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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1601.

11 Julie 1990

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 98 van 1990: Wysigingswet op Seevisserij, 1990.

No. 1601.

11 July 1990

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 98 of 1990: Sea Fishery Amendment Act, 1990.

SEA FISHERY AMENDMENT ACT, 1990

Act No. 98, 1990

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Sea Fishery Act, 1988, so as to amend a certain definition; to provide for the payment of money in respect of certain levies to the Republic of Namibia; to provide for the making of regulations in respect of certain matters; to increase the penalties in respect of certain offences; to further regulate declarations of forfeiture of certain things by the court; to create a certain presumption regarding certain goods in respect of which an offence has been committed; to regulate anew the use of foreign vessels in the fishing zone; and to create an offence in respect of the transfer of fish outside a fishing harbour from a foreign vessel to any other vessel; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 28 June 1990.)

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

Amendment of section 1 of Act 12 of 1988

1. Section 1 of the Sea Fishery Act, 1988 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “local authority” of the following definition:
- “‘local authority’ means any institution or body referred to in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), and the Natal Parks **[Game and Fish Preservation]** Board established under the **[Natal Parks, Game and Fish Preservation]** Nature Conservation Ordinance, 1974 (Ordinance **[No.]** 15 of 1974), of Natal;”;
- (b) by the substitution for the definition of “regulation” of the following definition:
- “‘regulation’ means a regulation made and includes a notice issued under this Act;”.

Amendment of section 17 of Act 12 of 1988

2. Section 17 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The chairman of the board shall **[be—**
- (a) a judge, retired judge or senior advocate of the Supreme Court of South Africa; or

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(b) a magistrate or retired magistrate of at least 10 years experience as a magistrate] possess at least a three-year diploma or degree in law conferred by a South African university as well as at least five years' experience in the administration of justice."

5 Amendment of section 28 of Act 12 of 1988

3. Section 28 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

10 "(2A) Money in respect of levies collected by virtue of the provisions of section 29 in respect of fish, fish products, aquatic plants and shells or collected by virtue of the provisions of section 20 of the Sea Fisheries Act, 1973, in respect of fish or any product thereof, within the fishing zone, including the territorial waters, of the Republic of Namibia, shall be paid out of the fund to the Republic of Namibia."

Substitution of section 31 of Act 12 of 1988

15 4. The following section is hereby substituted for section 31 of the principal Act:

"Licensing of implements

20 31. The Minister may by notice in the *Gazette* make regulations **[prohibit]** prohibiting the use of any implement for the catching of fish or fish belonging to a particular species, within a defined area, unless the implement is licensed in the prescribed manner."

Amendment of section 33 of Act 12 of 1988

5. Section 33 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a), of the following words:

25 "The Minister may, after consultation with the advisory committee, by notice in the *Gazette* **[prohibit]** make regulations prohibiting—"

Amendment of section 35 of Act 12 of 1988

6. Section 35 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a), of the following words:

30 "Notwithstanding anything to the contrary contained in this Act, the Minister may, after consultation with the advisory committee, by notice in the *Gazette* make regulations to—"

Amendment of section 36 of Act 12 of 1988

7. Section 36 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a), of the following words:

35 "The Minister may by notice in the *Gazette* make regulations to—"

Amendment of section 37 of Act 12 of 1988

8. Section 37 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

40 "The Minister may, subject to the provisions of any other law pertaining to the import and export of goods and with a view to the protection and utilization of any fish resource, by notice in the *Gazette* make regulations prohibiting [prohibit] that fish, fish belonging to a particular species or a particular fish product be exported in general or to a specified country or area—"

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Amendment of section 45 of Act 12 of 1988

9. Section 45 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- 5 “(3) A regulation made under subsection (1) may provide that a person who contravenes or fails to comply with a provision thereof, shall be guilty of an offence and on conviction be liable to a fine not exceeding **[R6 000]** R50 000 or imprisonment for a period not exceeding **[two]** six years or to both such fine and such imprisonment.”.

Amendment of section 47 of Act 12 of 1988

10 10. Section 47 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
 “(g) contravenes the provisions of sections 30 (1) and (6) **[31]** and 38 (1) or of a notice issued in terms of section 31, 33, 35, **[or]** 36 or 37 or fails to comply with an order referred to in section 21 (3) (a), 37 (2) or 42;”;
- 15 (b) by the substitution for paragraphs (o) and (p) of subsection (1) of the following paragraphs, respectively:
 “(o) uses any fishing boat or any implement without the consent of the owner or master thereof;
- 20 (p) allows any fishing boat or any implement of which he is the licensee to be used for the catching of fish in contravention of the provisions of this Act;”;
- (c) by the substitution for the words immediately following upon paragraph (p) of subsection (1), of the following words:
 “shall be guilty of an offence and liable on conviction to a fine not exceeding **[R15 000]** R50 000 or to imprisonment for a period not exceeding **[five]** six years or to both such fine and such imprisonment.”; and
- 25 (d) by the substitution for paragraph (a) of subsection (2) of the following paragraph:
 “(a) If any person is convicted of an offence in terms of this Act, the court shall summarily enquire into and determine the monetary value of any advantage which he may have gained in consequence of that offence, and, in addition to any other punishment that may be imposed in respect of that offence, impose a fine equal to three times the amount so determined and, in default of payment thereof, imprisonment for a period not exceeding one year.”.
- 30 35

Amendment of section 48 of Act 12 of 1988

40 11. Section 48 of the principal Act is hereby amended by the addition of the following subsection:

- “(4) The court convicting any person of an offence in terms of section 52 (4) shall, in addition to any other penalty it may impose—
 (a) in the case of section 52 (4) (a), declare the vessel, implement, fish or fish products;
 (b) in the case of section 52 (4) (b), declare the implement, fish or fish products, which were used in connection with the commission of the offence or in respect of which the offence was committed, as the case may be, to be forfeited to the State, unless the fish or fish products have been forfeited to the State in terms of section 53 (5), and cancel or suspend for such period as the court may think fit any licence or permit issued or granted to him in terms of this Act.”.
- 45 50

Amendment of section 50 of Act 12 of 1988

12. Section 50 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- 55 “(2) If any fishing boat, vessel or vehicle has been used in connection with any offence in terms of this Act, or if any fish, aquatic plants, shells or implement in respect of or by means of which an offence in terms of this Act has been

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committed, is found or proved to have been upon or in any fishing boat, vessel or vehicle—

- 5 (a) any person who was on board such fishing boat or vessel or in or on the vehicle at the time when the offence was committed, shall be deemed to be guilty of that offence, unless he proves that he did not commit the offence, did not take part in the commission thereof and could not have prevented the commission thereof; and
- 10 (b) the offence shall, unless the contrary is proved, be deemed to have been committed in respect of all fish, aquatic plants, shells or implements which were found or are proved to have been upon or in such fishing boat, vessel or vehicle at such time.”.

Amendment of section 52 of Act 12 of 1988

13. Section 52 of the principal Act is hereby amended—

- 15 (a) by the substitution for subsection (4) of the following subsection:
 “(4) **[Any person who uses]** An owner or master of a vessel registered in a foreign state who uses such vessel as a fishing boat or factory, or prepares it for such use—
 (a) **[within the territorial waters;**
 20 (b) **]** within the fishing zone **[excluding the territorial waters]** without a permit being issued in terms of subsection (2) or section 30 (8) in respect thereof;
[(c)] (b) within the fishing zone **[excluding the territorial waters]** in contravention of or **[non-compliance]** without complying with any condition on which a permit has been issued in terms of subsection (2) in respect thereof,
 25 shall be guilty of an offence and liable on conviction to a fine of at least R250 000 but not exceeding [R100 000] R1 000 000 [or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment].”; and
 30 (b) by the addition of the following subsection:
 “(5) Any person who without lawful cause or in contravention of any condition on which a permit has been issued, transfers fish or fish products outside a harbour or fishing harbour from a vessel referred to in subsection (4), to any other vessel, shall be guilty of an offence and liable on conviction
 35 to a fine of at least R250 000 but not exceeding R500 000.”.”.

Short title

14. This Act shall be called the Sea Fishery Amendment Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.