

FISHERIES AND AQUACULTURE ACT, 2019

*Date of Assent: 29 October 2019*

*Date of commencement to be proclaimed*

*Arrangement of Sections*

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*An Act to provide for the sustainable regulation and utilization of fish resources and the development of aquaculture by giving effect to the Southern Africa Development Community (SADC), 2006; to repeal and replace the Protection of Fresh Water Fish Act No. 75 of 1937; and to provide for incidental matters.*

## PART I PRELIMINARY PROVISIONS

### *Short title and commencement.*

1. (1) This Act may be cited as the Fisheries and Aquaculture Act, 2019.  
(2) This Act shall come into force on a date to be determined by the Minister by Notice published in the *Gazette*.

### *Interpretation.*

2. In this Act, unless the context otherwise requires—

“aquaculture” means the cultivation of aquatic organisms in controlled or selected fresh water environments where the end product is raised in fresh water and where the earlier stages of the life cycle of these species may be spent in brackish waters or marine waters and where the cultivated stock may be privately owned and disposed of for commercial gain or for subsistence purposes;

“aquatic resources” means all living organisms located on shores of or in a body of water, including but not limited to—

- (a) all organic or inorganic substances;
- (b) living organisms and their habitats including fish; and
- (c) habitats and their interacting natural ecosystems;

“Board” means the Fisheries and Aquaculture Board established under section 8;

“citizen or permanent resident of Eswatini” means either—

- (a) a citizen of Eswatini;
- (b) a permanent resident of Eswatini;
- (c) a legal entity where the majority of the issued share capital or interest, as the case may be, is beneficially controlled by a citizen of Eswatini; or
- (d) a trust where the majority of trustees and beneficiaries are Eswatini citizens;

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“commercial aquaculture” means the production of fish for commercial sale whether domestically or for export;

“fish” means any aquatic plant or animal and includes the eggs, larvae and all juvenile stages;

“fish processing” means the process associated with fish and fish products between the time fish is caught or harvested up to the time the final product is delivered to the consumer;

“fish processing establishment” means any commercial vehicle, vessel, premises or place where any substance or article is produced from fish by any method, including the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving of fish, or where fish are canned, packed, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale in or outside the territory of Eswatini;

“fishing” means—

- (a) searching for, catching, taking or harvesting fish or an attempt to undertake any such activity;
- (b) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) placing, searching for or recovering any fish aggregating device or associated gear; or
- (d) any operation in support or in preparation of any activity described in this definition;

“fisheries observer” means an independent specialist who serves on board commercial fishing vessels, or in fish processing plants and other platforms and is employed by the fisheries observer program either by a government department or by a third party contractor;

“fishing activities” means—

- (a) storing, buying, selling, processing or transporting fish or any fish product taken from Eswatini waters;
- (b) on-shore storing, buying, selling or processing of fish or any fish product;
- (c) refueling or supplying fishing vessels, selling or supplying fishing equipment or performing any other act in support of fishing; or
- (d) exporting and importing fish or any fish product;

“fishing vessel” means any craft ship which is used for, equipped to be used for or of a type that is normally used for fishing or related activities, and includes all gear, equipment, stores, cargo and fuel on board the vessel;

“Minister” means the Minister responsible for fisheries and aquaculture;

“national water bodies” means any body of water, river or stream located either entirely or partly on privately owned land and includes those water bodies managed as dams by any Government department;

“Principal Secretary” means the Principal Secretary of the Ministry responsible for fisheries and aquaculture;

“recreation or sport fishing” means fishing for pleasure or competition;

“small-scale commercial aquaculture” means the farming of fish in ponds that produce more than 400 kilograms but not exceeding 10 000 kilograms of fish annually and is sold, bartered or exchanged for commercial gain or for goods and services;

“small-scale commercial fishing” means fishing where the majority of the catch is sold for commercial gain or in exchange for goods and services and a minority of the catch is used for subsistence purposes;

“subsistence aquaculture” means the farming of fish in domestic ponds for purposes of own-consumption;

“total allowable catch” means the total allowable catch determined by the Board in accordance with this Act; and

“total applied effort” means the total applied effort determined by the Minister in accordance with this Act.

*Objectives and principles of the Act.*

3. The Minister, a Government department or official shall, in exercising any power under this Act, have regard to the following objectives and principles—

- (a) the environmental principles set out in the Environment Management Act (Act No. 5 of 2002), in so far as they are applicable;
- (b) the need to achieve optimum utilization and ecologically sustainable development of fish stocks and aquaculture;
- (c) the need to conserve fish stocks for both present and future generations;
- (d) the need to apply precautionary approaches and the utilization of the best available scientific research in respect of the management and development of fisheries and aquaculture;
- (e) the need to utilize fisheries and aquaculture to achieve economic growth, human resource development, employment creation and a sound ecological balance consistent with the development objectives of the Kingdom;
- (f) the need to preserve environmental and fisheries biodiversity;
- (g) the need to minimize, mitigate and prevent pollution (according to polluter pays principle) of water bodies; and
- (h) any relevant obligation of the country in terms of any international agreement or applicable international law.

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*Application of the Act.*

4. Unless the context indicates otherwise, this Act shall apply—
- (a) to a person, a fishing activity, a fishing vessel, and an aircraft, including a foreign aircraft, on or in the airspace above the territory of Eswatini;
  - (b) to a fishing activity or aquaculture carried out in water bodies within the territory of Eswatini or in foreign or international waters by a vessel bearing an Eswatini flag or a person in possession of Eswatini license or permit; and
  - (c) to a fishing activity, vessel or aircraft bearing Eswatini national flag or such colors, emblem or depiction of national importance.

PART II  
FISHERIES MANAGEMENT

*Catch and effort limitations.*

5. (1) The Minister shall determine the total allowable catch, the total applied effort, or a combination of the two.
- (2) The Minister shall determine a portion of the total allowable catch, the total applied effort, or a combination of the two, to be allocated in any year to subsistence or recreational fishing.
- (3) In the execution of the powers in terms of this section, the Minister may determine that the total allowable catch, or the total applied effort, or a combination thereof, shall apply—
- (a) to a specific area, or in respect of particular species or a group of species of fish or marine life; and
  - (b) in respect of the use of particular gear, fishing methods or types of fishing vessels.

*Aquatic Emergencies.*

6. (1) The Minister may—
- (a) suspend all or any of the fishing in a fishery or any specified part of it;
  - (b) restrict and reduce the number of fishing vessels in a fishery; or
  - (c) restrict and reduce the mass of fish which may be taken from a fishery,
- when an emergency that endangers or threatens the biological health of any fish, aquatic life, any species or class of fish or aquatic life in any fishery or part of a fishery occurs.
- (2) The particulars of any measures taken in terms of this section shall be made known by the Minister by notice published in the *Gazette* and by publication of the notice in at least one national newspaper and at least one electronic media.

*Management zones.*

7. (1) The Minister may, by notice published in the *Gazette*, declare any water body or part of a water body to be a fisheries management zone for the management of fish species or to prevent conflict between holders of fishing licences.

(2) The Minister may, in respect of each fisheries management zone, approve a management plan for the conservation, management and development of fisheries or aquaculture.

(3) The management plan referred to in sub-section (2) shall be published in the *Gazette* by the Minister after consulting with stakeholders or all interested and affected parties.

*Fisheries and Aquaculture Board.*

8. (1) There is established a Fisheries and Aquaculture Board to be appointed by the Minister for a period not exceeding five (5) years.

(2) The Board shall be responsible for providing policy direction, strategic governance and the development of the fisheries and aquaculture industry.

(3) The Board shall be comprised of seven (7) members who shall be representatives of the following sectors and Government Ministry—

- (a) Chairperson appointed by the Minister;
- (b) Aquaculture;
- (c) Fisheries conservation;
- (d) Water conservation;
- (e) Environment management;
- (f) Trade and Industry; and
- (g) Ministry responsible for fisheries and aquaculture.

(4) The Board shall be responsible for—

- (a) promoting and developing sustainable production management and utilization of the fisheries and aquaculture resources;
- (b) regulating the issuance of fisheries and aquaculture licences;
- (c) promoting the industrialization of fisheries and aquaculture sectors;
- (d) promoting the sustainable conservation of aquaculture genetic resources;
- (e) regulating the allocation of fishing quotas;
- (f) determining levies periodically;
- (g) advising about the management of the Fisheries and Aquaculture Fund; and
- (h) undertaking any other duties as may be delegated by the Minister.

PART III  
FISHERIES AND AQUACULTURE REGULATION

*Types of fishing and aquaculture.*

9. (1) Subject to this Act, the Board is authorized to licence the following categories of wild fishing for fish species found in national, foreign or international water bodies—

(a) commercial; and

(b) recreation or sport fishing.

(2) A person may not be authorized to undertake commercial fishing of fish species in any national, foreign or international water body without authority.

(3) Subject to the provisions of this Act, the Board is authorized to licence the following categories of aquaculture—

(a) small-scale commercial aquaculture; and

(b) large-scale commercial aquaculture.

*Fishing licenses.*

10. (1) A person shall not undertake commercial or sport fishing without a fishing licence, as the case may be, issued by the Board.

(2) An application for a fishing licence shall be submitted or made to the Board and in the prescribed format stipulated by the Board.

(3) The Board may grant a subsistence or commercial fishing licence for a period not exceeding five (5) years subject to any conditions considered necessary.

(4) The Minister may grant a sport fishing licence for a period not exceeding two (2) years subject to conditions considered necessary.

(5) A subsistence fisher and a fish farmer shall be exempt from having to obtain a licence.

(6) A sport fishing licence may only be granted to a natural person.

(7) The Minister shall annually prescribe the fees applicable to the granting of fishing licenses under this section by notice published in the *Gazette*.

*Fishing permits.*

11. (1) A person may not undertake fishing or utilise a fishing licence granted in terms of this Act unless a fishing permit has been issued by the Principal Secretary to that person.

(2) Any permit contemplated in sub-section (1) shall be issued—

(a) for a period not exceeding one year;

(b) subject to the conditions determined by the Principal Secretary in the permit; and

(c) subject to the payment of any fees prescribed by the Principal Secretary.

(3) The holder of a permit shall at all times have that permit available for inspection.

(4) A permit may not be granted to a person in terms of this Act if the conditions of a previously issued permit were not adhered to.



*Fish export and import permits.*

12. (1) A person may not export or import any fish, or aquatic material or product thereof whether live, frozen or processed in any form without an export or import permit.

(2) An application for an export or import permit shall be made to the Principal Secretary in the format prescribed.

(3) An application to import live fish shall be denied if the Principal Secretary is of the opinion that to permit that import would threaten or harm any indigenous or endemic fish or aquatic resource or in any way harm fish or aquatic biodiversity.

(4) The Principal Secretary shall issue export and import permits for a period not exceeding twelve (12) months.

*Aquaculture licences.*

13. (1) A person shall not undertake small- scale commercial or large - scale commercial aquaculture without an aquaculture licence issued by the Board.

(2) An application for an aquaculture licence shall be made to the Board in the prescribed form.

(3) The Board may issue an aquaculture licence authorizing one of the following categories of aquaculture—

(a) small-scale commercial aquaculture; or

(b) large-scale commercial aquaculture.

(4) The Board shall not grant an aquaculture licence for a period in excess of five (5) years renewable for small-scale and large – scale commercial aquaculture.

(5) Small-scale commercial aquaculture licences may not be granted to persons other than citizens or permanent residents of Eswatini.

(6) Large-scale commercial aquaculture licenses may be granted to any person resident in the Country.

(7) The Minister shall annually prescribe the fees applicable for the granting and renewal of aquaculture licences by notice published in the *Gazette*.

(8) The Board shall annually prescribe the levies applicable to the gross annual production of fish by notice published in the *Gazette* and that notice may set different levies for different species of fish farmed.

(9) Aquaculture licences are not transferable except in accordance with subsection (10).

(10) The Board may authorize the transfer of an aquaculture licence upon written application by the holder of an aquaculture licence showing good cause why the Board should transfer the licence.

*Fish processing establishment.*

14. (1) A person or establishment shall not undertake fish processing without a fish processing establishment permit issued by the Principal Secretary.

(2) An application for a fish processing establishment permit shall be made to the Principal Secretary and in the format prescribed.

(3) The Principal Secretary may not grant a fish processing establishment permit for a period in excess of (5) five years.

(4) A fish processing establishment permit may only be granted to any person resident in Eswatini.

(5) The Principal Secretary shall annually prescribe the fees applicable to the granting of fish processing establishment permits by notice published in the *Gazette*.

(6) Subject to sub-section (7), fish processing establishment permits are not transferable.

(7) The Principal Secretary may authorize the transfer of a fish processing establishment permit upon written application by the permit holder showing good reasons why the Principal Secretary should authorize the transfer of the permit.

(8) Where the Principal Secretary considers it appropriate, a permit issued under this provision may be suspended, withdrawn or terminated.

#### *Fishing vessels.*

15. (1) A person responsible for a fishing vessel flying the Eswatini flag shall cause the vessel to be registered.

(2) The registration of fishing vessels shall be the responsibility of the ministry responsible for fisheries and aquaculture.

(3) A person shall not operate a fishing vessel in any national, foreign or international water body without a vessel permit.

(4) An application for a fishing vessel permit shall be made to the Principal Secretary in a format to be prescribed.

(5) The Principal Secretary shall not grant a fishing vessel permit for a period exceeding a period of one (1) year.

(6) The Principal Secretary shall annually prescribe the fees applicable to the granting of fishing vessel permits by notice published in the *Gazette*.

(7) The Principal Secretary shall open and maintain a public register of fishing vessels.

(8) A vessel flying the Eswatini flag shall comply with any relevant legislation whether of local, coastal state or the international law of the sea.

#### *Register of licences and permits.*

16. (1) The Principal Secretary shall open and keep a register of all licences and permits granted or issued in terms of this Act.

(2) The register contemplated in sub-section (1) shall be publicly available and accessible.

(3) The register shall be maintained and updated at least annually.

*Administrative penalties.*

17. (1) If a holder of a licence or permit—
- (a) furnishes information in the application for that licence or permit, or submits any other information which is false or incomplete;
  - (b) contravenes or fails to comply with a condition imposed in the licence or permit;
  - (c) contravenes or fails to comply with a provision of this Act;
  - (d) is convicted of an offence in terms of this Act; or
  - (e) fails to effectively utilize that licence or permit, without any reasonable cause,
- the Principal Secretary may, by written notice delivered to that holder, request for the holder to show cause in writing within a period of twenty-one (21) days from the date of the notice, why the licence or permit should not be revoked, suspended, withdrawn or altered as the case may be.
- (2) The Principal Secretary shall, after the expiry of the period referred to in sub-section (1), refer the matter together with any reason furnished by the holder in question, to the Minister for a decision.
- (3) When a matter is referred to the Minister in terms of sub-section (2), the Minister may—
- (a) revoke, suspend or alter the licence or permit; or
  - (b) decide not to revoke, suspend or alter the licence or permit.
- (4) Without conflicting the provisions of sub-sections (1), (2) and (3), the Minister may, whenever the Minister is of the opinion that it is in the interests of promoting, protecting or utilising on a sustainable basis of a particular aquatic resource, at any time by written notice to the holder of a licence or permit, revoke, suspend or reduce that licence or permit.

PART IV  
FISHERIES CONSERVATION

*Fisheries protected areas.*

18. (1) The Minister may, by notice published in the *Gazette*, declare any national water body or part of a water body to be a fisheries protected area—
- (a) for the protection of aquatic resources and ecosystems or particular fish species;
  - (b) to facilitate fishery management by protecting spawning stock, allowing stock recovery, enhancing stock abundance in adjacent areas, and providing pristine aquatic ecosystems for research; or
  - (c) to diminish any conflict that may arise from competing uses in that area.
- (2) A person shall not in any fisheries protected area, without permission granted in terms of sub-section (3)—
- (a) fish or attempt to fish;

- (b) take or destroy any aquatic resource;
- (c) dredge, extract sand or gravel, discharge or deposit waste or any other polluting matter, or in any way disturb, alter or destroy the natural environment;
- (d) construct or erect any building or other structure on or over any land or water within a fisheries protected area; or
- (e) carry on any activity which may adversely impact on the ecosystems of that area.

(3) The Minister may, upon application and provision of good reasons, give permission, in writing, by way of a permit issued under this Act that any activity prohibited in terms of this section may be undertaken on condition that, that activity will not harm or threaten the objectives of declaring an area or part of an area a fisheries protection zone.

*Prohibited Fishing practices.*

19. The Minister shall declare, by notice published in the *Gazette*, any fishing practices that are considered to be harmful, destructive or damaging to aquatic resources, to be prohibited fishing practices.

*Establishment of a Fisheries and Aquaculture Fund.*

20. (1) The Fisheries and Aquaculture Fund is established.

(2) The Fund shall consist of—

- (a) all money paid in respect of fines, penalties and interest for any offence committed in terms of this Act, including any proceeds from the sale of any vessel, vehicle, aircraft, gear or fish forfeited or seized in terms of this Act;
- (b) all interest and fees collected in terms of this Act;
- (c) money appropriated from the Consolidated Fund for the realisation of the objects of the Fund;
- (d) interest on investments;
- (e) donations received with the approval of the Minister in consultation with the Minister responsible for finance;
- (f) 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; and
- (g) any levy on fish, fish products, aquatic plants or other fish resources, imposed and collected in terms of this Act.

(3) The Fund shall be administered by the Principal Secretary in consultation with the Minister, in accordance with an estimate, a supplementary or revised estimate of revenue and expenditure approved by the Minister in consultation with the Minister responsible for finance in respect of each financial year, which shall end on the 31st March, and no expenditure payable from the Fund may be incurred except in accordance with that estimate of expenditure.

(4) The Principal Secretary shall be the accounting officer charged with the responsibility of accounting for money received and expenditure incurred by the Fund.

(5) The Principal Secretary shall invest money in the Fund not required for immediate use on the advice of the Minister responsible for finance.

(6) Any unexpended balance in the Fund at the end of a financial year shall be carried forward as a credit in the Fund to the next financial year.

(7) The Auditor-General shall audit the books and accounts of the Fund annually.

*Functions of the Fund.*

21. The functions of the Fund shall be to—

- (a) facilitate the fisheries and aquaculture development and management;
- (b) support commercial aquaculture;
- (c) facilitate the execution of fisheries conservation and bio-diversity programs; and
- (d) enhance adaptation to climate change in the fisheries and aquaculture sector and making preventive investment to reduce the impact of natural disasters on the sector.

PART V  
LAW ENFORCEMENT

*Fishery enforcement officers and voluntary fishery enforcement officers.*

22. (1) The Minister may, in consultation with the Ministry responsible for public service, designate posts or ranks in the Ministry of which the incumbents shall be Fishery Enforcement Officers.

(2) The Minister may, by written notice in the *Gazette*, appoint any person that the Minister considers fit to be a Fishery Enforcement Officer or a Volunteer Fishery Enforcement Officer, and in doing so may specify the powers to be exercised by that person in terms of this Act.

(3) A Fishery Enforcement Officer and a Volunteer Fishery Enforcement Officer shall be furnished by the Principal Secretary with an identity card recording the name of the officer and designation.

(4) The Minister may withdraw the appointment or authority of an Enforcement Officer at any time.

*Powers of fishery enforcement officers.*

23. (1) For the purposes of enforcing this Act, any Fishery Enforcement Officer may, with a warrant issued by a Magistrates Court, enter and search any fishing vessel, vehicle, aircraft or premises or seize any property.

(2) For the purposes of enforcing this Act any Fishery Enforcement Officer may without a warrant—

- (a) order any fishing vessel in the territory of Eswatini to stop;
- (b) require the skipper of a vessel to stop fishing and take the gear of the vessel back on board;

- (c) require the skipper of a vessel to facilitate the boarding of a vessel by all appropriate means;
  - (d) go on board a vessel and take with any other persons that the fishery enforcement officer may require for assistance in the execution of their powers;
  - (e) require any vessel documents, catch logbooks, licences or permits to be produced and examined;
  - (f) require the skipper to give an explanation concerning the vessel, the crew, any person on board the vessel and any document referred to above;
  - (g) make any examination or enquiry which the Fishery Enforcement Officer may consider necessary to ascertain whether any provision of this Act has been contravened;
  - (h) make an entry dated and signed by the Fishery Enforcement Officer in any vessel's log book;
  - (i) where a Fishery Enforcement Officer has reasonable grounds to believe that an offence in terms of this Act has been or is being committed, take or require the skipper to take the vessel to any place within the country for the purpose of carrying out any search, examination or enquiry;
  - (j) give directions to the skipper and any crew member of any vessel stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Act or for the compliance by the vessel, skipper or any crew member with any condition of a licence or permit;
  - (k) at all reasonable times enter and inspect any fish processing establishment or any other place where fish or fish products are kept or stored; or
  - (l) take samples of any fish found in any vessel, vehicle, aircraft or on any premises searched in terms of this section.
- (3) A Fishery Enforcement Officer may, without a warrant—
- (a) enter and search any vessel, vehicle, aircraft or premises if the Fishery Enforcement Officer has reasonable grounds to believe that an offence has been or is being committed or that fish illegally fished or that any prohibited fishing gear is being stowed or stored;
  - (b) stop, enter and search any vessel, vehicle or aircraft flying the Eswatini flag which the Fishery Enforcement Officer reasonably suspects is being used or is involved in the commission of an offence in terms of this Act;
  - (c) seize—
    - (i) any property on board any vessel, vehicle or aircraft or on any premises if the person in control of the vessel, vehicle, aircraft or premises consents to that seizure; or the Fishery Enforcement Officer has reasonable grounds to believe that a warrant will be issued, if the Fishery Enforcement Officer were to apply for that warrant, and the delay caused by the obtaining of that warrant would defeat the object of the seizure;
    - (ii) any vessel, including its gear, equipment, stores and cargo, and any vehicle or aircraft of which the Fishery Enforcement Officer has reasonable grounds to believe that it has been or is being used in the

commission of an offence in terms of this Act or in respect of which the Fishery Enforcement Officer suspects an offence to have been committed or which the Fishery Enforcement Officer knows or has reasonable grounds to suspect that it has been seized or forfeited in terms of any provision of this Act;

- (iii) any fish or fish product which the Fishery Enforcement Officer has reasonable grounds to suspect to have been taken or produced in the commission of that offence or which are possessed in contravention of this Act;
  - (iv) any substance or device which the Fishery Enforcement Officer has reasonable grounds to suspect to have been used or to be possessed or controlled in contravention of any provision of this Act;
  - (v) any log book, chart or other document required to be maintained in terms of this Act or in terms of any license, in respect of which the Fishery Enforcement Officer has reasonable grounds to believe that it shows or tends to show, with or without other evidence, the commission of an offence in terms of this Act; or
  - (vi) anything which the Fishery Enforcement Officer has reasonable grounds to believe might be used as evidence in any proceedings in terms of this Act; or
- (d) arrest any person whom the Fishery Enforcement Officer has reasonable grounds to suspect to have committed an offence in terms of this Act.

*Seizure of fishing vessels.*

24. Where any fishing vessel is seized in terms of section 23 (3), the skipper and crew of that vessel shall take the fishing vessel to a place that the Fishery Enforcement Officer shall direct and the vessel may be detained pending the outcome of any proceedings in terms of this Act or until it is released on payment or lodging of security in terms of this Act.

*Seizure of aircraft and vehicles.*

25. (1) Where any vehicle or aircraft is seized in terms of section 23, the driver or pilot, as the case may be, shall take the vehicle or aircraft to a place that the Fishery Enforcement Officer may designate as being the nearest or most convenient place for the holding of that vehicle or aircraft and that vehicle or aircraft may be detained pending the outcome of any proceedings in terms of this Act or until it is released on payment or lodging of security in terms of this Act.

(2) If a Driver or Pilot fails or refuses to take a vehicle or aircraft contemplated in subsection (1) to the designated place, a Fishery Enforcement Officer shall take charge of the vehicle or aircraft for the purpose of bringing it to the designated place.

*Co-operating with officials.*

26. (1) Where a Fishery Enforcement Officer, Observer or Volunteer Fishery Enforcement Officer exercises any power or performs any duty in terms of this Act, the Fishery Enforcement Officer or Volunteer Fishery Enforcement Officer shall, at the request of any person affected, produce the identity card contemplated in this Act to that person for inspection.

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(2) The Skipper and each member of the crew of any fishing vessel, the Driver of any vehicle and the Pilot or crew of any aircraft shall immediately comply with any lawful instruction given or request made by a Fishery Enforcement Officer and shall facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any gear, equipment, register, document, fish and fish product.

(3) The Skipper and each member of the crew of any fishing vessel, the Driver of any vehicle and the Pilot and crew of any aircraft shall take all measures to ensure the safety of a Fishery Enforcement Officer in the performance of the officer's duties.

(4) The holder of a permit and all persons employed at any fish processing establishment, shall immediately comply with any instruction or request given by a Fishery Enforcement Officer, facilitate the safe entry and inspection of the fish processing establishment, records, documents, fish and fish products and take all measures necessary to ensure the safety of a Fishery Enforcement Officer in the performance of the officer's duties.

(5) A person shall not—

- (a) assault, obstruct, resist, delay, refuse the boarding of, intimidate or fail to take all reasonable measures to ensure the safety of, or otherwise interfere with a Fishery Enforcement Officer in the performance of their duties;
- (b) incite or encourage any other person to assault, resist or obstruct any Fishery Enforcement Officer while exercising or performing their duties, or any other person lawfully acting under the orders of the Fishery Enforcement Officer;
- (c) use threatening language or behave in a threatening or insulting manner or use abusive language or insulting gestures towards any Fishery Enforcement Officer or an Observer while exercising or performing their powers or duties, or towards any other person lawfully acting under the orders of a Fishery Enforcement Officer;
- (d) fail to comply with the lawful requirements of any Fishery Enforcement Officer;
- (e) furnish to any Fishery Enforcement Officer any particulars which are false or misleading;
- (f) impersonate or falsely represent oneself as a Fishery Enforcement Officer; or
- (g) falsely represent oneself as a person lawfully acting under a Fishery Enforcement Officer's orders.

*Duty to report.*

27. A holder of a licence or permit issued under this Act has a duty to report any contravention of any provision of this Act by any other person to the Minister.

PART VI  
OFFENCES AND PENALTIES

*Offences and penalties.*

28. (1) Any person who sells, imports or exports contaminated fish or fish products or undertakes fishing, aquaculture or related activities in contravention of—

- (a) the provisions of sections 9, 10, 11, 12 or 13;



- (b) conditions of any licence or permit granted or issued in terms of this Act;
- (c) the provisions of sections 18 or 19; or
- (d) any other provision of this Act,

commits an offence and is liable, on conviction, to a fine not exceeding twenty five thousand Emalangeni (E25,000.00) for offences committed within Eswatini or two (2) million Emalangeni (E2,000 000.00) for offences committed in international waters, or to imprisonment for a period not exceeding five (5) years or to both.

(2) Regulations made under this Act may provide that a person who contravenes or fails to comply with a provision of this Act, commits an offence and is liable, on conviction, to the fine stipulated in sub-section (1).

*Limitation of Government liability.*

29. (1) The Government, Minister, or any person in the employment of an organ of Government or any person appointed to perform any function in terms of this Act shall not be liable by virtue of anything done in good faith under a provision of this Act.

(2) The Government, Minister or any person contemplated in sub-section (1) shall not be liable, except in the case of any intentional or negligent act or omission on the part of that person.

*Destruction of evidence.*

30. (1) A person who being on board a vessel being pursued, about to be boarded or notified that it will be boarded by a Fishery Enforcement Officer, shall not throw overboard or destroy any fish, fish product, gear, explosive, fire-arm, poison, noxious substance, chart, log book, document or other thing to avoid the seizure of that thing or the detection of any contravention of this Act.

(2) Sub-section (1) shall, as far as may be applicable, also apply to vehicles, aircrafts, fish processing establishments and other premises where fish or fish products may be kept.

*Security for the release of vessels, vehicles or aircraft.*

31. (1) If a fishing vessel, vehicle or aircraft is taken, seized or detained in terms of this Act and judicial proceedings are instituted in respect of an offence for which the vessel has been detained, the Skipper, Owner, Charterer or Agent of the owner or the Charterer of the vessel, vehicle or aircraft may at any time apply to the Court which will hear the matter, for the release of the vessel, vehicle or aircraft on the provision of security in terms of this section.

(2) On hearing the application the Court shall—

- (a) determine the amount of security to be deposited with the Court by adding to the value of the vessel, vehicle or aircraft—
  - (i) the maximum fine for the offence or offences alleged; and
  - (ii) the costs and expenses incurred or reasonably foreseen to be incurred by the Government, and recoverable in terms of this Act,

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and order the release of the vessel, vehicle or aircraft subject to the lodging of a guarantee or depositing of the security as determined; or

- (b) where it is satisfied that there are special and exceptional circumstances to justify it doing so, order the release of the vessel, vehicle or aircraft subject to the payment of security which is less than the amount contemplated in paragraph (a).

(3) The furnishing of security shall, subject to sub-section (4), be subject to the conditions that the Court may determine.

(4) Any security granted in terms of sub-section (2) shall be subject to the condition that, if—

- (a) the accused is found not guilty of the charge; or
- (b) the accused, on being convicted of the charge, pays in full within 14 days, or such time that the court may determine, after the accused is convicted, the amount of the fine imposed by the court and the amount of all costs and expenses due by the accused to the Government in terms of sub-section (2),

that security shall be of no effect and any amount that has been deposited, shall forthwith be returned to the accused.

(5) Any security granted in terms of sub-section (2) shall be recoverable in full in any Court as a debt due to the Government jointly and severally by the person or persons by whom the security has been given unless the person or persons prove the due performance of the conditions on which the security was given.

(6) The Minister may order the release of any vessel, vehicle, aircraft or gear, equipment or fish seized in terms of this Act.

*Disposal of perishable.*

32. (1) If any fish or other thing of a perishable nature is seized in terms of this Act, the Minister may, notwithstanding any other provision of this Act—

- (a) return the fish or other thing to the person from whom it was seized on receiving adequate security equivalent to the value of the fish or thing; or
- (b) cause the sale of the fish or other thing at a price which is reasonable in the circumstances and, if court proceedings are instituted, pay the proceeds of the sale into the Fund pending a court order in respect of the forfeiture of the proceeds or, if no proceedings are instituted, release the proceeds to the person from whom the fish or other thing was seized.

(2) If, after making all reasonable efforts, the Minister is unable to sell the fish or other thing, or where the fish or other things are unfit for sale, the Minister may dispose them in any other manner that the Minister considers fit, including destruction.

(3) If any live fish is seized in terms of this Act, it may be released or destroyed at the discretion of the seizing Fishery Enforcement Officer where the Fishery Enforcement Officer for any sufficient reason considers that act desirable.

*Treatment of things seized or detained.*

33. (1) If any vessel, vehicle, aircraft or other thing is detained or seized in terms of this Act, and a person who has been charged with a related offence fails to appear to answer the charge within ninety (90) days of the detention or seizure, the Minister may apply to the Court for the item to be forfeited to the State and the court shall make the order as it considers fit.

(2) If the lawful owner of a vessel, vehicle, aircraft or thing seized or detained in terms of this Act cannot be traced within ninety (90) days of that seizure, the seized items shall be forfeited to the State and be disposed of as the Principal Secretary may consider fit.

(3) If a vessel, vehicle, aircraft or thing is seized or detained in terms of this Act and the court does not order its forfeiture, any proceeds realized from its disposal shall be returned to the owner or the person having possession, care or control of it at the time of that detention or seizure.

(4) If the owner of a vessel, vehicle, aircraft or thing or the person having the possession, care or control at the time of its seizure or detention is convicted of an offence in terms of this Act and a fine is imposed, it may be detained until all fines, orders for costs and penalties imposed in terms of this Act have been paid.

(5) If any payment contemplated by this clause is not made within the time that the court may determine, the vessel, vehicle, aircraft or thing may be sold in satisfaction of that determination and the proceeds shall be dealt with in accordance with the provisions of this Act.

(6) Any vessel, vehicle, aircraft or other thing ordered to be forfeited in terms of this Act may, if no appeal is lodged at the expiry of the time specified for appeal in a court, be disposed of in the manner that the Minister may determine.

*Application of security given.*

34. Any security or net proceeds of sale held in respect of any vessel, vehicle, aircraft or other thing may be used to—

- (a) discharge any forfeiture ordered in terms of this Act;
- (b) pay all fines or a contribution towards a fine, for offences in terms of this Act or penalties imposed in terms of this Act, arising out of the use of or in connection with the vessel, vehicle, aircraft or other thing; or
- (c) to discharge all orders for costs in proceedings in terms of this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other thing.

*Liability for loss, damage or deterioration of things in custody.*

35. The Government shall not be liable to any person for any loss, damage or deterioration in the condition of any vessel, vehicle, aircraft or other thing while in the custody of the Government in terms of this Act if the loss, damage or deterioration is not due to negligence on the part of Government.

*Removal of items from custody.*

36. Any person who knowingly or is reasonably expected to know that a vessel, vehicle, aircraft or other thing is held in the custody of the Government in terms of this Act and who

removes that vessel, vehicle, aircraft or thing, commits an offence and shall, on conviction, be liable to a fine not exceeding twenty five thousand Emalangeni (E25, 000.00) or a term of imprisonment not exceeding five (5) years or both.

*Forfeiture orders by Court.*

37. (1) If any person is convicted of an offence in terms of this Act, the Court may, in addition to any other penalty, order that any fishing vessel, together with its gear, equipment, any fish caught unlawfully or the proceeds of sale of that fish or any perishables, and any vehicle or aircraft used or involved in the commission of that offence be forfeited to the State.

(2) If any vessel, vehicle, aircraft or other thing seized in terms of this Act, or any security or net proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed in terms of this Act, it shall be made available to the registered owner or a nominee of the registered owner or, in the absence of such persons, a person who appears to be entitled to it.

(3) If any vessel, vehicle, aircraft or other thing is released upon the lodging of security, an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the security.

(4) If any vessel, vehicle, aircraft or other thing has been released upon the lodging of security, the Court may order any person convicted of an offence in connection therewith and the owner of the vessel, vehicle, aircraft or other thing concerned, whether or not that person is an accused, to pay the difference between the amount lodged in respect of security and the aggregate value of the forfeited property.

*Disposal of forfeited things.*

38. (1) Any vessel, including its gear, cargo and fuel, and any vehicle or aircraft, gear, net or other equipment, explosive, fire-arm or poison ordered to be forfeited in terms of this Act shall be disposed of in a manner that the Minister may determine.

(2) The owner or any other person with real security in any property forfeited in terms of this Act may apply to court for the release of the property in question or for the realization of that person's security in the property, as the case may be.

(3) The Court may release the property contemplated above or order the realization of the security in the property, if the applicant proves that the applicant is in no way implicated in the commission of the offence and that the applicant could not have prevented it.

*Jurisdiction of Courts.*

39. (1) Any act or omission in contravention of any of the provisions of this Act, which is committed—

- (a) by any person within Eswatini;
- (b) outside of the territory of Eswatini by any citizen of Eswatini or any person ordinarily resident in Eswatini; or
- (c) by any person on board any fishing vessel from Eswatini,

shall be dealt with and judicial proceedings taken as if that act or omission took place in the territory of Eswatini.

(2) Any offence in terms of this Act shall, for purposes in relation to jurisdiction of a Court to try the offence, be deemed to have been committed within the area of jurisdiction of the Court in which the prosecution is instituted.

*Documentary evidence.*

40. (1) The Minister may issue a certificate stating that—
- (a) a specified vessel or person was or was not on a specified date the holder of any specified license, permit, authorization or certificate of registration;
  - (b) an appended document is a true copy of the licence, authorization or certificate of registration for a specified vessel or person and that specified conditions were those of a licence, permit, authorization or certificate of registration issued in respect of a specified vessel or person;
  - (c) a particular location or area of water was on a specified date within Eswatini's national waters;
  - (d) an appended chart shows the boundaries on a specified date of Eswatini's national waters and territory; or
  - (e) a particular position or catch report was given in respect of a specified vessel.
- (2) Any certificate issued in terms of this section shall—
- (a) be signed by the person who made it; and
  - (b) state the section under which it is issued.

(3) In the absence of evidence to the contrary, a document purporting to be a certificate issued in terms of this section shall be deemed to be a certificate and to have been duly given.

(4) In any proceedings for an offence in terms of this Act, a certificate as to the cause and manner of death or injury of any fish, signed by the Principal Secretary, shall, in the absence of evidence to the contrary, be sufficient evidence as to the matters in that certificate.

*Validity of certificates.*

41. (1) Subject to this section, in any proceedings in terms of this Act, a certificate issued in terms of section 42 shall be admissible in evidence and shall be prima facie evidence of the facts averred thereto.

(2) A Court may, of its own accord or on application by any party to proceedings, require that the person who issued the certificate attend and give oral evidence at the hearing.

(3) Any omission or mistake in any certificate issued in terms of this Act shall not render it inadmissible as evidence unless the Court considers that omission or mistake to be material to any issue in the proceedings concerned, or the Court is of the opinion that the defendant or accused is unduly prejudiced thereby.

*Certificate as to location of vessel.*

42. (1) A certificate given by a Fishery Enforcement Officer shall be prima facie evidence in any proceedings in terms of this Act, of the place or area in which a vessel was at a particular date and time or during a particular period of time.

(2) A Fishery Enforcement Officer shall in any certificate issued in terms of this section, state the following—

- (a) the name, address, official position, place of appointment and provision in terms of which the Fishery Enforcement Officer is appointed;
- (b) the name and, if known or apparent, registration number of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in a place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area referred to in paragraph (d) and their accuracy within their specified limits; and
- (f) that the Fishery Enforcement Officer checked the position fixing instruments a reasonable time before and after they were used to fix the position and that they appeared to be working correctly.

*Photographic evidence.*

43. (1) If a photograph is taken of any fishing or related activity and the date and time on and position from which the photograph is taken are simultaneously superimposed upon the photograph, it shall be prima facie evidence that the photograph was taken on the date, at the time and in the position so appearing.

(2) Subsection (1) shall apply only when—

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
- (b) the instruments which provide the date, time and position are generally recognized as being accurate.

(3) Any Fishery Enforcement Officer who takes a photograph contemplated in this section may issue a certificate appending the photograph stating the following—

- (a) the name, address, official position, place of appointment and provision in terms of which the officer is appointed;
- (b) the name and, if known or apparent, registration number of the fishing vessel concerned;
- (c) the brand and model names of the camera, watch, clock or other instruments supplying the date and time, including the position fixing instrument, and that the officer checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, that they all appeared to be working correctly;
- (d) the accuracy of the fixing instrument if used within specified limits; and
- (e) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

PART VII  
MISCELLANEOUS PROVISIONS

*Delegation of powers.*

44. (1) The Minister may, upon the conditions that the Minister considers fit, delegate any or all the powers conferred upon the Minister in terms of this Act, save a power to make regulations, to the Principal Secretary, an officer of the Department nominated by the Principal Secretary or any other person or entity responsible for fisheries management.

(2) The Principal Secretary may delegate any power conferred upon the Principal Secretary in terms of this Act to an officer in the Department upon conditions that the Principal Secretary considers fit.

(3) Delegation of any power shall not prevent the exercise of that power by either the Minister or the Principal Secretary, as the case may be.

*Administrative appeal to minister.*

45. (1) An affected person may appeal to the Minister against a decision taken by any person acting under a power delegated in terms of this Act.

(2) An appeal under sub-section (1) shall be noted and shall be dealt with in the manner and in accordance with the procedure prescribed by the Minister by regulation.

*Scientific research and experiments.*

46. In pursuit of the objectives and principles of this Act, the Minister may permit any scientific, research or investigation or practical experiment aimed at developing fisheries or aquaculture in Eswatini and the Minister may set aside monies in the Fund for that research, investigation or practical experiment, as the case may be.

*Trans-boundary fisheries and aquaculture management.*

47. (1) The Minister shall take particular measures to conserve and protect trans-boundary ecosystems and aquatic resources.

(2) The Minister shall endeavor to enter into bi-lateral or multilateral agreements with neighbouring countries to give effect to the provisions of sub-section (1).

*Regulations.*

48. (1) The Minister may make Regulations regarding—

- (a) any matter required or permitted to be prescribed in terms of this Act; and
- (b) generally all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Minister may make regulations—

- (a) prescribing or increasing fines greater in amount than those already specified in any provision of this Act if necessary as a result of inflation or a rise in the consumer price index or to be in accordance with international law;

- (b) providing for the forfeiture of any vessel, vehicle, aircraft or thing used in the commission of an offence in terms of this Act;
- (c) providing for the forfeiture of any fish caught in contravention of any provision of this Act;
- (d) providing for the imposition of an additional fine to an amount representing the value in whole or in part of any vessel, vehicle, aircraft, gear, equipment or fish in the place of forfeiture of such vessel, vehicle, aircraft, gear, equipment or fish;
- (e) prescribing fisheries management and conservation measures, including prohibited methods of fishing or gear and schemes for limiting entry into all or any specified fisheries;
- (f) regarding permits or authorization in respect of any vessel or class or category of vessel to be used for fishing, related activities or any other purpose pursuant to this Act, including application procedures and forms, and the format and requirements for the issuing of licences or permits, grounds for denial or terms and conditions;
- (g) prescribing different classes of and formats for licences or permits, including application procedures and forms, and the area or fishing method or type of gear in respect of which each class of licence or permit shall be valid;
- (h) prescribing the operation of, and conditions and procedures to be observed by any fishing vessel while in Eswatini waters;
- (i) regarding the catching, loading, landing, handling, processing, transporting, possession and disposal of fish;
- (j) regarding the import, export, trade, distribution and marketing of fish and fish products;
- (k) requiring the provision of statistical and other information related to fisheries, including fishing log books, and the format in which the information shall be recorded;
- (l) regulating and controlling the operation of fish processing establishments, including quality control measures and inspection of such establishments;
- (m) establishing measures for the protection of specified species;
- (n) relating to the dumping or discharging of anything which is or may be injurious to fish, or which may disturb or change the ecological balance in any area of a water body; and
- (o) to ensure the sustainable and responsible development and control of aquaculture in Eswatini.

(3) The Minister may, where necessary, make or cause the development of regulations, guidelines and necessary requirements on fish safety and quality as well as the competent authority thereof.

*Repeal and transitional measures.*

49. (1) The Protection of Fresh Water Fisheries Act No. 75 of 1937, is repealed.



(2) Without conflicting sub-section (1), any permit or authorization granted under the Protection of Fresh Water Fisheries Act No. 75 of 1937, shall be deemed to remain valid and in force for a period of twelve (12) months from the date of commencement of this Act, after which these permits and authorizations shall lapse and cease to be valid.

(3) All holders of permits and authorizations referred to in sub-section (2) may apply for an appropriate licence or permit under this Act during the twelve (12) month transitional period.

*Precedence of this Act.*

50. If any conflict arises between this Act and the provisions of any other law dealing with fisheries and aquaculture, the provisions of this Act shall prevail.

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