



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

**SUBMISSION IN RESPECT OF  
THE DRAFT AQUACULTURE DEVELOPMENT  
BILL**

---



**29 JANUARY 2024**



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

To: The Department of Forestry, Fisheries, and the Environment  
("DFFE" or the "Department")  
Att: The Director-General: Department of Forestry, Fisheries and the Environment  
Mr Tshepo Sebake  
Per e-mail: [AquacultureDB@dffe.gov.za](mailto:AquacultureDB@dffe.gov.za)

29 January 2024

Dear Honourable Representatives

**RE: SUBMISSION: THE DRAFT AQUACULTURE DEVELOPMENT BILL**

**INTRODUCTION**

Please find herewith the initial, high-level submission (the "**Submission**") by Animal Law Reform South Africa ("**ALRSA**")<sup>1</sup> in respect of the call for public comments published in *Government Gazette* Notice No. 49736 dated 17 November 2023 in respect of the Draft Aquaculture Development Bill (the "**Draft Bill**").

We commend the Department's efforts to provide for formal regulation of a currently under-regulated industry as well as for its inclusion of various provisions that promote important aims, specifically in relation to the protection, well-being and welfare of aquatic organisms. However, there are many instances where the Draft Bill needs to provide for more robust protection for the interests of animals, well as the protection of the environment and people. We have provided for a few such instances in this Submission, which is non-exhaustive of our comments on the Draft Bill.

**ORGANISATIONAL BACKGROUND AND DECLARATION OF INTEREST**

This Submission is by ALRSA, a non-profit company and a registered NPO (Number 238-234 NPO). ALRSA operates through three key Pillars being: Animal Flourishing; Social Justice; the Law. ALRSA undertakes its work through three main mechanisms, namely: Education & Research; Legislative & Policy Reform; Litigation & Legal services.

Through these mechanisms, ALRSA aims to contribute to the development of a robust animal law ecosystem in South Africa which recognises the intrinsic worth of animals as sentient beings. Our work is grounded in our understanding that it is critical for a context-sensitive approach to be taken to the furtherance of animal protection in South Africa, and that the impact of our work is enhanced through an intersectional approach to animal well-being, social justice, and environmental protection.

---

<sup>1</sup> See <https://www.animallawreform.org/>.



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

We have a substantial interest in the issues to be considered by the Department, including in the Draft Bill. ALRSA previously provided commentary during 2022 on the previous Draft Aquaculture Development Bill, some of which were incorporated into the Draft Bill of 2023.

We have, for years, consistently expressed interest in issues involving animals to DFFE, other government departments, NGOs, the South African public, and other stakeholders – both privately and within the public domain. ALRSA is a member of the Wildlife Well-being Forum initiated by the Department. We have requested engagement with and feedback from the relevant authorities in respect thereof. We have provided various formal submissions, sent letters, emails, and other correspondence, attended presentations and meetings, and otherwise engaged on these matters (where such engagement has been possible). We are interested stakeholders and representatives of vulnerable populations within South Africa, including human as well as animals. We have, within our core focus, concepts of social justice and appreciate the need for intersectionality in our approach.

### **SELECTED INITIAL HIGH-LEVEL COMMENTS ON THE BILL**

#### **MANDATE MATTERS: FOOD SECURITY, ANIMAL PROTECTION AND ENVIRONMENTAL PROTECTION**

We note that the Department has been working on a bill of this nature for some time, and that it falls within the realm of Operation Phakisa. We understand that the legal mandate and core business of the DFFE is to manage, protect and conserve South Africa's environment and natural resources.<sup>2</sup> Such mandate is informed by section 24 of the Constitution of the Republic of South Africa, 1996 (the “**Constitution**”), which affords everyone the right to (a) an environment that is not harmful to their health or well-being; and (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures. However, this Draft Bill seeks to address food security, which is not only not a direct mandate of the DFFE but seems to prioritise this aspect over the vast and potential harms. This is indicative of a trend of the Department, considering the Draft Bill as well as the Game Meat Strategy released by the Department in 2023. ALRSA has previously raised this issue in our submission in response to the Draft Game Meat Strategy in 2022, without any satisfactory response. Issues pertaining to mandate are of great importance when drafting legislation and we accordingly request the Department to provide some clarity on their position as to the Departments’ mandates and duties (such as relating to food security). Should the Department consider food security as part of its essential mandate, it must similarly investigate, explore and promote opportunities for non-animal sourced foods in advancement of food security.

---

<sup>2</sup> <https://www.dffe.gov.za/>



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

We further note that the DFFE has previously denied a mandate for animal welfare, which has been rejected by the courts,<sup>3</sup> and, in the context of legislation dealt with to some extent by the National Environmental Laws Amendment Act (“**NEMLAA**”), through the inclusion of “animal well-being”.<sup>4</sup> However, the Draft Bill provides for “animal welfare”, which is currently under the custodianship of the Department of Agriculture, Land Reform and Rural Development (“**DALLRD**”). In order to ensure that there are no gaps and proper inter-governmental co-ordination, it is recommended that the words “and well-being” be included in all places where animal welfare is mentioned (as well as the additional places as proposed by this Submission). Furthermore, there needs to be clear plans of co-operative governance and intergovernmental co-ordination in respect of animal welfare and well-being between the Department and DALRRD, and same must be provided for in the Draft Bill.

### **INCLUSION OF POTENTIAL CATEGORIES OF HARMS**

We note that the Draft Bill is titled the “Aquaculture *Development* Bill” (emphasis added) and seeks to develop the aquaculture industry. This includes promoting “responsible aquaculture development and the responsible development and management of an aquaculture sector”; “promote coordination of aquaculture research and development activities”; “ensure efficient and effective regulation of the aquaculture sector”; “promote transformation of the aquaculture sector”; “promote investment into the aquaculture sector”; “promote aquaculture as a farming activity” and “make provision for appropriate support service”. Yet, in the Draft Bill, there has been insufficient mention and inclusion of this industry’s vast and far-reaching harms due to people, animals and the environment.

There is an extensive body of research spanning these issues from across the world illustrating that such harms may include, but are not limited to:

1. **Animal Harms:** such as animal welfare, well-being, and protection – these are vast and species-specific. It is important to contextualise just how broad this area of harm is. Such harms include, but are not limited to:
  - a. the species and animals who are farmed directly;
  - b. species and animals who are brought in to assist with the farming activities (e.g., cleaner wrasses to eat parasites);
  - c. the tremendous numbers of wild caught aquatic species implicated by aquaculture including those caught and killed to be fed to farmed fish (carnivorous);
  - d. insects are farmed to feed aquatic animals (this is a growing industry);
  - e. other wild animals implicated directly through fishing activities (e.g. bycatch; ghost nets; overfishing); and

---

<sup>3</sup> See for example *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* (86515/2017) [2019] ZAGPPHC 337; 2020 (1) SA 249 (GP) (6 August 2019)

<sup>4</sup> National Environmental Management Laws Amendment Act 2 of 2022



# ANIMAL LAW REFORM

## SOUTH AFRICA

- f. other wild animals harmed (less) directly through issues such as loss of food / disruption to food chain and ecosystems and pollution of surrounding environments; interference with migration routes; genetic mixing in the case of escapements; etc.

This category is therefore much broader than the animals farmed. All animals and biodiversity implicated directly and indirectly must be properly considered.

2. **Environmental harms:** such as pollution (various types); waste; use of resources, GHG (greenhouse gas) emissions, biodiversity loss, among others (see example below);
3. **Food Safety and Human Health harms:** Such as animal diseases, human diseases, zoonotic diseases, health impacts of consuming seafood, allergens, microplastics, antibiotic use / misuse; and antimicrobial resistance, chemicals and pollutants, GMOs, etc.;
4. **Worker Rights and Safety Harms:** Aquaculture is one of the most dangerous industries in the world from a worker safety perspective, and there is increasingly more research done illustrating this;
5. **Public Safety Harms:** For example, the escapement of animals, including harmful animals such as potentially dangerous animals such as crocodiles;
6. **Consumer Harms:** including actively misleading through humane-washing, green-washing; seafood fraud; mislabelling source of animals (source of origin); traceability; and within this the lack of information and transparency around products including harms listed in this section; and
7. **Vulnerable Group Harms:** The impact on specific groups for example communities, and indigenous groups and their fishing rights.

For example, the threat of species extinction and degradation of ecosystems is a global concern compounded by the effects of climate change. Ecosystems and the species living within them are imperative for sustainable Earth functioning. Aquatic organisms contribute to various ecological processes, including nutrient cycling, oxygen production, and food webs.<sup>5</sup> For example, phytoplankton in the oceans are significant producers of oxygen through photosynthesis, and they form the basis of marine food chains.<sup>6</sup> Additionally, various marine and freshwater species contribute to nutrient cycling and help maintain the balance of ecosystems.<sup>7</sup> Due to the climate crisis, aquatic organisms in particular are exposed to heightened risks associated with rising water temperatures and oxygen depletion.<sup>8</sup> It is therefore imperative that we as humans do our part to protect these creatures from harm, while being cognisant of the imperative role that these animals play in the functioning of Earth systems.

---

<sup>5</sup> Naselli-Flores, L. and Padišák, J., 2023. Ecosystem services provided by marine and freshwater phytoplankton. *Hydrobiologia*, 850(12-13), 2691-2706.

<sup>6</sup> Ibid. See also National Geographic 'All About the Ocean' <https://education.nationalgeographic.org/resource/all-about-the-ocean/>.

<sup>7</sup> Ibid.

<sup>8</sup> Prakash, S., 2021. Impact of Climate change on Aquatic Ecosystem and its Biodiversity: An overview. *International Journal of Biological Innovations*, 3(2).



# ANIMAL LAW REFORM

## SOUTH AFRICA

Aquaculture is the fastest growing food production system in the world, and a global industry that brings with it a number of identified risks, including: “biodiversity loss, ecological damage, pollution, antibiotic overuse, lack of sustainability, and human rights abuses”.<sup>9</sup> A major challenge for the industry is that aquaculture growth is “outpacing” animal welfare and well-being knowledge, and thus “immediate efforts are needed to safeguard the welfare of high-production, understudied species and to create policies that minimize welfare risks”.<sup>10</sup> Human interference in natural systems such as aquatic ecosystems through unnatural practices such as aquafarming, “hinders and manipulates” the continuance of natural processes.<sup>11</sup> Such interference has far-reaching effects, as “means dependent on each other start to collapse”.<sup>12</sup> Human interference with the non-human world is excessive in general and is a contributing factor to the environmental concerns that the Earth is faced with today.<sup>13</sup> To regulate human intervention in natural systems, South Africa has developed environmental legislation and recognises environmental rights in the Constitution.

It is critical that these potential impacts and harms be adequately reflected in the relevant places in the Draft Bill. For instance, the Preamble states “*aquaculture has the potential to contribute to food security, equity, job creation and economic development and to create export opportunities for South African businesses*”. This recordal only reflects the positive impacts associated with the industry and fails to mention the aforementioned potential environmental, human and animal related impacts

### **DEVELOPMENTS RE SECTION 24 OF THE CONSTITUTION: ANIMAL SENTIENCE AND INTRINSIC VALUE**

Section 24 of the Constitution affords everyone the right “*to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and environmental degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development*”. This right acknowledges the significance of “environmental protection to the well-being and prosperity” of people in South Africa. The section 24(b) constitutional right to a protected environment has been interpreted by various courts, including the Constitutional Court, so as to include the protection of animal welfare, as animals are sentient beings with intrinsic value,<sup>14</sup> and living beings which play a critical role in Earth systems functioning. Nonetheless, South African environmental legislation is typically formulated, understood, and implemented with an anthropocentric approach, giving precedence to human well-being over

---

<sup>9</sup> Franks, B., Ewell, C. and Jacquet, J., 2021. Animal welfare risks of global aquaculture. *Science Advances*, 7(14), 0677.

<sup>10</sup> Ibid.

<sup>11</sup> Ellis, J., Hall, M., Ong, P., Wege, L., Paterson, N. and Smith, C., 2010. Animal Testing at Dalhousie University: A brief insight into social, economic, and environmental effects of nonhuman animal testing.

<sup>12</sup> Ibid.

<sup>13</sup> Sessions, G. and Devall, B., 1985. Deep ecology. Salt Lake Citauy: Peregrine Smith Books.





**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

animal and environmental preservation.<sup>15</sup> This perspective tends to portray humans as distinct from and superior to other life forms, rather than recognising them as integral components of the overall ecosystem.<sup>16</sup> However, South African law has recently undergone some reform as a result of the recognition of the sentience of animals by the courts, which is indicative of the judiciary adopting a more eco-centric approach in its decision-making.<sup>17</sup> The Draft Bill fails to account for these developments.

These pronouncements illustrate the potential for advancing animal protection in tangible legal action as well as their well-being and flourishing in South Africa. In *South African Predator Breeders Association v Minister of Environmental Affairs and Tourism*,<sup>18</sup> the validity of regulations published by the Minister of Environmental Affairs and Tourism designed to regulate the practice of canned lion hunting, were challenged before the High Court. Despite not declaring the practice of canned lion hunting unlawful, Justice Rampai acknowledged that the practice is “*abhorrent and repulsive*” due to the suffering of animals, based on the notion of sentience.<sup>19</sup> Rampai J placed emphasis on the importance of protecting animals against cruel practices that humans subject them to. Unfortunately, the decision was overturned by the Supreme Court of Appeal (“**SCA**”). Nonetheless, Justice Rampai’s judgment is reflective of adjudication that takes the interests of animals into consideration and rejects exploitation and cruelty.

In *National Society for the Prevention of Cruelty to Animals v Minister of Justice, Constitutional Development, and Another*,<sup>20</sup> a full bench of the Constitutional Court recognised that animals are “*sentient beings*” and that they have “*intrinsic value as individuals*”. This has since been echoed by various other courts, including

---

<sup>15</sup> Goralnik, L. and Nelson, M.P., 2014. Field philosophy: Dualism to complexity through the borderland. *Dialectical anthropology*, 38, 145. The authors confirm that ‘seismic survey is a study in which seismic waves generated through compressed air are used to image layers of rock below the seafloor in search of geological structures to determine the potential presence of naturally occurring hydrocarbons (that is, oil and gas)’. Anthropocentrism is recognised as a human-centred ‘ethical belief that humans alone possess intrinsic value’, and that other life on Earth has mere instrumental value to humans.

<sup>16</sup> Anthropocentrism is recognised as a human-centred ‘ethical belief that humans alone possess intrinsic value’, and that other life on Earth has mere instrumental value to humans.

<sup>17</sup> According to *National Society for the Prevention of Cruelty to Animals v Openshaw* (462/07) [2008] ZASCA 78 (RSA) (*Openshaw*) and *National Society for the Prevention of Cruelty to Animals v Minister of Justice, Constitutional Development, and Another* [2016] ZACC 46 (NSPCA 2016), sentience is the ‘notion that animals have a subjective consciousness’ and are ‘capable of suffering and experiencing pain’. According to Gandhi, D., 2007. *The Limits and Promise of Environmental Ethics: Eco-Socialist Thought and Anthropocentrism’s Virtue*. *Environ: Env’tl. L. & Pol’y J.*, 31, p.36; and Washington, H., Taylor, B., Kopnina, H., Cryer, P. and Piccolo, J.J., 2017. *Why ecocentrism is the key pathway to sustainability*. *The Ecological Citizen*, 1(1), pp.35-41, the notion of ecocentrism stands in contrast with anthropocentrism as it is an approach to environmentalism that ‘finds inherent value in all of nature’.

<sup>18</sup> *South African Predator Breeders Association and Others v Minister of Environmental Affairs and Tourism* (1900/2007) [2009] ZAFSHC 68 (*South African Predator Breeders Association*).

<sup>19</sup> *Ibid* at para 72.

<sup>20</sup> *National Society for the Prevention of Cruelty to Animals v Minister of Justice, Constitutional Development, and Another* [2016] ZACC 46 (NSPCA 2016).



## ANIMAL LAW REFORM SOUTH AFRICA

the SCA.<sup>21</sup> Notably, the court held that animal welfare and animal conservation together reflect intertwined values and further related animal welfare to the constitutionally protected environmental right (in section 24 of the Constitution).<sup>22</sup> When referencing the SCA in *S v Lemthongthai*, the Constitutional Court noted that “*constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general*” and the Court concluded that this obligation was especially pertinent because of our country’s history.<sup>23</sup> When referencing the “integrative approach” (as coined by Professor David Bilchitz, one of ALRSA’s co-founders and directors) the court noted that such approach “*correctly links the suffering of individual animals to conservation and illustrates the extent to which showing respect and concern for individual animals reinforces broader environmental protection efforts*”.<sup>24</sup>

In referencing the above statements in the case of *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others*,<sup>25</sup> the court noted that “[t]hese unambiguous and compelling sentiments require careful consideration in that not only do they provide guidance in terms of the legal conduct that is expected of us but rather that it also speaks to the kind of custodial care we are enjoined to show to the environment for the benefit of this and future generations”. This case related to the export quota of lion bones for 2017 and 2018, which the court ultimately found to be unlawful and constitutionally invalid. One of the reasons therefore was a failure by the then Minister of the Department of Environmental Affairs to consider welfare issues relating to lions in captivity when making decisions relevant to them.

In the recent case of *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*,<sup>26</sup> Shell, one of the largest multinational oil companies in the world, planned to engage in extractive practices in South Africa commencing with a seismic survey to locate oil and gas deposits off the Wild Coast in December of 2021. Humpback whales migrate from the Western Cape Province to the Kwa-Zulu Natal Province from June to December and pass through the Wild Coast with their calves. Shell was therefore met with outrage from the South African public who feared for the well-being of aquatic animals, including for example, whales, which sparked conversation – and litigation - surrounding the use of the ocean for economic gain and the dangers that this poses to the effects of climate change and aquatic life. The court set aside the decisions of the Minister of Mineral Resources and Energy to grant Shell an exploration right and two renewals thereof. The court’s reasoning included that Shell, when intending to proceed with its seismic survey, and the Minister of Mineral Resources and Energy, when taking the aforementioned decisions, failed to: (i) meaningfully engage with affected communities; (ii) *take relevant considerations into account, such as the anticipated harm to marine*

---

<sup>21</sup> *Bool Smuts and Another v Herman Botha* (887/20) [2022] ZASCA 3 (10 January 2022).

<sup>22</sup> *Ibid* at para 67.

<sup>23</sup> *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) (*Lemthongthai*) at para 20.

<sup>24</sup> NSPCA Case at para 58.

<sup>25</sup> *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* (86515/2017) [2019] ZAGPPHC 337; 2020 (1) SA 249 (GP) (6 August 2019)

<sup>26</sup> *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2022] ZAECMKHC 55 (*Sustaining the Wild Coast* September 2022 judgment).





**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

*and bird life*; the effect on the local communities’ spiritual, cultural and religious rights; and *possible climate change impacts*; and (iii) to comply with applicable legal prescripts.

We believe that when the interests and intrinsic value of animals are meaningfully protected, a sustainable environment for all life on Earth becomes reality<sup>27</sup> and the pursuit and achievement of rights is advanced. Taking the above jurisprudence into consideration, ALRSA recognises the necessity of phasing out and shutting down cruel and exploitative animal industries. In the case of the aquaculture industry, should the Department continue to pursue the development of this industry, it is essential that there is proper regulation which includes, *inter alia* the recognition of the sentience and intrinsic value of animals; requirements relating to their welfare and well-being being included throughout; the importance of protecting ecosystem functioning, and fighting against climate change. We applaud the Department for acknowledging that consideration needs to be given to the promotion of aquatic organisms’ well-being, including their physical and mental health, quality of life, and their ability to cope with their environment, but also recognise that significant improvement needs to be made to address animal well-being,<sup>28</sup> however this needs to be much more robust in the Draft Bill and include specific wording in pursuit thereof.

There are numerous studies confirming that various land and aquatic animals are sentient and have both positive and negative subjective experiences, such as expressing feelings, emotions, and the ability to perceive, interact with and respond to his/her surrounding environment.<sup>29</sup> As such, we encourage the Department to adopt a similar approach in respect of the protection of all animals, in the spirit of the aforementioned court decisions. This may avoid unnecessary litigation in future. For example, ALRSA recommends that the sentience of all relevant animals be included and recognised in all Departmental policies and legislation under its purview; and that such policies and legislation be brought in alignment with the principle of well-being which has been defined in the National Environmental Management: Laws Amendment Act<sup>30</sup> (“**NEM:LAA**”).

## **OPERATION PHAKISA, THE AQUACULTURE INDUSTRY AND THE PROTECTION OF AQUATIC ENVIRONMENTS AND AQUATIC LIFE**

Operation Phakisa is an initiative of the South African government designed to “*fast track the implementation of solutions on critical development issues*” and is intended to address issues highlighted in the

---

<sup>27</sup> *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) [1], [20] (*Lemthongthai*).

<sup>28</sup> See [https://www.gov.za/sites/default/files/gcis\\_document/202311/49736gon4098.pdf](https://www.gov.za/sites/default/files/gcis_document/202311/49736gon4098.pdf).

<sup>29</sup> See [https://www.researchgate.net/publication/268787765\\_Cognitive\\_Control\\_Under\\_Social\\_Influence\\_in\\_Baboons](https://www.researchgate.net/publication/268787765_Cognitive_Control_Under_Social_Influence_in_Baboons) and <https://link.springer.com/content/pdf/10.1007/s10071-022-01681-x.pdf> for illustration purposes.

<sup>30</sup> National Environmental Management: Laws Amendment Act 2 of 2022.



# ANIMAL LAW REFORM

## SOUTH AFRICA

National Development Plan (“NDP”) 2030<sup>31</sup> such as poverty, unemployment and inequality.<sup>32</sup> The Oceans Economy Lab (“OEL”), an initiative of Operation Phakisa, was introduced to “unlock” the economic potential of South Africa's oceans and balance efforts to protect marine life.<sup>33</sup> Without sufficient safeguards in place to protect aquatic environments and aquatic life, Operation Phakisa risks being regressive step in light of the climate crisis and in respect of advancing animal welfare and well-being, especially as many of the areas of focus are arguably anti-environmental.<sup>34</sup> This “hurried” nature of the development and implementation of the projects of Operation Phakisa come with shortcomings and potential harmful consequences. These include (among others) improper planning, a lack of understanding of the impact of the projects on the environment and aquatic life, and lack of policies to safeguard the ocean and other bodies of water as well as the aquatic organisms that belong to them.<sup>35</sup> South Africa ought to take a more proactive stance in ensuring the safeguarding of all types of aquatic environments and life, rather than perceiving of them predominantly as a means of generating revenue for the nation. The Draft Bill provides an opportunity for the Department to introduce progressive measures in addressing and regulating the aquaculture sector, while taking cognisance of the welfare and well-being of aquaculture organisms in light of their sentience and intrinsic value.

### REQUEST

We welcome the opportunity to make such a Submission and look forward to it being properly considered by the Department. We look forward to receiving a response to our Submission and are available to engage on any queries, comments, concerns which you may have in respect of the Submission. **Please note that we have not commented on the SEIAS Study as part of the Submission and reserve the right to do so in future.**

Kindly confirm receipt of this Submission and address further correspondence to the email addresses: [amywilson@animallawreform.org](mailto:amywilson@animallawreform.org) and [faizayed@animallawreform.org](mailto:faizayed@animallawreform.org).

Yours sincerely,

**ANIMAL LAW REFORM SOUTH AFRICA**

---

<sup>31</sup> See <https://www.gov.za/issues/national-development-plan-2030> for more information.

<sup>32</sup> Department of Planning, Monitoring and Development ‘Operation Phakisa’ <https://www.operationphakisa.gov.za/Pages/Home.aspx>

<sup>33</sup> See The Department of Forestry, Fisheries and the Environment ‘Operation Phakisa’ 2021 [https://egis.environment.gov.za/operation\\_phakisa#:~:text=Oceans%20Economy%20Lab&text=The%20focus%20of%20this%20Lab,and%20not%20land%20resources%20only](https://egis.environment.gov.za/operation_phakisa#:~:text=Oceans%20Economy%20Lab&text=The%20focus%20of%20this%20Lab,and%20not%20land%20resources%20only)

<sup>34</sup> The areas of focus for Operation Phakisa are: Marine Transport and Manufacturing; The Aquaculture; Marine Protection Services and Ocean Governance; and Offshore Oil and Gas Exploration.

<sup>35</sup> For a critique of Operation Phakisa, see Chademana, S and Joseph, C., 2017 ‘Phakisa is a regressive step against Climate Change Policy gains in South Africa’ The Mercury.



# ANIMAL LAW REFORM

## SOUTH AFRICA

### SPECIFIC SUBMISSIONS REGARDING THE DRAFT AQUACULTURE DEVELOPMENT BILL

#### I. PREAMBLE

The preamble of the Draft Bill states “*aquaculture has the potential to contribute to food security, equity, job creation and economic development and to create export opportunities for South African businesses*”. As aforementioned in the general comments above, we are concerned about the development and promotion of an industry which has many known and potential harms and for which no mention is made of avoiding nor mitigating such harms, beyond in the minimal context of the environment alone.

While ALRSA recognises the inclusion of section 24(b) of the Constitution, we note that section 24(a) is excluded. Section 24(a) provides that “everyone has the right to an environment that is not harmful to their health or well-being”. ALRSA asserts that this section remains relevant in this context, considering the environmental effects of aquaculture caused by the emissions of marine animal waste from aquaculture facilities. ALRSA proposes that the preamble must acknowledge the known and potential harms and other negative aspects associated with aquaculture. The Preamble must also note the sentience of animals, the intrinsic value of animals as well as the link between animal welfare and the right to environment and correctly should be evidenced through the entirety of the Draft Bill.

#### II. CHAPTER 1: INTERPRETATION, OBJECTS, APPLICATION AND CONFLICTS WITH OTHER LAWS

##### 1. DEFINITIONS

ALRSA proposes the following in respect of the definitions (**amendments in red**):

A definition for “**Animals Protection Act**” (APA) must be inserted and referenced throughout the Draft Bill.

In addition, it is extremely concerning to see that the APA has not been referred to anywhere in the current Draft Bill nor in the Socio-Economic Impact Assessment System (SEIAS). Given that billions of animals will potentially be impacted by this industry, and the APA is currently the predominant piece of legislation impacting on animals and their protection, it is a major oversight and gap that this has not been included. It is similarly concerning to see that animal protection groups are not adequately mentioned or considered either in the SEIAS Study (including as an “interest group”) or throughout the Draft Bill.

A definition for “**Animal Diseases Act**” must be inserted as referenced throughout the Draft Bill.

“**aquaculture activity**” means -



## ANIMAL LAW REFORM SOUTH AFRICA

- (a) engaging in aquaculture, including the holding of broodstock and operating a hatchery;
- (b) the operation of any breeding and/or rearing of aquaculture;
- (c) the operation of an aquaculture processing facility;
- (d) the transportation of live aquaculture organisms between aquaculture disease zones or catchments in which aquaculture occurs;
- (e) the slaughter of aquaculture;
- (f) the collection of broodstock for aquaculture;
- (g) the import of aquaculture products;
- (h) the import of aquaculture feed for use in aquaculture;
- (i) the export of aquaculture products;
- (j) seeding and harvesting for ranching purposes; and
- (k) any other activity which may be prescribed.

“**aquaculture facility**” means a structure in a geographically defined area of water or land, whether or not submerged, including any place, structure, vehicle or other appurtenance where aquatic animals are propagated, reared, held, harvested, transported, or slaughtered, whether on land or in a natural or artificial body of water, used for aquaculture and includes all buildings, structures and equipment within that area that are used for aquaculture;

“**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 and regulated in terms of relevant legislation;

“**aquaculture food**” means any aquaculture product which is used or intended to be used for human consumption.

ALRSA proposes that the current definition of “aquaculture foods” must be expanded to include foods for animal consumption. In many instances, even if food is fed to animals, it may ultimately end up within the human food chain and therefore safety and health and other relevant aspects including testing are similarly applicable to foods for both human and other animals.

“**aquatic organism**” means any animal, including a crocodile, 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, but excludes mammals, birds and any other organism as may be prescribed;

ALRSA confirms that, despite comments from the industry, crocodiles must be included in this definition as, not is this factually correct, but such industry is long-overdue for formalized regulation. In addition, we propose that birds, mammals and all aquaculture organisms must be included in this definition. Clarity must be provided as to why they have been excluded. If there are certain aspects of the Draft Bill that do not apply to them, they should be more appropriately excluded from such



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

exceptions but not referring to them at all would be incorrect, as ALRSA recognises the import of the Draft Bill covering all species.

Further, there is no definition provided for “aquatic animal” within this definition section, yet there are multiple references to it made throughout the Draft Bill. Are the terms “aquatic organism” and “aquatic animals” supposed to be used interchangeably? This requires clarification and terms must be consistently used to avoid legal gaps.

“**aquaculture research**” means a practical, systematic and scientific investigation into the field of aquaculture for the advancement of existing information, to ascertain facts, seek solutions and benefit society as a whole where the investigation is not authorised as part of an aquaculture permit or by registration in terms of this Act;

ALRSA proposes that the definition of “aquaculture research” must include necessity and be independently signed off in terms of proper research protocols.

“**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 **and regulation**;

The definition of this term should include the regulation thereof.

“**commercial aquaculture**” means aquaculture that is undertaken with the primary purpose ~~of making a profit~~ **any financial gain or enrichment**.

Note that financial gain and enrichment is broader than a profit, as this would include non-profit entities and research institutions whose sole aims are not profit-making.

“**Department**” means the national department responsible for aquaculture **and any other national department with custodianship and mandates over aspects relevant to and impacted by aquaculture**.

“**escape**” means the unintentional release or movement of live aquaculture products, **any aquaculture organism or aquatic organism** from an aquaculture facility so they are no longer subject to the control of the owner or operator of that aquaculture facility.

“**ranching**” means the intentional release of a live aquaculture organism into any **and all** aquatic environments (~~marine, brackish or freshwater~~) which is not controlled or confined, with the intention of harvesting them for sale by the ranching licence-holder;

“**responsible aquaculture development**” means aquaculture development that aims to-





## ANIMAL LAW REFORM SOUTH AFRICA

- (a) promote the entry and participation of historically disadvantaged individuals and local communities in the aquaculture sector;
- (b) promote sound labour practices;
- (c) avoid **significant** adverse environmental impacts, or where these cannot be avoided, mitigate such impacts;
- (d) promote equitable access to coastal public property, state land, water and other aquaculture resources;
- (e) promote the health, **well-being** and welfare of aquaculture animals **throughout the entirety of their lives, including** during husbandry, harvesting and transportation **as well as at slaughter**, including good practice regarding the types of substances, feeds, and drugs used in aquaculture; and
- (f) ensure the safety and quality of aquaculture products;

Generally, the definition of “responsible aquaculture development” is required to be more robust. We refer back to the potential harms and negative aspects associated with aquaculture mentioned in respect of the preambular provisions of the Draft Bill. All relevant aspects of harm associated must be taken into account when ensuring truly “responsible aquaculture”. Furthermore, it must not infringe on guaranteed Constitutional rights; it must acknowledge the sentience and intrinsic worth of animals; it must promote conservation; and various other factors related to animal well-being. We further note that any time reference to “aquaculture development” is mentioned, the correct reference should be to “**responsible** aquaculture development” to ensure that the abovementioned provisions have the requisite impact.

“**Subsistence aquaculture**” means aquaculture that is undertaken by a person, **which does not constitute commercial aquaculture**, with the primary purpose of providing food for that person and their family and contributing to their livelihood by producing aquaculture products for sale and barter but not for profit-making

While the above is included, the Draft Bill remains silent in respect of other definitions, imperative to animals, sustainability and the environment, as well as relevant authorities. As such, ALRSA proposes the inclusion of the following terms:

### **“Animal welfare” or “welfare”**

The terms “animal welfare” and “animal well-being” must be used collectively throughout the entirety of the Draft Bill (where they currently appear, as well as is proposed by our Submission) to ensure that there are no gaps and duties and responsibilities pertaining to both areas are clearly captured.

### **“Animal well-being” or “well-being”**



# ANIMAL LAW REFORM

## SOUTH AFRICA

The terms “animal welfare” and “animal well-being” must be used collectively throughout the entirety of the Draft Bill (where they currently appear, as well as is proposed by our Submission) to ensure that there are no gaps and duties and responsibilities pertaining to both areas are clearly captured. We note that there is a current definition for well-being as included by NEM:LAA, although we have previously submitted comments relating to deficiencies in this definition, it must be used until such time as it is amended.

### “Animal sentience” or “sentience”

#### “Intrinsic value”

“Harm” - ALRSA proposes the following definition in respect of harm to animals: “Any deliberate or negligent act that inflicts physical or psychological suffering, injury, or death upon an animal. This includes actions such as abuse, cruelty, neglect, or any form of mistreatment that compromises the well-being of an animal. ALRSA proposes the following definition in respect of harm to the environment: “any deliberate or negligent action that results in significant and adverse impacts on ecosystems, natural resources, and the overall ecological balance. This includes actions leading to pollution, deforestation, habitat destruction, overexploitation of natural resources, and other practices that degrade environmental quality”.

“Sustainable development” - A definition for “sustainable” or “sustainable development” must be provided for in this Act for clarity. Definitions can be taken from the document “[Our Common Future](#)” which states that “sustainable development” is development which meets present needs without compromising the ability of future generations to meet their own needs.

“Sustainable use” - ALRSA proposes using the definition found in the “White Paper on Conservation and Sustainable Use of South Africa’s Biodiversity,”<sup>36</sup> (even though we have previously pointed out issues with this definition).

A definition of “NEM:LAA” to be inserted. In addition to the definition, NEM:LAA is a relevant act as it *inter alia* confirms the legislative mandate of the DFFE in respect of animal well-being as well as provisions relating to the regulation thereof.

## 2. OBJECTS OF ACT

While the objects contained within the Draft Bill include *inter alia* to “(a) promote responsible aquaculture development and the responsible development and management of an aquaculture sector that (viii) is ecologically, socially and economically sustainable”, ALRSA proposes that further

---

<sup>36</sup> White Paper on Conservation and Sustainable Use of South Africa’s Biodiversity, <https://www.dffe.gov.za/sites/default/files/legislations/sabiodiversity2023whitepaper.pdf>



# ANIMAL LAW REFORM

## SOUTH AFRICA

reference be made to animals within this section. As such, ALRSA proposes the following additions **(in red)**:

2. The objects of this Act are to -

- (a) promote responsible aquaculture development and the responsible development and management of an aquaculture sector that -
  - (viii) is ecologically, socially and economically sustainable;
  - (ix) recognises that aquatic animals are sentient beings with intrinsic value and respects, protects and promotes their welfare and well-being;**

Furthermore, the objects of this Act must also include the following **(in red)**:

- (h) utilises best practices from around the world in responsible aquaculture development;**
- (i) avoids and if avoidance is not possible, then mitigates negative impacts of aquaculture including in relation to animals, the environment and people;**
- (j) promotes animal welfare and well-being and acknowledges the sentience and intrinsic value of animals as individuals;**
- (k) utilises the latest scientific developments and knowledge including in relation to animal welfare, well-being and sentience; and**

### 3. APPLICATION OF ACT

ALRSA proposes the following amendment to the application of the Draft Bill **(in red)**:

- 3. (1) This Act applies to **all aquatic environments within the Republic**, including freshwater, brackish waters and South African waters.
  - (2) This Act applies to all persons, natural and juristic, including the private sector, industry and members of the public.**
  - (3) This Act binds all organs of State.**

### 4. CONFLICT WITH OTHER ACTS

ALRSA notes this provision stating, *“in the event of a conflict between a provision of this Act and any other law, the provisions of this Act prevail insofar as the conflict concerns aquaculture”*.

While there are certain aspects of the Draft Bill which will regulate certain aspects specifically, and which it should take preference, certain exceptions should be referenced in this section. These exceptions are more specific than simply “insofar as the conflict concerns aquaculture”.

For instance, the following Acts should prevail in terms of their principles and guidelines:

- The Animals Protection Act 71 of 1962 (or new proposed Animal Welfare Act, as applicable);



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

- The National Environmental Management Act 107 of 1998, the National Environmental Management: Biodiversity Act 10 of 2004, NEM:LAA, and Threatened or Protected Species (“**TOPS**”) Regulations.
- And to the extent that there are any more specific regulations issued around specific types of aquaculture or practices, these may take precedence.

### **III. CHAPTER 2: INSTITUTIONAL ARRANGEMENTS**

#### **5. Establishment of Intergovernmental Authorisations Committee**

ALRSA commends the Department on the establishment of an Intergovernmental Authorisations Committee. This committee, appropriately constituted, could prove significant in ensuring alignment with authorised aquaculture activities in relation to the growing jurisprudence on animal protection (including animal well-being and animal welfare). As such, this Intergovernmental Authorisation Committee (“**IAC**”) and the provision related to its establishment, must be robust. It is essential that animal welfare and well-being are included as a core mandate of the IAC, and explicitly referenced in this section.

Furthermore, within its establishment as contained in section 5(1) as well as its mandate in section 5(2) explicit reference should be made to “responsible aquaculture development” (taking into account all relevant factors in aforementioned comment relating to this definition).

ALRSA also commends the inclusion of “specialist advice” within the Intergovernmental Authorisations Committee, noting that section 5(5) states “[t]he Minister may appoint one or more advisors to provide specialist advice to the Intergovernmental Authorisations Committee”. We however wish to outline the field of speciality of these advisors appointed to give such “specialist advice”. Advisors authorised to do so must have expertise not only in the field of aquaculture development, but broader expertise on aspects related to the welfare and well-being of the animals, animal law and environmental sustainability and protection. As such, ALRSA proposes the following amendment to section 5(5) (**in red below**):

(5) The Minister may appoint one or more advisors to provide specialist advice to the Intergovernmental Authorisations Committee. **Such advisors must be duly qualified to provide advice on the welfare and well-being of aquaculture organisms in light of their intrinsic value, long term sustainability of prospective authorisations and impacts as well as harms associated with the industry.**

#### **6. National Aquaculture Intergovernmental Forum**

ALRSA commends the Department on the establishment of the National Aquaculture Intergovernmental Forum with a view to promoting the coordination of aquaculture development



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

and management in the Republic. Much like the Intergovernmental Authorisations Committee discussed above, the National Aquaculture Intergovernmental Forum could prove significant in ensuring alignment of aquaculture activities in relation to the growing jurisprudence on animal protection. As such, this Forum and the provision related to it must be robust, specifically as it relates to animal welfare and well-being and such matters must be included as part of this mandate and explicitly referenced in this section. This extends to the Provincial Aquaculture Intergovernmental Forums, as contemplated in terms of section 7.

Section 6(1) faces the same flaw as contained in the aforementioned section 5(1) and explicit reference should be made to “responsible aquaculture development” (taking into account all relevant factors in aforementioned comment relating to this definition) within this section.

Section 6(2) empowers the Minister to appoint members of the National Aquaculture Intergovernmental Forum consisting of a representative of the various members of the State and a representative of each Provincial Aquaculture Intergovernmental Forum. As mentioned in section 6(1), the Forum was established to promote the coordination of aquaculture development and management in the Republic. The inclusion of advisors in respect of animal welfare and well-being, including representatives from the animal protection sector must be included within this Forum.

In respect of section 6(3), we further propose that explicit reference be made to the obligation of the National Aquaculture Intergovernmental Forum towards the welfare and well-being of aquatic organisms in light of their intrinsic value.

## **8. National and Provincial Aquaculture Stakeholder Liaison Forum**

Taking cognisance of the necessity of the relationship between industry and the State, ALRSA notes the establishment of the National and Provincial Aquaculture Stakeholder Liaison Forum. ALRSA contends that the same emphasis placed on industry be placed on the courts acknowledgement of the need to protect animals in light of their sentience and intrinsic value.

As such, ALRSA proposes the following amendments be made in respect of section 8(2) as follows **(in red)**:

2. The purpose of the National Aquaculture Stakeholder Liaison Forum is to promote and maintain liaison and communication between the Department and participants in the aquaculture sector regarding the management and **responsible** development of the aquaculture sector, including -

- (a) the promotion of partnerships between government and private sector participants in the aquaculture sector; ~~and~~
- (b) the promotion of the welfare and well-being of aquaculture organisms and recognition of their sentience and intrinsic value; and**
- (c) the regulation of aquaculture.





**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

Further, section 8(4), provides the “National Aquaculture Stakeholder Liaison Forum and a Provincial Aquaculture Stakeholder Forum **may** include representatives of the sector industry, as well as labour and civil society organisations”. We submit that this be a compulsory inclusion (i.e., “**must**”) for this provision related to these Forums respectively. The inclusion of representatives of the sector - labour, civil society and animal protection organisations - presents an opportunity for the purpose inscribed in the aforementioned section 8(2) (taking into account all relevant factors in the aforementioned comment relating to this section). It should further include representatives from the animal protection sector to ensure that the interests of animals are adequately considered in this forum.

## **11. Recognition of aquaculture sector associations**

While ALRSA commends the Department for the recognition of associations within the aquaculture industry, express inclusion of these associations seeking to promote and protect aquaculture organisms in light of their intrinsic value in light of the environmental right, must be included. Reference to the inclusion of civil society organisations, including, but not limited to those in the animal protection sector, and the inclusion of “responsible aquaculture development” (taking into account all relevant factors in aforementioned comment relating to this definition) must be included as part of the threshold for the recognition of aquaculture sector associations. As such, ALRSA proposes the following amendments in respect of sections 11(1) and 11(2) (**in red**):

11 (1) An aquaculture sector association, **which may include civil society organisations that represent the interests of animals**, that wishes to be recognised by the Department must apply to the Minister in the prescribed manner.

11 (2) The Minister may approve an application for recognition if the aquaculture sector association -

- (a) is a representative of a specific body or group which has an interest within the aquaculture sector;
- (b) has a policy that promotes the inclusion of all relevant parties as members; **and**
- (c) **promotes the protection of the animals including animal welfare and animal well-being;**
- (d) promotes **responsible** aquaculture development.

## **12. Establishment of national reference laboratory for aquatic organism diseases**

As mentioned throughout this Submission, the inclusion of express efforts related to aquatic animal’s welfare and well-being in light of the recognition of the sentience and intrinsic value of all animals as individuals is required throughout the Draft Bill. As such, there must be inclusion of research relating to animal protection (including animal welfare and well-being). Furthermore, the enforcement of the national reference laboratory must include express reference to enforcement of the Act by all actors, including civil society organisations that enforce animal protection laws, for example NGOs, the NSPCA and SPCAs and other animal welfare inspectors and environmental inspectors as well as



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

funding towards the enforcement for animal welfare, well-being and environmental organisations among other civil society organisations and NGOs. ALRSA proposes the following amendments to section 12(2) and inclusion of section 12(3) respectively (**in red**):

12(2) The purpose of the national reference laboratory for aquatic organism diseases is to provide a reference laboratory service to the aquaculture sector by -

- (a) **conducting research in respect of aquatic organism sentience, welfare and well-being;**
- (b) **developing expertise of best practice related to aquatic organism welfare and well-being;**
- (c) developing expertise for diagnostics in aquatic organism health;
- (d) standardising diagnostic techniques and validating results from other laboratories;
- (e) providing internationally acceptable results for certification of imports and exports of aquaculture products;
- (f) providing assistance and expert advice on aquatic organism disease surveillance and control;
- (g) coordinating and undertaking research in the field of aquatic organism diseases, **welfare and well-being;** and
- (h) providing technical training on aquatic organism health, **welfare and well-being** matters to both the private and public sectors.

**12(3) The national reference laboratory for aquatic organism diseases must set and adopt enforcement measures in respect of the nature of assistance, expert advice, research and technical training on aquatic organism health, welfare and well-being matters in both the private and public sectors.**

#### **IV. CHAPTER 3: AQUACULTURE PLANNING**

##### **15. Content of National Aquaculture Development Strategy**

ALRSA notes the intention of the Department to establish the National Aquaculture Development Strategy. The National Aquaculture Development Strategy must seek to provide robust protection of animal welfare and well-being in light of their sentience and intrinsic value as animals, as confirmed in the aforementioned court decisions. Accordingly, there must be substantial aquatic animal welfare considerations that are essential for the development of sustainable aquaculture.

As such, ALRSA proposes the following amendments to section 15 (**in red**):

15(1) The National Aquaculture Development Strategy must -

- (a) be informed by best-practice standards and international agreements to which the Republic is a party; **and**
- (b) **consider foreign best-practice standards in respect of aquatic organisms;**
- (c) **be informed by international best-practice in respect of animal welfare and well-being as it relates to aquatic organisms;**



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

- (d) be informed by scientific and research developments, including in relation to animal sentience, well-being and welfare, among others; and
  - (e) provide for an integrated and coordinated approach to the **responsible** development and management of the aquaculture sector by organs of state, non-governmental organisations, the private sector and local communities.
- (2) The National Aquaculture Development Strategy must include -
- (a) the national vision for the **responsible** development of the aquaculture sector in the Republic;
  - (b) goals for realising the national vision;
  - (c) an action plan for achieving the goals;
  - (d) **substantial aquatic animal welfare and well-being considerations;**
  - (e) a framework for cooperative governance in the **responsible** development of the aquaculture sector that -
    - (i) identifies the responsibilities of different organs of state including their responsibilities in relation to historically disadvantaged individuals and communities; and
    - (ii) facilitates coordinated and integrated regulation of aquaculture; and
  - (f) any other matter that is necessary to achieve the objects of this Act.

### **17. Content of National Aquaculture Development Strategy**

ALRSA notes that various shortcomings are evident in this section, as mentioned in respect of the aforementioned section 15. As such, ALRSA proposes the following amendments to section 17 (**in red**):

- 17(1) A provincial aquaculture development strategy must-
- (a) be informed by the provincial policy on the **responsible** development of the aquaculture sector in the province;
  - (b) **be informed by scientific and research developments, including in relation to animal sentience, animal welfare and well-being;**
  - (c) provide for an integrated, coordinated and uniform approach to the development and management of the aquaculture sector in the province; and
  - (d) be consistent with the National Aquaculture Development Strategy.
- 17(2) A provincial aquaculture development strategy must include -
- (a) a vision for the **responsible** development of the aquaculture sector in the province, including the sustainable use of natural resources **with due regard to the welfare and well-being of aquatic organisms in light of their sentience and intrinsic value as individuals;**
  - (b) goals for realising the vision **for** the province; and
  - (c) an action plan for achieving the goals of the provincial aquaculture development strategy.

### **19. Aquaculture Development Zones**



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

The aquaculture development zone must undergo a strict environmental authorisation process among other factors. This must be done in compliance with all relevant environmental laws, regulations, guidelines and other considerations.

Furthermore, there must be explicit prohibitions in respect of in section 19(1)(a) in that such an area must not:

- impact negatively on wild species and animals;
- negatively impact on any species listed as Threatened or Protected Species including those listed in the TOPS regulations and lists relating to aquatic environments (marine, freshwater or otherwise) from time to time;
- impact on biodiversity; and
- have negative impacts on the environment including but not limited in relation to pollution, water quality, genetic diversity, and otherwise.

Furthermore, section 19(1)(f) provides for specific restrictions and conditions on the conduct of activities and uses in the aquaculture development zone. While we commend the Department on its efforts to ensure certain harmful activities are prohibited, it is problematic that the purpose of such insurance is done in order to “protect aquaculture development activities”. The failure to recognise and include the import of intrinsic value and sentience of aquatic organisms and animals, in accordance with the aforementioned court jurisprudence, remains a specific shortcoming of the Draft Bill. As such, ALRSA proposes the following amendment (**in red**):

(f) specify restrictions and conditions on the conduct of activities and uses in the aquaculture development zone including in -

- (i) the waters draining into an aquaculture development zone; ~~and~~
- (ii) any buffer zone for an aquaculture development zone; ~~and~~
- (iii) ~~the welfare and well-being of aquatic organisms in the handling, transport, and slaughter;~~ **to protect aquaculture development activities—to protect aquaculture organisms in respect of their sentience and intrinsic value.**

In terms of section 19(2), there must be extensive public consultation before declaring an area as an aquaculture development zone as these have the potential to impact greatly on, *inter alia*, the environment and constitutional rights. Ample opportunity must be given to the public to submit comments.

In this respect, the following should be included (**in red**):

**The Minister must-**



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

(a) publish the intention to issue a notice as contemplated in section 21, in the Gazette and in at least two national newspapers distributed in the area in which the affected area is situated; and

(b) if it is proposed to declare any private land as an aquaculture development zone, send a copy of the proposed notice by registered post to the last known postal address of each owner of land within the area to be declared, in at least two official languages that are most prevalent in the area, and inform, in an appropriate manner any other person whose rights in such area may materially and adversely be affected by such declaration.

(2) The publication contemplated in subsection (1) must-

(a) invite members of the public, if applicable, to submit written representations to the Minister on, or objections to, the proposed notice within 60 days from the date of publication in the Gazette; and

(b) contain sufficient information to enable members of the public to submit meaningful representations or objections, and must include a clear indication of the area that will be affected by the declaration.

Furthermore, section 19(3) provides “The Minister must, for the purposes of identifying aquaculture development zones and buffer zones, develop criteria and a methodology for determining whether an area is suitable for aquaculture”. This “criteria and a methodology” must be robust and comprehensive, with due regard to the harms and potential harms associated with aquaculture, as mentioned above. Section 19(3) must provide express reference to the environmental and animal welfare and well-being considerations required here.

Overall, all biodiversity legislation (including international obligations) need to be carefully taken into account throughout this section. Section 19 requires very careful consideration and only limited proposals are included for purposes of this Submission.

## **V. CHAPTER 4: AQUACULTURE INFORMATION SYSTEM**

### **20. Establishment of national aquaculture information system**

ALRSA commends the establishment of the national aquaculture information system. This draft provision is, however, required to adequately address the intrinsic value, sentience and overall welfare of aquatic organisms. As such, when it comes to the welfare and well-being of animals, records should be kept pertaining to the inspection of animal welfare and well-being at aquaculture facilities. In particular, any non-compliance with relevant welfare and well-being standards or notifications or warnings in terms of the Animals Protection Act (or proposed new Animal Welfare Act, as appropriate). In the event of a violation, records should be kept that depict where the welfare and well-being violations were found. As such, ALRSA proposes the inclusion of the following within this section:

This provision should prescribe for records to be kept on *inter alia*:





**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

- (a) Equipment checks;
- (b) Equipment servicing and maintenance;
- (c) Staff trainings on animal health, animal welfare and well-being and worker health and safety;
- (d) Training records sufficient to identify those individuals who are competent to perform sedation, vaccination, stunning, and/or killing; and
- (e) Other aspects relevant to “responsible aquaculture development” and such operations.

In addition, the following minimum records should be kept on:

Slaughter-related information, including but not limited to:

- (i) Numbers of animals slaughtered per day, week, month, and year;
- (ii) Details of species in relation to slaughter;
- (iii) Methods of slaughter;
- (iv) Effectiveness of stunning methods;
- (v) Problems with methods and efforts to remediate those problems.

All such records which should be made public.

## **VI. CHAPTER 5: AQUACULTURE LICENCES, AQUACULTURE PERMITS AND REGISTRATION**

### **25. Considerations relevant to decision on licence application**

This section must be more robust, with express reference to aspects related to animal welfare. This section should provide for the provision of the Minister obtaining expert advice related to all licence applications. The experts should also be required to be duly qualified in the field of aquaculture, and the well-being of aquaculture organisms. As such, ALRSA proposes the following amendments to section 25 (in red):

25 (1) The Minister must consider all relevant factors when deciding an application for an aquaculture licence, including, but not limited to -

- (a) whether granting the licence is consistent with the objects of this Act;
- (b) whether the applicant is a fit and proper person in terms of section 31;
- (c) the applicant’s submission;
- (d) the impact of the proposed licenced activity on animals including the welfare and well-being of aquaculture organisms;
- (e) the impact of the proposed licenced activity on the environment;
- (f) any expert advice obtained in respect of factors related to the application;
- (g) any submission received from an organ of state and other interested and affected persons; and
- (h) any other requirements or criterion that may be prescribed.

## **27. Validity period of aquaculture licence**

ALRSA requests clarity in respect of the maximum period of 20 years for an aquaculture licence. Furthermore, this provision should set out the specific conditions for continued validity, including inspections, assessments and review of aquaculture licences in respect of the environment and aquatic organisms. Licences should be issued for a maximum of five years at one time. Thereafter, licence holders must report on compliance with all the provisions of the Act on an annual basis. If there is non-compliance, their licence must be revoked. This extensive licensing period of 20 years is extremely problematic and must be amended.

## **28. General provisions relating to an aquaculture licence**

It should be expressly stated that a licence must be issued for each and every site as each site needs to comply with the relevant provisions and there needs to be separate compliance conducted annually. No “blanket” licences should be issued to any person, natural or juristic, in respect of aquaculture activities. Each and every licence warrants due and proper consideration in its own right and the opportunity for interested parties to participate in each and every instance.

Furthermore, an aquaculture licence, as contemplated in terms of section 28(2) should be further subject to public participation. In an instance of an application of an aquaculture licence, a notice when someone applies for a license – particularly when of a certain size. The public and others must then have the opportunity to object to the license and therefore this carries a need that it must be published and publicly available. We propose there are groups who may register as “interested and affected persons” for new licenses.

## **29. Application for aquaculture permit**

Express reference must be made to the welfare and well-being aquatic animals in light of their sentience and intrinsic value as individuals. Furthermore, the exemption contained in section 29(2) is problematic and potentially opens the door to abuse. We request that the Department clarify the rationale for this exemption. In the event of an unsatisfactory, inadequate or unjustifiably rationale, this exemption must be removed. As such, ALRSA proposes the following amendments to section 29(1) and (2)(a) respectively (**in red**):

29(1) ~~Subject to subsection (2)~~; No person may undertake any of the following activities without an aquaculture permit:

- (a) transport of live aquaculture organism between aquaculture disease zones or between catchments in which aquaculture is occurring;



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

- (b) collection of broodstock for aquaculture or the collection of wild broodstock from the natural environment;
- (c) import of live aquaculture organisms;
- (d) export of aquaculture organisms or aquaculture products;
- (e) aquaculture research at an aquaculture facility;
- (f) harvesting of a ranched aquaculture organism;
- (g) seeding of an aquaculture organism for ranching purposes;
- (h) stock enhancement; or
- (i) any other activity prescribed as an aquaculture activity **as set out in this Act and/or for which a permit is required.**

~~(2) A person does not require an aquaculture permit—~~

- ~~(a) where that person has been issued with an aquaculture licence in terms of section 28(1) or has registered in terms of section 23(3) and that licence or registration authorises any of the activities in subsection (1); or~~
- ~~(b) for the import of a live aquaculture organism authorised in terms of other national legislation.~~

In respect of section 29(3), clarity is required in respect of the time frames provided for the issuing of aquaculture permits. ALRSA proposes that the maximum period for all cases for issuing such permits should be 12 (twelve) months at a time. Furthermore, the renewal, amendment and cancellation of an aquaculture permit must similarly be subject to the public participation process as stated above, in terms of section 28.

### **30. Decision on application for aquaculture permit**

The aforementioned obligation of the Department to expressly address the sentience and intrinsic value of individual animals must be evident within the decision making of applications for aquaculture permits, specifically as it relates to the refusals contemplated in terms of section 30(3). ALRSA proposes the inclusion of the terms “and well-being” in terms of section 30(3)(a). Furthermore, in respect of the same section, the word “unacceptable” is problematic and discretionary - who would decide as to what is an “unacceptable risk”? What are the thresholds in determining this? ALRSA requests clarity in this respect. The inclusion of the language “poses a threat to the environment” must be included within the grounds of refusals contemplated in terms of section 30(3)(a).

### **31. Fit and proper person**

ALRSA commends the Department for including the requirement for applicants to be fit and proper in order to obtain an aquaculture licence or aquaculture permits. We are appreciative of the express inclusion of the contravention of environmental, agriculture, fisheries or animal welfare, as contemplated in terms of section 31(2)(a).

### **32. Transfer of aquaculture licence, aquaculture permit or registration**

In terms of section 32(2), the word “may” should be replaced with “**must**” in order to compel all holders of aquaculture licences or aquaculture permits to apply to the Minister for approval to transfer such licence or permit. Furthermore, the same public participation procedure, as proposed in respect of section 28(2) must be included in this section. Upon an application for the transfer of aquaculture licence or aquaculture permit or registration, the public must be afforded an opportunity to provide submissions in respect of any such transfer.

### **33. Amendment, cancellation and suspension of aquaculture licence, aquaculture permit or registration**

The renewal, amendment and cancellation of an aquaculture permit must similarly be subject to the public participation process as stated above, in terms of section 28.

### **34. Integrated aquaculture authorisation**

We note that integrated aquaculture authorisation in respect of an aquaculture activity would result in an efficient and effective authorisation process, particularly in light of responsible aquaculture development as envisioned by the Department. This authorisation must however, be subject to the public participation process as stated above, in terms of section 28.

## **VII. CHAPTER 6: MAINTAINING ENVIRONMENTAL INTEGRITY**

### **36. Protection of aquatic environment**

“Aquatic environment” should be replaced with “environment”. Specifying “aquatic environment” could be limiting as not only aquatic environments are impact by aquaculture activities.

Furthermore, in terms of section 36(2), explicit reference must be made to “animal welfare and animal well-being” throughout, in conjunction with “environmental impact”. For example:

(2) (c) “A person engaged in aquaculture activities must take all reasonable measures to—  
avoid any harmful impacts on animal welfare and well-being, and where avoidance is not possible to  
minimise or or remedy any harmful animal welfare and well-being caused by aquaculture activities”

At 36(3) a new clause should be added:



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

36(3) The Minister may, after consultation with the Ministers responsible for the environment and water, prescribe water quality objectives and standards for aquaculture that must include the following: key water quality parameters within the rearing environments - including, but not limited to, oxygen and carbon dioxide levels, pH, temperature, turbidity, salinity, ammonia and nitrate. These must be monitored continuously, or at least once a day.

At 36(4) a new clause should be added:

36(4) The Minister may, after consultation with the Minister responsible for water, develop and implement a water quality monitoring system that must:

This should be coupled with an on-farm action plan in case poor water quality is detected.

There must be reporting relating to any release or escape of any aquaculture organisms.

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

At 37(3) a new clause should be added:

37. (3) Producers must:

Implement measures that prevent escapes, such as double-netting and monitoring structural integrity around the enclosures and prepare contingency plans in the event an escape occurs.

## **VIII. CHAPTER 7: HEALTH, WELFARE, SAFETY AND QUALITY OF AQUATIC ORGANISMS AND PRODUCTS**

### **38. Importation procedure**

While ALRSA commends the Department for its inclusion of an “original valid veterinary health certificate and an original valid phytosanitary certificate as well as a certificate of origin”, we submit that robust protection must be afforded to imported aquatic organisms. In terms of section 38(2), the clearance on the imported consignment must include other aspects including:

- Details of any animals injured during the consignment;
- Details of any animals who died during the consignment; and
- Other animal welfare details.

The above must be signed off by an **independent** veterinarian with at least 5 years of experience. This information must also be made available to the public. Such a certificate should be allowed to be opened for dispute and further independent verification.

### **39. Movement of aquaculture organisms and products**

In terms of section 39(1)(b), the word “significant” must be qualified with clarity or removed completely. Furthermore, ALRSA proposes the inclusion of the words “**detrimental harm to the welfare of animals generally**”.





**ANIMAL LAW REFORM**  
SOUTH AFRICA

#### 40. Animal welfare

While we commend the Department obligating the Minister to prescribe norms and standards relating to the welfare of a live aquatic animal used for an aquaculture activity, we propose the inclusion of the following (in red):

Animal welfare and well-being

40. The Minister **must** prescribe norms and standards relating to the welfare and measures to progressively address the sentience and intrinsic value of a live aquatic animal used for an aquaculture activity or any act relevant to the conducting of an aquaculture activity including, but not limited to the Animal Protection Act; NEMA; NEMLA; NEMBA; TOPS; MLRA or otherwise.

#### 41. Roles and responsibilities for animal health

The inclusion of the words “welfare and well-being” must be included after “aquatic organism health” within this section.

#### 42. National aquatic animal health and welfare programme

While we commend the Department for its establishment of a National Aquatic Animal Health and Welfare Programme, specifically with the inclusion of animal welfare, we believe that the impact should be strengthened by explicitly making reference to animal well-being as well as animal sentience and intrinsic value throughout this provision. This can be done with the insertion of “progressively address animal sentience and intrinsic value” within this programme.

In addition, we propose specific wording relating to the plan such as that included below:

***42. The Minister must, after consultation with the Minister responsible for animal health, develop a national aquatic animal health and welfare programme that must:***

Utilize a welfare-based approach to aquaculture that considers every life-stage of the animal being farmed, as well as the wellbeing of all other species used in their production. This includes cleaner fish, animals used for feed, and all other sentient beings involved in the supply chain.

(e) adequately consider and engages in animal welfare and well-being indicators specific to species, life stage and farming environment. The current best practice, evidence-based behavioural and physiological welfare indicators, must be used;



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

(f) provides for the training for staff to monitor and recognize physical and behavioral welfare indicators;

(g) provides species-specific stocking density limits, feed composition and environmental enrichment to naturally reduce stress and aggression (especially for normally passive species who may become aggressive in captivity);

(h) provides for appropriate stocking densities, feeding and environmental enrichment specific to species and life stage can reduce stress and thus reduce the risk of infection, disease amplification, and transmission. Such prevention strategies should always represent the first line of defense against disease and parasites.

#### **45. Aquaculture disease zones**

We commend the Department on the establishment of aquaculture disease zones. We submit that regular reporting on such disease zones must be made available to the public as it is a matter of public interest.

#### **51. Certification system for aquaculture products**

This provision suffers from the same uncertainty in respect of mandate as contemplated in terms of section 51. Clarity is required in respect of this certification system and accompanying obligations placed on the Minister of the Department.

### **IX. CHAPTER 8: TRANSFORMATION AND SOCIAL RESPONSIBILITY**

#### **52. Transformation of aquaculture sector**

Transformation is a critical and important aim supported by ALRSA. In addition to transformation in social and human contexts, and aligned with the goals of transformative constitutionalism, such transformation should extend to animals. Furthermore, transformation must include progressive measures to address animal well-being, in light of their sentience and intrinsic value. In addition to this, explicit reference must be made to research, transformation targets and sector specific transformation charter in respect of the promotion of non-animal derived food alternatives.

#### **55. Fair Labour Practices**

When it comes to fair labour practices, the Draft Bill notes that applicable labour legislation should be complied with. However, as aforementioned, there are many health and safety risks associated with the aquaculture industry which are not adequately addressed by existing legislation.



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

Occupational health and safety provisions should be included that address: the safe use of potentially hazardous equipment, such as hydraulic fish pumps, fish transport vehicles, cranes, etc. Provisions should also address the use of any hazardous chemicals involved in aquaculture, such as pesticides, disinfectants, etc. Workers' contact with the water used in aquaculture operations has also led to skin conditions such as dermatitis, and warts. Other potential hazards that should be addressed include drowning. Worker safety in particular should be addressed in relation to crocodile farming. Increasingly, research is indicating occupational health and safety of workers in the aquaculture industry.<sup>37</sup>

As such, in addition, a provision should be added, similar to that in NEMA which states the following (in red):

“...no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having refused to perform any work if the person in good faith and reasonably believed at the time of the refusal that the performance of the work would result in an imminent and serious threat to the environment or the welfare and well-being of animals”.

## **X. CHAPTER 9: COMPLIANCE AND ENFORCEMENT**

### **56. Designation of aquaculture inspectors**

The word “may” should be replaced with the term “must” throughout section 56. This must be done specifically in section 56(1) which states “the Minister may designate an official of the Department or of an organ of state as an aquaculture inspector;” section 56(2) that states “[a] designation other than of an official of the Department may only be made by agreement between the Minister and the relevant organ of state” and section 56(4) “[t]he Minister may prescribe training requirements for aquaculture inspectors.”

Furthermore, in respect of animal welfare, there should be a process whereby NGOs subject to relevant requirements can conduct animal welfare related inspections on aquaculture facilities. Similarly, in respect of environmental legislation that applies. In addition, those “aquaculture inspectors” must be trained in animal welfare specifically as well as relevant environmental issues.

### **59. Inspection powers of aquaculture inspectors**

We commend the Department for the robust powers afforded to aquaculture inspectors in respect of conducting inspections at aquaculture facilities in an effort to ensure compliance with the provisions of this Draft Bill. We propose that specific reference be made to the welfare and well-being of aquatic

---

<sup>37</sup> See for example, [Occupational Safety and Health in U.S. Aquaculture: A Review](#) (oclc.org) and [Scoping Global Aquaculture Occupational Safety and Health](#)



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

animals. In this regard, provision must be made to reference the Animals Protection Act (or the proposed new Animal Welfare Act, as applicable). Similarly, in respect of applicable environmental legislation. Provision must also be made for inspecting the welfare and well-being of animals. In this regard, similar powers granted in terms of the Animals Protection Act (for example, section 8) could apply as appropriate for the enforcement of animal welfare issues.

#### **60. Criminal investigation powers of aquaculture inspectors**

While we commend the Department for the inclusion of section 60(1)(d) which allows for the “seizure of anything, including an aquatic organism, aquaculture product or a sample of an organism or aquaculture product, in or on a premises, land, vehicle, vessel, aircraft, container, bag, box or item”, this must also include animal welfare. Provision must be made in respect of the Animals Protection Act, or Animal Welfare Act, as applicable. Provision must also be made for the seizure of an aquatic organism if concerns arise in respect of the welfare of such an animal. Similarly, in respect of applicable environmental legislation. Similar powers granted in terms of the Animals Protection Act, or Animal Welfare Act as applicable, must apply as appropriate for animal welfare issues.

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

In respect of the aquatic organisms seized in light of the aforementioned section, provision must be made for animals which have been seized, with due regard to their sentience and intrinsic value as individual animals. Furthermore, funding must be made available for the proper handling, transportation and care of any such aquatic organism.

#### **65. Offences**

Express reference to the contravention of individual aquatic animal’s well-being and welfare must be listed as a ground of an offence. Provision must be made for contraventions of the Animals Protection Act (or Animal Welfare Act, as applicable). Similarly, in respect of applicable environmental legislation.

### **XI. CHAPTER 10: GENERAL AND TRANSITIONAL PROVISIONS**

#### **70. Norms and standards**

Regulations should be made instead of norms and standards.

Express provision must be made for the issuing of regulations related to animal welfare and well-being within section 70(1)(a).



**ANIMAL LAW REFORM**  
**SOUTH AFRICA**

## **72. Exemptions**

This provision is significantly problematic. It allows for “an exemption granted in terms of subsection (1) may be (a) subject to conditions; (b) subject to the payment of a fee”. This provision is potentially problematic as there are no clear guidelines as to the basis on which an exemption may be granted. This section should either provide for specific categories of exemptions or be removed. Furthermore, the wording relating to a “group of persons” must be removed as if any exemptions were to be granted, these need to be granted individually on a case-by-case basis. In addition, any exemptions from the Draft Bill must be subjected to a public participation process and must be published publicly.

## **74. Regulations**

Further express inclusion of the regulations made in respect of aquatic organism well-being and welfare must be included within this provision.

## **77. Transitional arrangements**

Both periods contained within this provision must be limited to 12 (twelve) months in order to efficiently transition of authorisation and related matters to this Draft Bill.

---

*Thank you for the opportunity to comment on this Draft Bill. Due to time and capacity restraints, we have unfortunately not been able to comment on the entirety of the provisions but are willing to be contacted to engage further as required.*

*Please note in particular that we have not commented on the SELAS Study as part of the Submission and reserve the right to do so in future.*