

**SEA BIRDS AND SEALS PROTECTION ACT
NO. 46 OF 1973**

[ASSENTED TO 21 MAY, 1973]

[DATE OF COMMENCEMENT: 12 OCTOBER, 1973]

(English text signed by the State President)

as amended by

General Law Amendment Act, No. 57 of 1975
(with effect from 20 June, 1975 - see title GENERAL LAW AMENDMENT ACTS)

ACT

To provide for the control over certain islands and rocks; for the protection, and the control of the capture and killing, of sea birds and seals; and for the disposal of the products of sea birds and seals and for matters incidental thereto; and to repeal the Fish Protection Act, 1893 (Act No. 15 of 1893 of the Cape of Good Hope), and the provisions of the Sealing and Fisheries Ordinance, 1949 (Ordinance No. 12 of 1949 of South West Africa), relating to the killing, pursuit or capture of seals.

1. Definitions.- In this Act, unless the context otherwise indicates-

"commander", in relation to a boat or vessel, means the person in charge of or commanding that boat or vessel;

"island" means any island or rock or any group of islands or rocks specified in Schedule 1 or any island specified in Schedule 2;

"Minister" means the Minister of Economic Affairs and, in relation to the islands specified in Schedule 2 and to Antarctica, the Minister of Transport;

"officer" means any person appointed as an officer under section 8;

"permit" means an appropriate permit issued under this Act;

"prescribe" means prescribe in terms of this Act and "prescribed" has a corresponding meaning;

"regulation" means a regulation made under this act;

"Republic" includes the territory of South West Africa;

"sea bird" means any penguin (*Spheniscidae*), gannet (*Sulidae*), cormorant (*Phalacrocoracidae*), gull (*Laridae*), tern (*Sternidae*), pelican (*Pelicanidae*), albatross (*Diomedeidae*), petrel (*Procellariidae*, *Thalassidromidae* or *Oceanitidae*), dabchick (*Podicipidae*), ibis (*Thriakiornithidae*), skua (*Stercorariidae*), wader (*Charadriidae*), oystercatcher (*Haematopodidae*), phalarope (*Phalaropidae*), flamingo (*Phoenicopteridae*) or sheathbill (*Chionidae*);

"seal" means any Cape Fur seal (*Arctocephalus pusillus*), Antarctic seal, also known as Southern Elephant seal (*Mirounga leonina*), Leopard seal (*Hydrurga leptonyx*), Weddel seal (*Leptonychotes weddelli*), Crabeater seal (*Lobodon carcinophagus*), Ross seal (*Ommatophoca rossi*) and Southern Fur seal (*Arctocephalus spp*);

"this Act" includes any regulation, notice or direction issued thereunder.

2. Powers of Minister in connection with islands, sea birds and seals and products of sea birds and seals.-(1) For the purposes of this Act and subject to the provisions thereof, the Minister shall exercise control over-

(a) sea birds and seals as well as over the acquisition, gathering and disposal of all products of sea birds and seals, within the Republic and the territorial waters and fishing zone of the Republic as defined in sections 2 and 3, respectively, of the Territorial Waters Act, 1963 (Act No. 87 of 1963), on any island specified in Schedule 2 and, in respect of South African citizens, in Antarctica; and

(b) islands.

(2) Notwithstanding anything to the contrary contained in this Act, the Minister may in his discretion-

(a) cause sea birds to be captured or killed for the purpose of placing them at the disposal of any person for scientific purposes or of public institutions;

(b) cause seals to be captured or killed; and

(c) by or without the agency of the State Tender Board, cause products of sea birds or seals to be gathered and, in consultation with the Minister of Finance, to be disposed of.

3. Prohibitions.- No person shall-

(a) set foot on or remain upon any island;

(b) upon any island or within the territorial waters of fishing zone of the Republic or along the coast of the Republic between the low-water mark as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935), and the high-water mark as so defined, pursue or shoot at or wilfully disturb, kill or capture any sea bird or seal; or

(c) wilfully damage the eggs of any sea bird upon any island or collect upon or remove from any island any such eggs or the feathers of any sea bird or any guano,

except in the performance of his duties under this Act or under the authority and subject to the conditions of an exemption granted by or under this Act, or of a permit.

[S. 3 substituted by s. 42 of Act No. 57 of 1975.]

4. Issue of permits.-(1) The Minister may in his discretion issue to any person a permit authorizing the performance of any act which, under this Act, may be performed under the authority of a permit.

(2) Such a permit-

(a) may be issued for an indefinite or specified period;

- (b) may be issued subject to such conditions as the Minister may determine, which shall be incorporated in the permit;
- (c) shall be issued subject to the payment of the prescribed fee (if any) or the fee agreed upon, as the case may be;
- (d) may at any time be withdrawn or amended by the Minister.

(3) The Minister may, in addition to any other conditions which he may determine under paragraph (b) of subsection (2), in terms of that paragraph-

- (a) prescribe the methods by which sea birds and seals may be captured or killed;
- (b) prescribe the age, size, sex or kind of sea birds or seals which may be captured or killed;
- (c) prescribe the time or season when or the area within which sea birds or seals may be captured or killed or their products gathered or processed;
- (d) prescribe the prices at which the products of sea birds or seals may be sold;
- (e) prohibit the export of the products of sea birds or seals;
- (f) require the holder of a permit to furnish him with particular statistics and may prescribe the manner in which and the period within which those statistics shall be so furnished.

5. Transfer of permits.- (1) A person to whom a permit has been issued may not transfer it to any other person without the consent of the minister.

(2) If a person other than the Minister has refused to consent to the transfer of a permit, the holder of the permit may in writing appeal to the Minister against that refusal.

6. Exemptions.-(1) The Minister may, subject to such conditions as he may determine, exempt in writing any person who conducts any scientific investigation, experiment or research in connection with sea birds or seals, or any person or group or class of persons required or empowered to perform any act under any other law which would be or might result in a contravention of this Act, from any of or all the provisions of this Act in conducting any such investigation, experiment or research or in the performance of any such act.

(2) The Minister may at any time withdraw or amend any exemption so granted by him.

7. Limitation of liability.-(1) The State or any person in the service of the State, or the Minister, shall not be liable by virtue of anything done in good faith under the provisions of this Act.

(2) The State or any person in the service of the State, or the Minister, shall not be liable (except in the case of any wilful act or omission on the part of any such person) to any person who, except in the performance of a duty or an activity under this Act or any other law-

- (a) makes use of any vehicle, boat or vessel which is the property or under the control of the State in its Department of Industries or of Transport, for the purposes of his journey to or return from any island, including any island not defined in this Act, or Antarctica; or
- (b) is present upon any island referred to in paragraph (a) or in Antarctica, or to the spouse or any dependant of any such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use, referred to in paragraph (a), of any vehicle, boat or vessel, or the presence referred to in paragraph (b).

8. Appointment of officers and employees.- The Minister may, subject to the law relating to the public service, appoint such officers and employees as he may deem necessary for carrying out the provisions of this Act.

9. Delegation of powers.-(1) The Minister may delegate any or all of his powers under this Act to an officer appointed in terms of section 8.

(2) (a) The Minister may delegate any or all of his powers under this Act, generally or in respect of a particular area or kind of seal or sea bird, to a person in the service of the State or to the Administrator of a province or the territory of South West Africa or to any body established by or under any law.

(b) Such an Administrator may delegate any power delegated to him under paragraph (a) to a person in the service of the administration in question.

10. Powers of officers and certain other persons.-(1) Any police officer and, if generally or specially authorized thereto in writing by the Minister, any officer, person in charge of any island or commander of a boat or vessel which is the property of the State and is used in connection with the carrying out of the provisions of this Act, may, subject to the provisions of subsection (4)-

(a) require any person who is, or is about to go, on any island, to furnish him with his full name and address and the reason for his presence, or for his intention to go, on such island;

(b) if he on reasonable grounds believes or suspects that-

(i) any person is performing or has performed any act which may be performed solely under the authority of a permit, require such person to produce to him a permit authorizing the performance by such person of such act;

(ii) any person upon a boat or vessel within the territorial waters or fishing zone of the Republic, has committed or is about to commit any offence under this Act, require the commander of such boat or vessel to bring it to a standstill, and may go on board such a boat or vessel and require that commander to furnish him with the reason for the presence of such boat or vessel there, that commander's full name and address and that of every member of the crew of such boat or vessel;

(iii) any offence under this Act has been committed by means of or in respect of any thing, seize such thing;

(iv) any person who is present upon an island has committed any offence, without warrant arrest such person.

(2) If any person seizes any thing under the provisions of subsection (1) (b) (iii), he shall, as soon as possible, take such thing before a magistrate, and thereupon the provisions of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), shall apply in respect of such thing as if it had been seized under the provisions of that Act.

(3) Any person arrested in terms of subsection (1) (b) (iv) shall, as soon as possible, be brought to a police station or charge office and the provisions of section 27 of the Criminal Procedure Act, 1955, shall apply in respect of his detention thereafter.

(4) Any officer, person in charge of any island or commander referred to in subsection (1) shall, before exercising any power or performing any duty or function under subsection (1) in the presence of any persons affected thereby, exhibit the written authority issued to him in terms of subsection (1) to any of those persons.

11. Regulations.-(1) The Minister may-

- (a) make regulations prescribing the form and conditions of the permits and other documents which may be necessary for the carrying out of the provisions of this act;
- (b) make regulations prescribing the maximum number of any kind of seal which may be captured or killed during an indefinite or specified period or in a specified area, or the kinds of seals which may not be captured or killed;
- (c) make regulations prescribing the age at which and the methods by which seals may or may not be captured or killed;
- (cA) make regulations granting exemption from any provision of this Act, and prescribing the circumstances in which such exemption shall apply;

[Para. (cA) inserted by s. 43 of Act No. 57 of 1975.]

- (cB) make regulations prohibiting or regulating the taking on board, without lawful reason, on any fishing boat as defined in the Sea Fisheries Act, 1973 (Act No. 58 of 1973), of any fire-arm or any instrument or substance with which seals may be killed, disturbed or frightened away;

[Para. (cB) inserted by s. 43 of Act No. 57 of 1975.]

- (d) in consultation with the Minister of Finance make regulations prescribing the circumstances in which any fee shall be payable for a permit, the amount of such fee, the rate at which it shall be calculated or the manner in which it shall be determined;
- (e) make regulations providing for the further conservation or protection of sea birds or seals;
- (f) make regulations, generally, for the better achievement of the objects and purposes of this Act.

(2) The Minister may make different regulations under subsection (1) in respect of different islands or kinds of sea birds or seals and in respect of sea birds or seals, and may in terms of that subsection prescribe different fees or rates of fees for different permits.

12. Offences and penalties.- Any person who-

- (a) contravenes or fails to comply with the provisions of this Act;
- (b) contravenes or fails to comply with any direction in a permit issued or lawfully transferred to him;
- (c) without lawful reason refuses or fails to comply with any requirement under section 10 (1) of any officer, police officer, person in charge of an island or commander referred to in that section; or
- (d) resists or wilfully obstructs any person referred to in paragraph (c) in the performance of his duties or the exercise of his powers under this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

13. Jurisdiction and evidence.-(1) If any person is charged with having committed any offence under this Act at any place within the territorial waters or fishing zone of the Republic, any court whose area of jurisdiction abuts on or includes any portion of the sea, may hear the charge, and the offence shall, for all purposes incidental to or consequential upon the hearing of the charge, be deemed to have been committed within the area of jurisdiction of the court so hearing it.

(2) If any boat or vessel has been used in connection with the commission of any offence under this Act, or any thing by means of or in respect of which any such offence has been committed, is found or proved to have been upon any boat or vessel, any person who was on board such boat or vessel at the time when the offence was committed, shall be deemed to be guilty of such offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it.

(3) If any person is charged with having committed any offence under this Act and it is alleged in the charge that he performed any act wilfully and it is proved that he performed such act, he shall, until the contrary is proved, be deemed to have performed such act wilfully.

14. Amendment of Schedules.- The Minister may, by notice in the *Gazette*, amend Schedule 1 or 2 by the deletion therefrom of the name or description of any island or by the insertion therein of the name or a description of any island or rock or of any group of islands or rocks.

15. Repeal of laws.-(1) Subject to the provisions of subsection (2), the Fish Protection Act, 1893 (Act No. 15 of 1893 of the Cape of Good Hope), and the provisions of the Sealing and Fisheries Ordinance, 1949 (Ordinance No. 12 of 1949 of South West Africa), relating to the killing, pursuit or capture of seals, are hereby repealed.

(2) A permit, licence or concession issued or granted under a provision of any law repealed by subsection (1) or amended by subsection (3), relating to the utilization of seals or the products of sea birds or seals and which is in force immediately prior to the commencement of this Act, shall be deemed to be an appropriate permit issued under this Act: Provided that any condition or stipulation contained in such a permit, licence or concession and which is not provided for in this act, shall remain in force as if it had been properly imposed under this Act.

(3) The definition of "mineral" in section (1) of the Mines, Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968 of South West Africa), is hereby amended by the deletion of the words "and shall include sea bird guano".

16. Application of act.-(1) This Act, and any amendment thereof-

- (a) shall apply also in the territory of South West Africa;
- (b) shall not derogate from the provisions of the Nature Conservation Ordinance, 1967 (Ordinance No. 31 of 1967 of South West Africa), or of any other law or ordinance in so far as they relate to sea birds or the products of sea birds; and
- (c) shall apply also in respect of the islands specified in Schedule 2, and to a South African citizen while he is in Antarctica as if Antarctica were an island for the purposes of this Act.

(2) The Minister may by notice in the *Gazette* declare that this Act shall not apply in any area defined in that notice and declared to be a national park under section 2 of the National Parks Act, 1962 (Act No. 42 of 1962), and which abuts on or includes any portion of the sea.

17. Short title and commencement.- This Act shall be called the Sea Birds and Seals Protection Act, 1973, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule 1

[Amended by Government Notices No. R.585 of 5 April, 1974 and No. 1001 of 21 December, 1979]

Name or Description of Island					Situation		
					1.	Bird Island	..
2.	Stag Island	..	..	..	..	..	..
3.	Sea Island	..	..	..	..
4.	Black Rocks	..	..	..	..	Algoa Bay	
5.	.....	..	..	..	..
6.	.....	..	..	..	..
7.	.....	..	..	..	..
8.	.....	..	..	..	..	.....
9.	.....	..	..	..	..	.....
10.	.....	..	..	..	..	.....
11.	Sea Island	..	..	..	..	Mossel Bay	
12.	.....	..	..	..	..	.....
13.	.....	..	..	..	..	.....
14.	Quoin Rock	..	..	..	..
15.	Dyer Island	..	..	..	..	Bredasdorp district	
16.	Geyser Island	..	..	..	..
17.	.....	..	..	..	..	.....
18.	Sea Island	..	..	..	..	False Bay	
19.	Duikerklip	..	..	..	..	Hout Bay	
20.	Robbesteen (also known as Seal Leges)					Bellville district	
21.	.....	..	..	..	..	.....
22.	Dassen island	..	..	..	..	Malmesbury district	
23.	.....	..	..	..	..	.....
24.	Jutten Island	..	..	..	..
25.	Marcus Island	..	..	..	..
26.	Malagas island (also known as Malgas Island)					Saldanha Bay	
27.	Meeuwen Island (also known as Meeu Island)						
28.	Schaapen Island	..	..	..	..
29.	Vondeling Island	..	..	..	..	Near Saldanha Bay	
30.	Jacob's Rock	..	..	..	..
31.	Paternoster Rocks (also known as Paternoster Island)					At Great Paternoster Point, near Saldanha Bay, Hopefield district	
32.	Penguin Island (also known as Lambert's Bay island)	..	..	..	..	Lambert's bay	

Name or Description of Island					Situation		
33.	Elephant Rock	..	..	..		Near mouth of Olifants River, Vanrhynsdorp district.	
34.	Little Roastbeef Island	..	..	..		In Dernburg Bay, coast of South West Africa	
35.	Sinclair Island	..	..	..
36.	Plumpudding Island	..	..	..		Near Baker Bay, coast of South West Africa	
37.	Pomona Island	..	..	..		Near Jammer Bay, coast of South west Africa	
38.	Albatross Rock	..	..	..		Near Prince of Wales Bay, coast of South West Africa	

39.	Possession island	..	..	..	Near Elizabeth Bay, coast of South West Africa
40.	Long Islands	..	..	..	Near Wolf Bay, coast of South West Africa
41.	Halifax Island	..	..	..	Near Luderitz Bay
42.	Penguin Island (also known as Pikkewyn Island)	..	..	..
43.	Seal Island (also known as Rob Island)				Luderitz Bay
44.	Ichaboe Island	..	..	..	Near Douglas Bay, coast of South West Africa
45.	Mercury Island	..	..	..	Spencer Bay, coast of South West Africa
46.	Hollamsbird Island	..	..	..	Coast of South West Africa

Schedule 2

	Name or Description of Island				Situation
1.	Marion Island	..	..	..	As described in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948)
2.	Prince Edward Island..	..	..	..
