

(31 May 2013 - to date)

MARINE LIVING RESOURCES ACT 18 OF 1998

(Gazette No. 18930, Notice No. 747. Commencement date: 1 September 1998 [Proc. No. 80, Gazette No. 19148])

TRANSFER OF ADMINISTRATION AND POWERS AND FUNCTIONS ENTRUSTED BY LEGISLATION TO CERTAIN CABINET MEMBERS IN TERMS OF SECTION 97 OF THE CONSTITUTION

Published under Proclamation No. 16 in Government Gazette 36527 dated 31 May 2013. Commencement date: 31 May 2013.

In terms of section 97 of the Constitution of the Republic of South Africa, 1996, I hereby transfer the administration and powers and functions entrusted by the specified legislation, and all amendments thereto, to the specified Cabinet member and amend and clarify previous proclamations as set out in the Schedule in English and isiZulu, with effect from the date of publication of this Proclamation in the Gazette.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town on this 23rd day of May, Two Thousand and Thirteen.

(Signed)

PRESIDENT

By Order of the President-in-Cabinet:

MINISTER OF THE CABINET

(Signed)

MINISTER OF THE CABINET

(Signed)

SCHEDULE

1. The administration of and the powers and functions entrusted by the legislation, mentioned in Column 1 of the tables below, to a Cabinet member mentioned in column 2 of the tables below are hereby transferred to the Cabinet member mentioned in column 3 of the tables below.
2. Column 2 of the Schedule states the Minister or Ministers in whom, immediately prior to the commencement of this Proclamation, by virtue of the following Proclamations, the administration or powers and functions of the legislation mentioned in Column 3 vests:

Prepared by:

In partnership with:

- (a) Proclamation No. 44 of 1 July 2009, published in Government Gazette No 32367 of that date; and
- (b) Proclamation No. 1 of 10 February 2010, published in Government Gazette No. 32945 of that date.
3. Column 3 of the Schedule states the relevant Minister and the extent of the transfer of the administration of legislation and the powers and functions entrusted by legislation to that Minister. Column 3 also states instances where the administration of and powers and functions entrusted by legislation remain with the relevant Minister.
4. In so far as this Schedule may differ from or be in conflict with the Schedules to the Proclamations mentioned in item 2 above, and in so far as those Schedules relate to the Marine Living Resources Act, 1998 (Act No. 18 of 1998), this Schedule prevails.
5. Below, the Marine Living Resources Act, 1998 (Act No. 18 of 1998), is referred to as the Marine Living Resources Act, 1998.

ENVIRONMENTAL RELATED LEGISLATION:

COLUMN 1	COLUMN 2	COLUMN 3
LEGISLATION	CABINET MEMBER PREVIOUSLY RESPONSIBLE	CABINET MEMBER TO WHOM FUNCTIONS IS TRANSFERRED AND EXTENT OF TRANSFER
1. Marine Living Resources Act, 1998: Sections 1 to 4	Minister of Water and Environmental Affairs and Minister of Agriculture, Forestry and Fisheries	1. The Minister of Water and Environmental Affairs in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to the administration of, and the exercise of the powers and performance of the functions contained in- <p>(a) section 43 of the Marine Living Resources Act, 1998; and</p> <p>(b) the regulations and other provisions listed in this</p>

		<p>proclamation relating to marine protected areas; and</p> <p>(c) the regulations listed in this proclamation relating to whales, dolphins, turtles and white sharks.</p> <p>2. The Minister of Agriculture, Forestry and Fisheries in so far as the administration of and the powers and duties provided for in the sections referred to in Column 1 pertain to the administration of, and the exercise of the powers and performance of the functions contained in, the provisions of the Marine Living Resources Act, 1998, not mentioned in item 1 and the regulations listed in this proclamation that relate to fishing within a marine protected area.</p>
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(Please note that a full copy of the above table will be provided upon request. Kindly refer to our website for our contact details.)

EXPLANATORY MEMORANDUM

- On 10 May 2009 the President announced the appointment of Ministers and Deputy Ministers in terms of sections 91(2) and 93(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution). Since the Ministers' portfolios differed from the Ministers' portfolios before the President took the oath on 9 May 2009, it was necessary to align the administration of legislation and powers and functions entrusted by legislation to the new portfolios of Ministers announced by the President.
- The administration and the powers and functions entrusted by the Marine Living Resources Act, 1998 (Act No. 18 of 1998), pertaining to mariculture, were transferred from the Minister of Water and Environmental Affairs to the Minister of Agriculture Forestry and Fisheries by Proclamation No. 44 on 1 July 2009.

Prepared by:

In partnership with:

3. The administration and the powers and functions entrusted by the Marine Living Resources Act, 1998: pertaining to fisheries (excluding marine protected areas and the regulations related to Boat-based Whale Watching and White Shark Cage Diving), were transferred from the Minister of Water and Environmental Affairs to the Minister of Agriculture Forestry and Fisheries by Proclamation No. 1 of 10 February 2010.

4. The Proclamation of 10 February 2010 resulted in confusion as to the extent and exact nature of the transfer of functions, particularly in relation to regulations under the Marine Living Resources Act, 1998 (Act No. 18 of 1998) that were not mentioned in the 10 February Proclamation. This Proclamation, which is done in terms of section 97 of the Constitution, seeks to provide clarity on the exact nature and extent of the transfer of powers and functions under the Marine Living Resources Act, 1998 (Act No. 18 of 1998) including regulations. In some instances where the same Minister appears in both columns 2 and 3, this indicates that no transfer has taken place, thus providing clarity as to the nature of the transfer in the 10 February Proclamation. Section 97 of the Constitution provides that the "President by proclamation may transfer to a member of the Cabinet—
 - (a) the administration of any legislation entrusted to another member; or
 - (b) any power or function entrusted by legislation to another member."