type;
    - (ii) the declaration is consistent with responsible aquaculture development; and
    - (iii) the declaration is consistent with any applicable national policies and law;
  - (b) determine the location and define the boundaries of an aquaculture development zone; 35
  - (c) determine the 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 economic development and finance and the provision of essential services for aquaculture activities within an aquaculture development zone; and 40
  - (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— 45
    - (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— 50
- (a) consult with relevant government departments having jurisdiction in the proposed aquaculture development zone;
  - (b) in consultation with the Minister responsible for the environment, consider whether the area may— 55
    - (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;
- (c) in consultation with the Minister responsible for industry development, consider whether the area may also be designated a special economic zone in terms of section 24 of the Special Economic Zones Act, 2014 (Act No. 16 of 2014); and 5
- (d) consult with any municipality having jurisdiction over the area in question with a view to aligning aquaculture development considerations and municipal planning considerations, plans, policies and bylaws.
- (3) The Minister must, for the purposes of identifying aquaculture development zones and buffer zones— 10
  - (a) develop criteria and a methodology for determining whether an area is suitable for aquaculture of a specific type; and
  - (b) conduct environmental studies, in consultation with the Minister responsible for the environment, to identify suitable areas. 15

## CHAPTER SIX

### AQUACULTURE INFORMATION SYSTEM

#### Establishment of national aquaculture information system

- 22.** (1) The Minister must establish a national aquaculture information system to facilitate the effective management and development of the aquaculture sector. 20
- (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 strategy and provincial aquaculture development strategies and the implementation of this Act; 25
    - (ii) persons undertaking aquaculture activities; and
    - (iii) the public.
- (3) The national aquaculture information system must include a register of, and information related to— 30
- (a) the holders of aquaculture licences;
  - (b) the holders of aquaculture permits;
  - (c) aquaculture development zones and buffer zones;
  - (d) registered aquaculture drugs registered in terms of any law including this Act; 35
  - and
  - (e) registered aquaculture feeds registered in terms of any law including this Act.
- (4) The national 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 and other relevant organs of state; 40
  - (c) information about disease notification, surveillance and control;
  - (d) records regarding the use of aquaculture feeds and drugs;
  - (e) movement control records of aquaculture activities for traceability purposes;
  - (f) records of the movement of aquaculture organisms and aquaculture products within, into and out of the Republic; 45
  - (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. 50

#### Provision of and access to information

- 23.** (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 objects of this Act. 55
- (2) The Minister must, 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), enable the public to access the information contained in the national aquaculture information system.

### **Establishment of provincial aquaculture information systems**

24. (1) An MEC may establish a provincial aquaculture information system.
- (2) A provincial aquaculture information system must at least include the information required by the national aquaculture information system. 5
- (3) The Minister may, by notice in the *Gazette*, and for the purposes of ensuring efficient administration, exempt a category of persons who must furnish information to the provincial aquaculture information system contemplated in subsection (1) from furnishing that information to the national aquaculture information system. 10

## **CHAPTER SEVEN**

### **LICENCES AND PERMITS**

#### **Licensing authority**

25. The Minister is the licensing authority in respect of aquaculture licences, aquaculture permits, import permits contemplated in section 60 and export permits contemplated in section 64, unless the Minister has delegated that power in accordance with section 79(1) in which case the person to whom that authority has been delegated is the licensing authority. 15

#### **Activities requiring aquaculture licences**

26. (1) Subject to subsections (2) and (3), a person may not engage in an aquaculture activity unless that activity is— 20
- (a) authorised by both an aquaculture licence and an aquaculture permit; and
  - (b) undertaken in accordance with the conditions in that aquaculture licence and aquaculture permit, as the case may be.
- (2) A person does not require an aquaculture licence or permit but must register with the licencing authority in accordance with subsection (6) to— 25
- (a) keep aquatic organisms in an exhibition facility only for display purposes;
  - (b) keep, buy or sell aquatic organisms for non-consumptive or display purposes;
  - (c) undertake subsistence aquaculture; and
  - (d) undertake recreational aquaculture activities involving indigenous aquatic organisms. 30
- (3) A person does not require an aquaculture licence to undertake the—
- (a) transportation of live aquatic organisms, provided that the transportation is in accordance with a permit contemplated in section 32;
  - (b) importation of an aquaculture product, provided that the importation is in accordance with an import permit contemplated in section 60; or 35
  - (c) exportation of an aquaculture product, provided that the exportation is in accordance with an export permit contemplated in section 64.
- (4) Subject to subsection (5), any person who manufactures aquaculture feeds, must register in the prescribed manner with the licensing authority responsible for issuing aquaculture permits for that area and must comply with any conditions imposed by the licensing authority. 40
- (5) An aquaculture feed manufacturer is exempt from complying with subsection (4) if—
- (a) all the aquaculture feed that is manufactured is used to feed aquaculture organisms which the manufacturer keeps for non-commercial purposes; or 45
  - (b) that aquaculture feed is registered and regulated as a farm feed under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (6) If the Minister has reason to believe that monitoring or regulating an activity referred to in subsections (2) and (4) would enable responsible aquaculture development to be promoted more effectively, the Minister may, by notice in the *Gazette*, require any person who undertakes an activity referred to in subsections (2) and (4) to register with the licensing authority in the prescribed manner and to comply with any conditions imposed by the licensing authority. 50 55



### Application for aquaculture licence

- 27.** (1) A person who requires an aquaculture licence must apply to the licensing authority in the prescribed manner and pay the prescribed licence fees.
- (2) A person may, at any time, apply for an aquaculture licence to—
- (a) operate an aquaculture research facility; 5
  - (b) undertake commercial aquaculture;
  - (c) undertake pilot scale aquaculture in order to assess the financial, economic, technical, social or environmental viability of an aquaculture project at a specific place;
  - (d) convert a pilot scale aquaculture licence into a commercial aquaculture licence; or 10
  - (e) operate an aquaculture processing facility.
- (3) The licensing authority—
- (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 the licensing authority reasonably requires to make a decision on the application; 15
  - (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. 20

### Considerations relevant to decisions on licence applications

- 28.** (1) In deciding an application for an aquaculture licence, the licensing authority must take into account all relevant matters, including but not limited to—
- (a) whether granting the licence is consistent with— 25
    - (i) the objects of this Act;
    - (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 in terms of section 41;
  - (c) if the applicant is the holder of a pilot scale aquaculture licence, any reports on the activities conducted by the applicant under that licence; 30
  - (d) the applicant's submissions;
  - (e) any submissions received from an organ of state and interested and affected persons; and
  - (f) any relevant guidelines or other requirements published by the Minister. 35
- (2) The licensing authority 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.

### Decision of licensing authority on application for aquaculture licence

- 29.** (1) After considering an application for an aquaculture licence, the licensing authority must either— 40
- (a) grant the application and issue the applicant with a licence within 20 working days of the decision to grant the application; or
  - (b) refuse the licence application.
- (2) The licensing authority must refuse an application for aquaculture where the granting of the application would be inconsistent with the objects of this Act. 45
- (3) If the licensing authority refuses the application for an aquaculture licence, the licensing authority must give the applicant written reasons for the refusal.
- (4) When issuing a licence in terms of subsection (1)(a), the licensing authority may impose such conditions as it deems fit. 50

### Validity period of aquaculture licence

- 30.** (1) An aquaculture licence is valid for a period of 30 years.
- (2) A pilot scale aquaculture licence and a licence to operate an aquaculture research facility are valid for a period of up to 10 years and five years, respectively.

### General provisions relating to aquaculture licences

- 31.** (1) A single aquaculture licence may authorise the undertaking of one or more aquaculture activities involving one or more species of aquaculture organism—
- (a) on a single site; or
  - (b) on more than one site provided that the sites are within the same aquaculture development zone or catchment. 5
- (2) An aquaculture licence issued in terms of this Act is subject to—
- (a) any terms and conditions which may be prescribed by the Minister generally or in respect of certain categories of aquaculture specifically; or
  - (b) any special terms and conditions specified in the licence. 10

### Aquaculture permits

- 32.** (1) Subject to section 26(2), no person may engage in any aquaculture activity unless he or she has obtained an aquaculture permit issued by the licensing authority.
- (2) A licence holder that undertakes aquaculture activities on more than one site must apply for an aquaculture permit for each site. 15
- (3) A permit to undertake any aquaculture activity must be applied for in the form prescribed by the licensing authority.
- (4) The licensing authority must issue an aquaculture permit for the period specified in this Act.
- (5) When issuing an aquaculture permit, the licensing authority may impose such conditions as it may deem fit. 20
- (6) Aquaculture permits may not be renewed but may be amended in accordance with section 35 and cancelled in accordance with section 37.

### Validity period of permits

- 33.** (1) An aquaculture permit to undertake any of the following activities may be issued for a maximum period of 24 months: 25
- (a) Transporting live aquaculture organisms; or
  - (b) ranching.
- (2) An aquaculture permit to undertake any of the following activities may be issued for a maximum period of 12 months: 30
- (a) Collection of broodstock for aquaculture;
  - (b) import of live aquaculture organisms or aquaculture products;
  - (c) import of formulated feed for use in aquaculture; and
  - (d) export of aquaculture organisms or aquaculture products.

### Transfer of licences and permits 35

- 34.** (1) A holder of an aquaculture licence, aquaculture permit, import permit or export permit may not transfer that aquaculture licence or permit to a third party without the consent of the licensing authority.
- (2) The holder of an aquaculture licence or permit referred to in subsection (1) may apply to the licensing authority to transfer the aquaculture licence or permit to another person. 40
- (3) When considering an application for the transfer of an aquaculture licence or permit referred to in subsection (2), the licensing authority may—
- (a) request any additional information it considers necessary; and
  - (b) in relation to an application to transfer an aquaculture licence, must take into account the criteria contemplated in section 41. 45
- (4) The licensing authority may—
- (a) approve the transfer with or without conditions; or
  - (b) refuse the transfer of an aquaculture licence on the basis that the proposed transferee is not a fit and proper person as contemplated in section 41. 50
- (5) If the licensing authority approves the transfer of the aquaculture licence or permit, it must notify the applicant in writing within 10 working days of having made the decision and issue an amended aquaculture licence or permit which reflects the details of the new holder.

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

### **Amendment of licences and permits**

**35.** (1) On application by the holder of the aquaculture licence or permit, a licensing authority may amend an aquaculture licence, an aquaculture permit, an import permit or an export permit. 5

(2) A licensing authority may, by written notice to the holder of an aquaculture licence or permit referred to in subsection (1), amend the aquaculture licence or permit by varying, attaching, substituting or removing a condition or requirement— 10

- (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; or
- (c) to make a non-substantive amendment, including but not limited to correcting 15 any of the following:
  - (i) A clerical mistake, unintentional error or omission;
  - (ii) a miscalculated figure;
  - (iii) an incorrect description of any person, thing, property or activity; or
  - (iv) arising from a review in terms of section 39. 20

(3) Before the licensing authority may amend an aquaculture licence or permit in terms of subsection (2), the licensing authority must give written notice to the aquaculture licence or permit holder—

- (a) setting out reasons why the licensing authority intends to amend the aquaculture licence or permit; and 25
- (b) providing the holder of the aquaculture licence or permit with an opportunity to make representations about the proposed amendment within a specified period.

(4) Despite subsection (3), if urgent action is necessary to protect human health or the environment, to prevent the escape of aquatic organisms or the spread of disease or pests harmful to aquatic organisms, the licensing authority may immediately amend the aquaculture licence or permit and then give the holder of that aquaculture licence or permit a reasonable opportunity to make representations in relation to the amendment. 30

### **Renewal of licences**

**36.** (1) A licensing authority may renew an aquaculture licence on application by the holder of the licence. 35

(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 40
- (b) upon payment of the prescribed fees.

(3) The provisions of section 29 apply with the necessary changes to applications for renewal of an aquaculture licence.

### **Cancellation of licences and permits**

**37.** (1) The licensing authority may cancel an aquaculture licence, aquaculture permit, import permit or export permit if— 45

- (a) the licence or permit was granted on the basis of false information provided to the licensing authority;
- (b) the licensing authority has reasonable grounds for believing that the holder of the licence or permit contravened provisions of this Act or other applicable 50 legislation;
- (c) in the case of an aquaculture licence, the licence holder has not commenced the aquaculture activity for which the licence was granted within three years from the date on which the licence was granted or has ceased the activity; or
- (d) cancellation is necessary to prevent the spread of disease or risk to the aquaculture sector or to the environment and if the risk cannot reasonably be 55

managed or mitigated by suspending the activity for which the licence was granted.

- (2) Before the licensing authority may cancel an aquaculture licence or a permit in terms of subsection (1), the licensing authority must give written notice to the holder of the licence or permit— 5
- (a) setting out reasons why the licensing authority intends to cancel the licence or permit;
  - (b) providing the holder of the licence or permit with an opportunity to make representations about the proposed cancellation within a specified period; and
  - (c) where reasonably possible, providing the holder of the licence or permit with an opportunity to rectify any non-compliance, or eliminate or control the risk within a specified period. 10

### **Integrated aquaculture authorisations**

**38.** (1) If an activity requiring an authorisation in terms of this Act also requires authorisation in terms of one or more other laws, the licensing authority and any authority empowered under such other law to authorise that activity may— 15

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

(2) A licensing authority 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. 20

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

- (a) the relevant provisions of this Act and that of such other law have been complied with; and
- (b) the authorisation specifies the— 25
  - (i) provisions in terms of which it has been issued; and
  - (ii) the authorities that have issued it.

(4) The provisions of this Act relating to the amendment, transfer, suspension or cancellation of an aquaculture licence, aquaculture permit, import permit or export permit continue to apply to any integrated authorisation that is issued instead of such an authorisation. 30

(5) The licensing authority may not amend, transfer, suspend or cancel an integrated authorisation without the consent of the other authority that was involved in the issuing of that integrated authorisation.

(6) (a) Despite subsection (5), if urgent action is necessary to protect human health or the environment, to prevent the escape of aquatic organisms or the spread of disease or pests harmful to aquatic organisms, the licensing authority may— 35

- (i) immediately suspend the integrated authorisation; and
- (ii) then seek the consent of the other authority or authorities that issued that integrated authorisation. 40

(b) If the consent contemplated in paragraph (a)(ii) is refused, the licensing authority must lift the suspension immediately.

### **Periodic review of aquaculture licences**

**39.** (1) The licensing authority must review an aquaculture licence—

- (a) at intervals specified in the licence; or 45
- (b) if the licensing authority has reason to believe that—
  - (i) circumstances have arisen which may justify a review; or
  - (ii) the conditions imposed in the licence are inadequate either to protect the environment or human health, to enable the aquaculture sector to grow or fully realise its potential or to contribute towards social and economic development. 50

(2) The licensing authority 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 an interval other than that provided for in the licence.

### **Cessation of aquaculture** 55

**40.** (1) The licence holder must inform the licensing authority in writing not less than 30 days prior to the planned cessation of aquaculture activities at an aquaculture facility.

(2) The licensing authority must notify the Intergovernmental Authorisations Committee referred to in section 5 within 10 working days of receipt of a notice of cessation of aquaculture activities in terms of subsection (1).

### **Fit and proper persons**

**41.** (1) A licensing authority may refuse to issue an aquaculture licence to an applicant whom the licensing authority has reason to believe is not a fit and proper person to hold such a licence. 5

(2) In order to determine whether a person is a fit and proper person for the purposes of an application for an aquaculture licence or the transfer or renewal of an aquaculture licence in terms of this Chapter, the licensing authority must take into account all relevant facts, including whether that person has— 10

- (a) previously contravened or failed to comply with this Act;
- (b) held an aquaculture licence or aquaculture permit or an authorisation under any other law to undertake aquaculture that has been suspended or revoked; or
- (c) not complied with a material condition of the aquaculture licence or aquaculture permit or other authorisation. 15

### **Suspension of certain authorised aquaculture activities**

**42.** (1) The licensing authority may, on written notice to the holder of an aquaculture licence, aquaculture permit, import permit or export permit, suspend the holder's authority to undertake one or more authorised aquaculture activities if the licensing authority has reason to believe that— 20

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

(2) Before issuing a notice in terms of subsection (1), the licensing authority must give written notice to the holder of the licence or permit— 25

- (a) setting out reasons why the licensing authority intends to direct the holder to suspend certain aquaculture activities;
- (b) inviting the holder to make representations about the proposed suspension within a specified period; and 30
- (c) where relevant and appropriate, providing the holder with an opportunity to rectify any non-compliance within a specified period.

(3) Despite subsection (2), if urgent action is necessary—

- (a) to protect human health or the environment; or
- (b) to prevent the escape of aquaculture organisms or the spread of pathogens or pests harmful to aquatic organisms, 35

the licensing authority may immediately suspend the licence or permit by written notice to the holder and then give the holder an opportunity to make representations with regard to the suspension or to rectify any non-compliance, within a specified period.

## **CHAPTER EIGHT** 40

### **MAINTAINING ENVIRONMENTAL INTEGRITY**

#### **Water quality management**

**43.** (1) The Minister may, after consultation with the Ministers responsible for the environment and water, prescribe water quality objectives and standards for aquaculture. 45

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

- (a) the Minister responsible for water on water use that may adversely affect freshwater aquaculture facilities;
- (b) the Minister responsible for the environment for water quality objectives for aquaculture in the marine environment; or
- (c) the Ministers referred to in paragraphs (a) and (b) in respect of water quality objectives for aquaculture in brackish waters. 50

(3) The Minister may, after consultation with the Minister responsible for water affairs, develop and implement a water quality monitoring system. 55

(4) The Minister must allow persons undertaking aquaculture activities access to information about any condition that may affect the health of aquatic organisms.

#### **Protection of aquatic environment**

44. Notwithstanding the provisions of any other law, a person engaged in aquaculture activities must take all reasonably practical measures to— 5

- (a) avoid or minimise any harmful environmental impact caused by aquaculture, including but not limited to—
  - (i) harm to the environment by alien and invasive species; and
  - (ii) contamination of the environment by genetically modified organisms; and 10
- (b) prevent the escape of live aquaculture organisms into the aquatic environment of the Republic. 10

#### **Prohibition on release of live or disposal of dead aquaculture organisms**

45. A person may not—

- (a) release a live aquaculture organism into the aquatic environment except in terms of an aquaculture licence and an aquaculture permit; or 15
- (b) dispose of a dead aquaculture organism into the aquatic environment. 15

#### **Reporting of release or escape of live aquaculture organisms**

46. (1) A person who unlawfully releases or who is responsible for the escape of a live aquaculture organism into the aquatic environment must— 20

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

(2) If a person fails to comply with a directive contemplated in subsection (1)(b), the Director-General may take any reasonable measures to remedy the situation and recover the costs from— 25

- (a) the holder of an aquaculture licence or permit for the aquaculture facility from which the unlawful release or escape occurred; and
- (b) any person who caused the release or escape.

### **CHAPTER NINE** 30

#### **HEALTH, WELFARE, SAFETY AND QUALITY OF AQUATIC ORGANISMS AND PRODUCTS**

##### **National aquatic animal health and welfare programme**

47. The Minister must develop a national aquatic animal health and welfare programme that must— 35

- (a) guide the management, control and regulation of aquatic animal health, welfare and disease in the Republic;
- (b) integrate existing independently developed aquatic animal health mechanisms from both the freshwater and marine sectors;
- (c) guide other national departments, provincial departments, research institutions and private sectors on matters related to aquatic animal health and disease management; and 40
- (d) ensure that South Africa fulfils the commitments it has made in regional and international agreements relating to aquatic animal health and welfare to which it is a party. 45

##### **Certification of aquatic animal health**

48. The Minister must issue certificates of aquatic animal health subject to the provisions of this Act.

### **Notifiable pathogens and pests affecting aquatic organisms, humans or animals**

**49.** (1) The Minister may declare any pest or pathogen that is OIE-listed or of national significance and poses a significant risk to any aquatic organism or the aquaculture industry or the aquatic environment or that kills or causes illness in humans or animals who eat the infected organism, to be a notifiable pest or pathogen. 5

(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 reasonable grounds for suspecting that any aquatic animal or aquaculture product is infected with a notifiable pathogen or pest declared in terms of subsection (1) may— 10

- (a) sell the aquaculture product or aquatic organism, whether alive or dead;
- (b) transport or translocate it;
- (c) allow it to be eaten by humans or animals; or 15
- (d) deposit it, whether alive or dead, in any waters or land in a place where it may enter or contaminate any water.

### **Aquaculture disease zones**

**50.** (1) The Minister may declare a specific geographic area as an aquaculture disease zone for the purpose of prescribing measures for the prevention, management and control of diseases affecting aquaculture in the Republic. 20

(2) If a catchment in an aquaculture disease zone extends beyond the borders of the Republic, the Minister, for the purposes of prescribing disease prevention, management or control measures that apply to the movement of aquaculture organisms or aquaculture products into, out of or through an aquaculture disease zone, may deem that aquaculture disease zone to include those areas of the catchment situated outside the borders of the Republic. 25

### **Contingency measures for notifiable diseases**

**51.** (1) If the Minister reasonably believes that a pest or pathogen that is OIE-listed or of national significance and poses a significant risk to any aquatic organism, to the aquaculture industry or to the aquatic environment or that kills or causes illness in humans or animals who eat the infected organism, the Minister may— 30

- (a) order the isolation, quarantine or treatment of any aquatic organism infected or thought to be infected with such a pathogen or pest;
- (b) destroy and safely dispose of, or restrict the movement of, any aquatic organisms infected or thought to be infected with such a pathogen or pest; 35
- (c) quarantine all or part of any aquaculture facility in which the Minister on reasonable grounds suspects that such a pathogen or pest is present; or
- (d) take any other measures that the Minister on reasonable grounds believes are necessary to prevent the spread of such a pathogen or pest. 40

(2) Any person engaged in aquaculture must—

- (a) 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
- (b) immediately comply with any measures that the Minister may order for that purpose. 45

### **Quarantine areas**

**52.** (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 an aquatic animal health authority which must take appropriate measures to ensure that aquatic organisms in the quarantine area are properly contained and monitored and that the spread of pathogens and pests is prevented. 50

### **Compensation for destruction of aquaculture organisms**

**53.** (1) The owner of any aquatic organism or aquaculture product that has been destroyed, 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.

### **Use of aquaculture drugs and feeds** 10

**54.** (1) No person may use, market or sell 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 (Act No. 101 of 1965);

or

(b) Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947). 15

(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 in the *Gazette* and may publish a consolidated register of all registered aquaculture drugs registered in terms of the Medicines and Related Substances Control Act, 1965 and the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947. 20

### **Provision of veterinary services to aquaculture licence holders**

**55.** An MEC must, in consultation with the Minister, 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**

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

### **Standards for aquaculture** 30

**57.** The Minister, in consultation with the Ministers responsible for health and trade, must, by notice in the *Gazette*, establish and maintain standards for product safety and traceability of aquaculture products.

### **Aquaculture food safety monitoring programmes**

**58.** The Minister must, in consultation with the Ministers responsible for health and trade, establish product quality and safety programmes for aquaculture foods which conform, as far as possible, with relevant local standards and requirements and, as far as possible, with international standards or requirements. 35

### **Certification system for aquaculture products**

**59.** (1) The Minister must, in consultation with the Ministers responsible for health and trade, establish a certification system for aquaculture products that takes account of the requirements of countries that import aquaculture products from the Republic. 40

(2) The Minister, after consultation with the Ministers responsible for health and trade, must by notice in the *Gazette*, designate one or more organs of state that employ persons with appropriate expertise as the competent authority to issue certificates of food safety or other certificates confirming the quality or safety of the categories of aquaculture products specified in the notice. 45

(3) The Minister may not designate any organ of state as a competent authority referred to in subsection (2) for which another Minister or MEC is responsible, without the written consent of that Minister or MEC. 50



## CHAPTER TEN

### IMPORT, EXPORT AND MOVEMENT OF AQUACULTURE ORGANISMS, PRODUCTS AND FEED

#### Import of aquaculture organisms, products and feed

- 60.** (1) Subject to subsection (2), a person may not import an aquaculture product or formulated aquaculture feed without an import permit issued by the licensing authority. 5
- (2) The Minister may, by notice in the *Gazette*, waive the requirement for an importer of an aquaculture product to obtain an import permit referred to in subsection (1), either generally or in specified circumstances, if the importer has an import permit that authorised the import of aquaculture products in terms of— 10
- (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) An import permit for aquaculture organisms, products and aquaculture feed may be issued for a maximum period of 12 months.
- (4) An import permit may not be renewed, but may be amended in accordance with section 35 and cancelled in accordance with section 37. 15
- (5) The Minister may prohibit the import of alien aquatic organisms, aquaculture products or aquaculture feed from a specified place, produced in a specified manner or of a specified species or kind where it is reasonably necessary for the protection of the environment or the aquaculture sector in the Republic. 20

#### Decision on import permit application

- 61.** (1) The licensing authority may—
- (a) refuse an application for an import permit; or
- (b) grant an import permit subject to conditions.
- (2) The licensing authority may not grant an import permit unless it is satisfied that the proposed importation will not pose a risk to the health of aquatic organisms within the Republic. 25
- (3) If an application for an import permit is refused, the licensing authority must notify the applicant as soon as is reasonably possible and provide reasons for the refusal.

#### Importation procedure 30

- 62.** (1) Any consignment of live aquatic organisms or aquaculture products destined for an aquaculture facility entering the Republic—
- (a) must be accompanied by an original valid veterinary health certificate in a prescribed form, a phytosanitary certificate, where applicable, and a certificate of origin; and 35
- (b) may be inspected by an aquaculture inspector before being cleared through customs at a border post, airport or port.
- (2) A person may not remove any live aquatic organism or aquaculture product from customs unless an aquaculture inspector has cleared the consignment.

#### Movement of aquaculture organisms and products 40

- 63.** (1) If an aquaculture inspector detects in a consignment of aquaculture organisms or aquaculture products exhibiting clinical signs for a disease that is OIE-listed or of national significance and poses a significant risk to any aquatic organism or the aquaculture industry or the aquatic environment or that kills or causes illness in humans or animals who eat the infected organism, 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 in order to reduce or prevent the risk to human or animal health. 45
- (2) Subject to subsection (1), the aquaculture inspector may order further tests to be conducted on the consignment. 50
- (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, by notice in the *Gazette*, establish aquatic animal health and product movement protocols or requirements for the aquaculture sector in the Republic.

#### **Decision on application for export permit**

- 64.** (1) No person may export an aquaculture product without an export permit issued by a licensing authority. 5
- (2) The licensing authority may issue an export permit subject to conditions.
- (3) The licensing authority must refuse the application for a permit if—
- (a) the aquaculture products in question—
    - (i) pose an unacceptable risk to human and aquatic animal health; or
    - (ii) do not comply with the requirements of the importing country; 10
  - (b) the aquaculture products are not accompanied by a certificate of aquatic animal health issued in accordance with section 48, where required; or
  - (c) permitting the export of the aquaculture products or aquaculture organisms would be inconsistent with the objects of this Act.
- (4) If an application for a permit is refused, the licensing authority must notify the applicant as soon as is reasonably possible and provide reasons for the refusal. 15
- (5) An export permit may not be renewed but may be amended in accordance with section 35 and cancelled in accordance with section 37.

### **CHAPTER ELEVEN**

#### **TRANSFORMATION 20**

##### **Transformation of aquaculture sector**

- 65.** The Minister may—
- (a) prescribe 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. 25

##### **Compliance with broad-based black economic empowerment**

**66.** An aquaculture licence holder must, where applicable, comply with black economic empowerment legislation.

##### **Fair labour practices**

**67.** An aquaculture licence holder must follow fair labour practices and comply with the relevant labour legislation. 30

### **CHAPTER TWELVE**

#### **INSPECTION AND ENFORCEMENT**

##### **Designation of aquaculture inspectors**

- 68.** (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. 35
- (2) Subject to subsection (3), all fishery control officers appointed in terms of the Marine Living Resources Act are designated as aquaculture inspectors.
- (3) The Minister may at any time withdraw or alter the scope of authority or powers of an aquaculture inspector or class of aquaculture inspectors. 40

##### **Powers of aquaculture inspectors**

- 69.** (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, any aquaculture product and any document or record required under this Act; 45
  - (b) stop, enter and inspect any vehicle, vessel or aircraft which may be transporting aquaculture products;

- (c) question any person who, in the reasonable opinion of the inspector, may be capable of furnishing any information which the inspector may require;
  - (d) require any person employed or present at 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; 5
  - (e) seize any aquatic organism or aquaculture product or any sample of an aquatic organism or aquaculture product, which the inspector has reasonable grounds for suspecting—
    - (i) has disease or is not safe for human consumption;
    - (ii) has not been farmed in accordance with a licence issued under this Act; 10
    - or
    - (iii) 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 humanely destroy any aquatic organism that has disease or is not safe for human or animal consumption and dispose of it safely; 15
  - (g) issue 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. 20
- (2) Where an aquaculture inspector suspects that an offence under this Act has been committed, upon obtaining a warrant issued by a judge, or a magistrate with jurisdiction, the inspector may— 25
- (a) seize any vehicle, vessel, equipment or any other article which the inspector has reasonable grounds for suspecting has been used in the commission of that offence or where such seizure is reasonably necessary to preserve evidence; or
  - (b) require any person who may have information concerning a possible offence to furnish his or her name and address. 30
- (3) A judge, or magistrate with jurisdiction, may issue the warrant referred to in subsection (2) if satisfied that there are reasonable grounds to believe that—
- (a) a person has committed an offence under this Act; and
  - (b) any vehicle, vessel, equipment or other article may have been used in the commission of the offence and that the seizure thereof may be necessary for the preservation of evidence. 35
- (4) An aquaculture inspector must provide a receipt for—
- (a) any document, book, record or written or electronic information removed in terms of subsection (2)(a);
  - (b) any aquaculture organism, aquaculture product, sample or other item seized in terms of subsection (1)(e); or 40
  - (c) a vehicle, vessel or equipment seized in terms of subsection (2)(a).
- (5) If any aquatic organism or aquaculture product seized under subsection (1)(e) is found—
- (a) to have a disease or not to be safe for human or animal consumption, as the case may be, the licensing authority may dispose of it; or 45
  - (b) not to have a disease or to be safe for human or animal consumption, as the case may be, the licensing authority must return it to its owner, or if its return is not practicable, the licensing authority may dispose of it.
- (6) An aquaculture inspector must produce an official certificate of identification issued by the Minister before exercising any power in terms of this section. 50

### **Disposal of aquaculture products and seized items**

- 70.** (1) The provisions of sections 30 to 34 of the Criminal Procedure Act apply, with the necessary changes, to the disposal of anything seized in terms of section 69.
- (2) When an item is seized in terms of section 69, 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. 55
- (3) In order to secure a vehicle or vessel that has been seized, the aquaculture inspector may take such steps which are reasonably necessary to secure that vehicle or vessel. 60

(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 subsection (4), any aquaculture product seized under section 69 that is likely to perish may be disposed of in such a manner as the circumstances may require.

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### Objections to directive

**71.** (1) Any person who receives a directive in terms of section 69(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.

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(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.

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### Failure to comply with directive

**72.** If a person fails to comply with a directive, the aquaculture inspector must report the non-compliance to the licensing authority and the licensing authority may—

- (a) suspend, cancel or amend the relevant licence, permit or other instrument which is the subject of the directive; or
- (b) take any other necessary steps and recover the costs of doing so from the person who failed to comply.

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### Offences

**73.** A person commits an offence if that person—

- (a) contravenes sections 26(1) or (2), 32(1), 45, 49(2) or (3), 54(1), 60(1), 62(2) or 64(1) of this Act;
- (b) contravenes or fails to comply with a condition of a licence or permit or exemption which has been granted in terms of this Act; or
- (c) fails to cooperate with the reasonable and lawful instructions of an aquaculture inspector on duty.

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### Penalties

**74.** (1) A person convicted of an offence in terms of section 73(a) or (b) is liable to a fine not exceeding R2 million or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment.

(2) A person convicted of an offence in terms of section 73(c) is liable to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years, or to both a fine and imprisonment.

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### Admission of guilt fines

**75.** (1) The Minister may by regulation 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 of law for the offence.

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(2) An aquaculture inspector who has reasonable grounds for believing that a person has committed an offence contemplated in 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, with the necessary changes, to written notices and admission of guilt fines referred to in this section.

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## CHAPTER THIRTEEN

### APPEALS

#### Appeals

- 76.** (1) Any person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act. 5
- (2) An appeal under subsection (1) must be noted and dealt with in the prescribed manner.
- (3) The Minister may, in a prescribed manner, appoint an appeal panel to 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. 10
- (5) The Minister may suspend a decision pending an appeal.

## CHAPTER FOURTEEN

### GENERAL AND TRANSITIONAL PROVISIONS

#### Ownership of aquaculture organisms and products 15

- 77.** (1) Until they are lawfully sold, given or bartered to another person, aquaculture organisms and aquaculture products that are—
- (a) specified in a licence, permit or exemption notice are owned by the holder of that licence, permit or exemption; or
- (b) farmed or produced by a person lawfully engaged in subsistence aquaculture, or small-scale aquaculture for which a licence, permit or exemption is not required, are owned jointly by the persons undertaking that aquaculture, unless they have entered into an agreement between them regarding the ownership of those aquaculture organisms or aquaculture products, in which case ownership shall be determined by that agreement. 20 25
- (2) All aquaculture organisms which are lawfully released for the purpose of ranching are the exclusive property of the holder of the licence or permit which authorised their release.

#### Application for exemption

- 78.** (1) Subject to subsection (2), the Minister may exempt any person, category of persons or an organ of state from any of the provisions of this Act in a prescribed manner. 30
- (2) The Minister may not grant an exemption unless the Minister has reasonable grounds for believing that doing so is consistent with the attainment of the objects of this Act. 35

#### Delegation by Minister

- 79.** (1) The Minister may delegate a power or duty vested in him or her in terms of this Act to—
- (a) an official of the Department or any other person duly appointed by the Department; 40
- (b) an MEC, by agreement with the MEC; or
- (c) 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; 45
- (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 sub-delegate; 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. 50

- (4) The Minister may confirm, amend or revoke any decision taken in consequence of a delegation or sub-delegation 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 the power—
- (a) to make regulations; and 5
  - (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—
- (a) to an official of the Department; or
  - (b) after consultation with a provincial head of department, to an official in a provincial administration or municipality. 10
- (7) A delegation referred to in subsection (6)—
- (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; 15
  - (d) may include the power to sub-delegate; and
  - (e) may be withdrawn by the Director-General.

### Power to make regulations

- 80.** The Minister may make regulations regarding— 20
- (a) any matter permitted to be prescribed in terms of this Act;
  - (b) the regulation of different categories of aquaculture, including recreational aquaculture and subsistence aquaculture;
  - (c) the exclusion of species or other categories of aquatic organism from the definition of aquatic organism for the purposes of this Act; 25
  - (d) the establishment of any forums, working groups, advisory and technical committees, or the appointment of any specialists, including the terms of their respective appointments, that are necessary to achieve the objects of this Act;
  - (e) 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; 30
  - (f) the establishment of a national reference laboratory for aquaculture;
  - (g) the administration and management of the national aquaculture development fund;
  - (h) the declaration and management of aquaculture development zones; 35
  - (i) the conduct, management, licensing and integrated licensing of aquaculture activities;
  - (j) the collection and dissemination of information concerning aquaculture activities;
  - (k) the setting of water quality objectives; 40
  - (l) the surveillance, monitoring and prevention of diseases of aquatic organisms;
  - (m) measures for controlling disease of aquatic organisms;
  - (n) the registration and use of formulated feeds, aquaculture drugs and other substances for aquaculture purposes;
  - (o) the movement of aquaculture organisms into and within the Republic; 45
  - (p) the export from, and import into, the Republic of aquaculture organisms and aquaculture products;
  - (q) the traceability and quality control of aquaculture products;
  - (r) the granting of exemptions from the provisions of this Act;
  - (s) appeals against decisions made in terms of this Act; 50
  - (t) the imposition of fees for applications and levies on the export of aquaculture products or aquaculture organisms in terms of this Act;
  - (u) the setting of health standards for the import of live aquaculture organisms;
  - (v) the form of a health certificate that must accompany a consignment of live aquaculture organisms; 55
  - (w) the procedure in respect of the inspection contemplated in section 62(1)(b);
  - (x) the form of a veterinary certificate or phytosanitary certificate that must be issued in terms of section 62(1)(a);
  - (y) control measures for the movement of aquaculture organisms within the Republic; and 60

- (z) any ancillary or incidental administrative or procedural matter that may be necessary for the implementation and administration of this Act.

### **Procedure for making regulations**

- 81.** (1) The Minister, before making or amending any regulations referred to in section 80 or notice, must publish a notice in the *Gazette*— 5
- (a) setting out the draft regulations or notice that have been developed;
  - (b) specifying where a copy of the draft regulations or notice may be obtained; and
  - (c) inviting written comments to be submitted on the proposed regulations or notice within a specified period. 10
- (2) After complying with subsection (1) and after consultation with the relevant authority in respect of the draft regulations referred to in section 80, the Minister may—
- (a) amend the draft regulations or notice; and
  - (b) publish the regulations or notice in final form in the *Gazette*.

### **Savings, repeal and amendment of legislation** 15

- 82.** (1) Subject to subsections (2) and (3), the laws set out in Schedule 1 are hereby repealed or amended to the extent set out in the third column of that Schedule.
- (2) Anything lawfully done or deemed to have been done under a provision repealed or amended by subsection (1) which may or must be done in terms of this Act must be regarded as having been done in terms of this Act. 20
- (3) Anything 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 this Act has not come into force. 25

### **Transitional arrangements**

- 83.** (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 or an aquaculture permit within 24 months of the date of commencement of this Act. 30
- (2) Any person who, on the date of commencement of this Act, was undertaking aquaculture activities unlawfully must apply to the licensing authority within 12 months of the date of commencement of this Act. 35
- (3) Any person who, on the date of commencement of this Act, was undertaking aquaculture activities where such activities are now covered in terms of this Act must apply to the licencing authority within 18 months of the date of commencement of this Act. 40
- (4) Any person who applies for an aquaculture licence or aquaculture permit within the period referred to in subsections (1), (2) and (3) is deemed to have complied with the obligation to obtain such a licence or permit until the licensing authority decides whether to grant or refuse the application.

### **State liability** 45

- 84.** 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 that exercise or failure was unlawful, negligent or in bad faith. 50

**Short title and commencement**

**85.** This Act is called the Aquaculture Development Act, 2018, and takes effect on a date determined by the President by proclamation in the *Gazette*.



**Schedule 1****LAWS REPEALED OR AMENDED**

(Section 82)

Number and year of the law	Short title	Extent of repeal or amendment
Act No. 18 of 1998	Marine Living Resources Act, 1998	Amends the definition of “fishing” in section 1 by adding the words “excluding mariculture” at the end of that definition.
		Amends section 1 by deleting the definition of “mariculture”.
		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”.
		Amends section 2(d) by deleting the words “and mariculture”.
		Amends section 18(1) by deleting the words, “engage in mariculture”.
		Amends section 34(4) by deleting the words “or mariculture”.
		Deletes section 77(2)(cc).
Government Notice No. R1111, 2 September 1998	Regulations in terms of the Marine Living Resources Act, 1998	Deletes regulation 4(1)(i).
		Repeals Chapter 6.

## **MEMORANDUM ON THE OBJECTS OF THE AQUACULTURE DEVELOPMENT BILL**

### **1. BACKGROUND**

- 1.1 The development of the Aquaculture Development Bill (“Bill”) for the Republic of South Africa (“South Africa”) is an initiative of the Department of Agriculture, Forestry and Fisheries (“Department”). The development of the Bill is guided by the National Aquaculture Strategic Framework (“NASF”) and the National Aquaculture Policy Framework (“NAPF”).
- 1.2 In 2012, the Minister of Agriculture, Forestry and Fisheries (“Minister”) signed the NASF into effect. The purpose of the NASF is to guide and fast-track the development of an equitable, diverse, viable and competitive aquaculture sector through creating a harmonised enabling environment and scope for attainable government and private sector interventions.
- 1.3 The NAPF was approved by Cabinet in May 2013 and seeks to regulate and manage both the marine and freshwater aquaculture sectors in a coordinated manner. Furthermore, in order to implement some of the key focus areas of the NAPF, there is a need to develop new aquaculture legislation. Through an initiative of the Office of the President, known as Operation Phakisa-Oceans Economy, the government intends to advance certain priority sectors faster and more effectively. The aim of Operation Phakisa is to achieve significant socio-economic transformation in a short period of time using a results-driven approach. One of the projects comprising Operation Phakisa is focused on aquaculture and a component of this project is the reform of applicable legislation to promote aquaculture development, including the drafting of a dedicated Aquaculture Development Act for South Africa.
- 1.4 Aquaculture has been identified as a priority sector for the South African government because of its potential for growth as the diminishing supply of wild fish products is met with an increase in demand. The sector is expected to contribute meaningfully to job and wealth creation, increase food security and contribute to rural development in South Africa.
- 1.5 During 2013, the Department conducted a comprehensive review of legislation that affects aquaculture activities (“legislative review”). The principal finding of the legislative review was that the regulatory environment in South Africa is hampering the development of the aquaculture sector. The main reason for this is that in South Africa, aquaculture is not coherently regulated. This hampers development and makes it more difficult to establish aquaculture operations. Furthermore, it makes it difficult for South African aquaculture products to gain acceptability in foreign markets and makes investing in aquaculture more risky. With the current legislation regulating aquaculture:
  - Establishing and operating an aquaculture facility is difficult because multiple authorisations must be obtained from different authorities in the national, provincial and municipal spheres of government; and
  - aquaculturists must comply with a wide range of legislation that was not developed to facilitate responsible aquaculture, including legislation regulating the establishment and operation of each aquaculture facility and the import and export of aquatic organisms used for aquaculture (eggs, spat, and fry), aquaculture feeds and aquaculture products.
- 1.6 Despite the aforesaid, there are gaps and inconsistencies in the way that aquaculture is regulated. The Bill seeks to, among others, deal with the challenges highlighted below:
  - A system for collecting, analysing and disseminating information relevant to the development of the sector which has not been established;

- there is no system for developing comprehensive strategic plans for the development of the aquaculture sector at national and provincial levels and for systematically reviewing and updating them;
- there are no institutions formally tasked to ensure the effective and consistent implementation of aquaculture plans and policies throughout government;
- there are no intergovernmental agreements or other institutional mechanisms for ensuring the coordination of actions between organs of state responsible for administering legislation pertaining to aquaculture;
- there is no national legislation regulating freshwater aquaculture;
- marine aquaculture (*mariculture*) is regulated by the Marine Living Resources Act, 1998 (Act No. 18 of 1998), as a fishery, rather than an agricultural sector, which was seen as inappropriate by stakeholders;
- the legislation relating to medicines and feeds used in aquaculture is not fully developed; and
- there is no system for export certification that allows South Africa to compete effectively in the international market.

The legislative review therefore recommended that a new Aquaculture Development Bill should be drafted to regulate both freshwater and marine aquaculture.

## 2. OBJECTS OF THE BILL

The Bill seeks to—

- (a) promote responsible aquaculture development;
- (b) promote the development and management of an aquaculture sector that—
  - (i) is diverse in terms of species, scale, technology and methodology employed in production;
  - (ii) enhances food security and sovereignty in South Africa and promotes the farming of indigenous fish species as far as is reasonably practical, particularly for small-scale aquaculture;
  - (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 commercially 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;
- (e) promote transformation of the aquaculture sector;
- (f) promote investment into the aquaculture sector;
- (g) promote aquaculture as a farming activity; and
- (h) make provision for appropriate support services.

## 3. LEGISLATIVE ANALYSIS

### 3.1 Chapter 1

Chapter 1 of the Bill provides for the definitions of certain words and concepts that are used in the Bill. It sets out the objects of the Bill which, amongst others, are to promote responsible aquaculture development, to promote coordination of aquaculture research and development activities and to enable the aquaculture sector to be regulated more effectively. It further provides for the application of the envisaged Act by stating that the envisaged Act applies to South Africa, including South African waters and binds all organs of State.

### **3.2 Chapter 2**

Chapter 2 of the Bill provides for the establishment of the Intergovernmental Authorisations Committee whose function it is to facilitate the development and implementation of integrated processes for obtaining all authorisations necessary under applicable legislation to carry out aquaculture activities. It empowers the Minister to establish the following Forums: National Aquaculture Intergovernmental Forum, to promote coordination of aquaculture development and management in the Republic; National Aquaculture Stakeholder Liaison Forum, the purpose of which is to promote and maintain liaison and communication between the Department and the aquaculture sector regarding the management and development of the aquaculture sector; the national reference laboratory for aquatic animal diseases, the purpose of which is to promote coordination of aquaculture development and management in the Republic; and national reference laboratory for aquaculture foods safety, the purpose of which is to provide a reference laboratory service to the aquaculture sector. This Chapter further empowers an MEC to establish a Provincial Aquaculture Intergovernmental Forum to promote responsible aquaculture development in the province.

### **3.3 Chapter 3**

In terms of Chapter 3 of the Bill, the Minister is required to establish a national aquaculture development fund to promote responsible aquaculture development and provide funding. An MEC is also empowered to establish, after consultation with the Minister, a provincial aquaculture development fund.

### **3.4 Chapter 4**

In terms of Chapter 4 of the Bill, the Minister is required to adopt, within two years of the commencement of the envisaged Act, a national aquaculture development strategy for achieving the objects of the envisaged Act. An MEC is also required to develop and adopt a provincial aquaculture development strategy for a province within two years of the commencement of the envisaged Act and after consultation with the Minister.

### **3.5 Chapter 5**

Chapter 5 empowers the Minister to declare any area within South Africa, including any area within South African waters, as an aquaculture development zone and to determine measures for the management of land, water and other resources for aquaculture in the aquaculture development zone.

### **3.6 Chapter 6**

In terms of Chapter 6 of the Bill, the Minister is required to establish a national aquaculture information system to facilitate the effective management and development of the aquaculture sector. Furthermore, an MEC is empowered to establish a provincial aquaculture information system. Moreover, the Minister is empowered to exempt a category of persons who must furnish information to the provincial aquaculture information system from furnishing that information to the national aquaculture information system.

### **3.7 Chapter 7**

Chapter 7 of the Bill provides that the Minister is the licensing authority in respect of all aquaculture licences and permits. Subject to certain stipulated exemptions, this Chapter prohibits a person from engaging in aquaculture or operating an aquaculture processing facility without an aquaculture licence or contrary to any condition of such a licence.

### **3.8 Chapter 8**

Chapter 8 of the Bill empowers the Minister to set water quality objectives and standards for aquaculture, to enter into agreements with the specified Ministers, to assist with the achievement of water quality objectives and to develop and implement a water quality monitoring system. It requires a person who is engaged in aquaculture activities to take all reasonable practical measures to avoid and minimise any harmful environmental impact caused by aquaculture and prevent the escape of live aquaculture organisms into the aquatic environment of South Africa.

### **3.9 Chapter 9**

Chapter 9 of the Bill requires the Minister to develop a national aquatic animal health and welfare programme that will, amongst others, guide the management, control and regulation of aquatic animal health, welfare and disease in South Africa and integrate existing independently developed aquatic animal health mechanisms from both the freshwater and marine sector.

### **3.10 Chapter 10**

Chapter 10 of the Bill prohibits the import of aquaculture products without a permit. It empowers the licensing authority to grant an import permit. It provides for the aquaculture inspector's powers to deal with the movement of aquaculture organisms and products where the presence of a disease likely to constitute a health hazard to humans, animals or other aquatic organisms is detected. It further prohibits the export of an aquaculture product without an export permit issued by the licensing authority.

### **3.11 Chapter 11**

Chapter 11 of the Bill deals with transformation of the aquaculture sector and the responsibility of the aquaculture licence holders.

### **3.12 Chapter 12**

Chapter 12 of the Bill empowers the Minister to designate an official of the Department or any other organ of state as an aquaculture inspector for the purposes of the envisaged Act. It further provides for the disposal of aquaculture products and items seized by the aquaculture inspectors, the consequences of the failure to comply with a directive issued by an aquaculture inspector and offences and penalties that may be imposed in respect of offences committed under the envisaged Act.

### **3.13 Chapter 13**

Chapter 13 deals with appeals and provides that an appeal, against a decision taken by any person in terms of a power delegated by the Minister under the envisaged Act, may be lodged with the Minister.

### **3.14 Chapter 14**

Chapter 14 deals with general and transitional provisions which deal with ownership of aquaculture organisms and products, applications for exemptions from the provisions of the envisaged Act, the Minister's power to delegate a power or duty vested in him or her, the Minister's power to make regulations, the procedure that must be complied with when making regulations, transitional arrangements, state liability and the commencement of the envisaged Act.

#### **4. CONSULTATION**

The following stakeholders have been consulted:

- Department of Environmental Affairs;
- Department of Health;
- Department of Trade and Industry;
- Department of Water Affairs;
- Department of Public Works;
- Provincial departments of agriculture;
- South African Crocodile Farmers Association;
- sector groups;
- members of the public; and
- Office of the Chief State Law Adviser.

#### **5. FINANCIAL IMPLICATIONS FOR THE STATE**

The Department undertook a preliminary costing analysis to determine the financial costs associated with the implementation of the envisaged Act as per legislative requirements and the costs are highlighted below:

- Capital expenditure and once-off costs for year one (1) estimated at R32,000,000;
- annual operational costs estimated at R25,561,000;
- annual human resource costs for the first three (3) years estimated at R39,902,389; and
- annual costs for Provincial Departments estimated at R1,802,912.

#### **6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers are of the opinion that this Bill should be dealt with in terms of the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996, as it falls within a functional area of concurrent national and provincial legislative competence listed in Schedule 4 of the Constitution, namely “Agriculture” and “Animal Control and Diseases”.
- 6.2 The State Law Advisers are further of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in accordance with section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), as the Bill does not contain any provisions pertaining to the customary law of traditional communities.