



Food and Agriculture  
Organization of the  
United Nations

# Legal report on the ecosystem approach to fisheries in South Africa

An analysis of the ecosystem approach to fisheries in selected  
national policy and legal instruments of South Africa

FAO EAF-Nansen Programme Report No. 59  
EAF-N/PR/59 (En)

A decorative graphic at the bottom of the page consisting of several thick, wavy blue lines that resemble ocean waves. Scattered among these waves are several small, solid blue circles, which represent fish or bubbles.

PROGRAMME REPORT

## THE EAF-NANSEN PROGRAMME

The EAF-Nansen Programme “Supporting the Application of the Ecosystem Approach to Fisheries Management considering Climate and Pollution Impacts” supports partner countries and regional organizations in Africa and the Bay of Bengal improving their capacity for the sustainable management of their fisheries and other uses of marine and coastal resources through the implementation of the Ecosystem Approach to Fisheries (EAF), taking into consideration the impacts of the climate and pollution.

The Programme is executed by the Food and Agriculture Organization of the United Nations (FAO) in close collaboration with the Institute of Marine Research (IMR) of Bergen, Norway, and funded by the Norwegian Agency for Development Cooperation (Norad). This Programme is the current phase of the Nansen Programme which started in 1975.

The aim of the Programme is that sustainable fisheries improve food and nutrition security for people in partner countries. It builds on three pillars, Science, Fisheries Management, and Capacity Development, and supports partner countries to produce relevant and timely evidence-based advice for management, to manage fisheries according to the EAF principles and to further develop their human and organizational capacity to manage fisheries sustainably. In line with the EAF principles, the Programme adopts a broad scope, taking into consideration a wide range of impacts of human activities and natural processes on marine resources and ecosystems including fisheries, pollution, climate variability and change.

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# **Legal report on the ecosystem approach to fisheries**

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policy and legal instruments of South Africa**

**By Julia N. Nakamura and Teresa Amador**

**FAO EAF-Nansen Programme Report No. 59  
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## Abstract

Legislating for the ecosystem approach to fisheries (EAF) is complex, due to the holistic nature of the EAF involving multiple factors that underpin the social, economic, environmental, and institutional aspects of fisheries sustainability. These factors include ecosystems integration, risks, inter-sectoral collaboration, research, participatory processes, monitoring, control, surveillance, and enforcement, among others. To assess how the EAF is being implemented through national policy and legal frameworks, FAO developed [\*A diagnostic tool for implementing an ecosystem approach to fisheries through national policy and legal frameworks\*](#).

The present legal report on the EAF used the diagnostic tool to assess the alignment of selected policy and legal instruments of South Africa with the EAF. This assessment analysed the extent to which 82 EAF legal requirements, which are considered the minimum standards in legislating for the EAF, are reflected in South Africa's policies and legislation relevant to the fisheries sector of the country and other relevant sectors (such as environment, wildlife, ecosystems, and maritime affairs). Based on this preliminary diagnosis, gaps were identified in the assessed instruments, and recommendations were made for improving the implementation of the EAF

This report was elaborated following a participatory approach with the involvement of the national competent authorities of South Africa. Drafted in July 2021, the report was submitted to the national authorities of South Africa in November 2021, and further revised and resubmitted in November 2022.



# Contents

- Acknowledgements ..... vii**
- Abbreviations and acronyms ..... viii**
- 1. Introduction: legislating for the ecosystem approach to fisheries..... 1**
  - 1.1 A diagnostic tool for implementing the ecosystem approach to fisheries through national policy and legal frameworks ..... 1
  - 1.2 International legally binding instruments and non-legally binding instruments relevant to an ecosystem approach to fisheries ..... 1
- 2. Legal report on the ecosystem approach to fisheries: assessing a country’s policy and legal framework..... 3**
  - 2.1 Methodology and scope ..... 3
    - 2.1.1 Selection and collection of national policy and legal instruments of South Africa ..... 3
    - 2.1.2 Desk-based stepwise assessment of selected national policy and legal instruments..... 4
    - 2.1.3 Filling in the Ecosystem Approach to Fisheries Legal Checklist of South Africa ..... 4
    - 2.1.4 Additional observations ..... 5
  - 2.2 Overview and main findings ..... 6
    - 2.2.1 Fisheries policy ..... 6
    - 2.2.2 Fisheries primary legislation ..... 8
    - 2.2.3 Fisheries secondary legislation ..... 9
    - 2.2.4 Other sectors primary legislation ..... 11
    - 2.2.5 Other sectors secondary legislation ..... 14
- 3. Conclusion ..... 16**
  - 3.1 Main gaps in the assessed policy and legal instruments ..... 16
  - 3.2 Level of alignment of the assessed policy and legal instruments with an ecosystem approach to fisheries ..... 17
  - 3.3 Final considerations and proposed way forward ..... 17
- 4. References ..... 19**
- Appendix A. List of national policy and legal instruments assessed in this report ..... 20**
- Appendix B. Ecosystem Approach to Fisheries Legal Checklist applied against selected national policy and legal instruments ..... 21**

## Tables

<b>Table 1.</b>	Status of South Africa in selected international legally binding instruments relevant to an EAF .....	2
<b>Table 2.</b>	Summary of the stepwise assessment .....	4
<b>Table 3.</b>	Meaning of the symbols used in the ecosystem approach to fisheries Legal Checklist .....	5
<b>Table 4.</b>	Criteria for determining the level of alignment of assessed instruments with an EAF .....	17

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We are grateful to the delegates of South Africa who participated in the *Second Online regional workshop on the use of the Diagnostic Tool on Implementing an EAF through policy and legal frameworks* (9–12 November 2020) and for providing additional information relevant to the present report.

## Abbreviations and acronyms

DEA	Department of Environment Affairs (of South Africa)
EAF	ecosystem approach to fisheries
EIA	environmental impact assessment
FAO	Food and Agriculture Organization of the United Nations
FMP	fishery management plan
IMO	International Maritime Organization
IUU	illegal, unreported and unregulated (fishing)
MCSE	monitoring, control, surveillance and enforcement
MINTECH	Ministerial Technical Committees (of South Africa)
MPA	marine protected area
MSP	marine spatial planning
NGO	non-governmental organization
RFMO/A	regional fisheries management organization and/or arrangement
SSF	small-scale fisheries
TAC	total allowable catch
TAE	total allowable effort
VMS	vessel monitoring system

# 1. Introduction: legislating for the ecosystem approach to fisheries

The Food and Agriculture Organization of the United Nations (FAO) has promoted the implementation of the ecosystem approach to fisheries (EAF) through various activities conducted over the last decades (FAO, 2019), many of which under the EAF-Nansen programme (FAO, n-d). Among the many ways or processes through which the EAF can be implemented is the review of national policies and/or legislation, which provides a country the opportunity to reassess its respective policy and legal frameworks, identify the gaps and/or needs for improvement, and present recommendations for enacting new policy and/or legal instruments for the EAF, and/or amending the existing ones so that they are appropriately aligned with the EAF.

FAO's initiative to promote legislating for the EAF has been undertaken through the development of studies, guidance materials and tools (Skonhoft, 2011; FAO, n.d-b; FAO, 2016; FAO, 2021a, 2021b, 2021c, 2021d, 2021e).

## 1.1 A diagnostic tool for implementing the ecosystem approach to fisheries through national policy and legal frameworks

The latest material developed by FAO for the implementation of an EAF through national policy and legal frameworks, published in 2021, is [\*A diagnostic tool for implementing an ecosystem approach to fisheries through national policy and legal frameworks\*](#) (hereafter referred to as "EAF Legal Diagnostic Tool" (FAO, 2021a, 2021b, 2021c). This tool, which constitutes the basis for the development of the present report, provides important information about the EAF and should be read together with this report. Such relevant information includes a non-exhaustive list of international legal instruments that support the EAF (Appendix A of the EAF Legal Diagnostic Tool), and a non-exhaustive list of examples of selected national policy and legal instruments relevant for an EAF (Appendix B of the EAF Legal Diagnostic Tool).

The Appendix C of the EAF Legal Diagnostic Tool provides the EAF Legal Checklist for Assessment and Implementation of the EAF Policy and Legal Frameworks (hereafter referred to as "EAF Legal Checklist"), based on which the level of alignment of a country's policy and/or legal frameworks with an EAF and the 17 EAF Components can be assessed (FAO, 2016).

## 1.2 International legally binding instruments and non-legally binding instruments relevant to an ecosystem approach to fisheries

There are several international legally binding and non-legally binding instruments that provide for the EAF. The Appendix A of the EAF Legal Diagnostic Tool highlights, in a non-exhaustive list, selected provisions of international instruments or decisions relevant for the

EAF. Other legally binding instruments in support of the EAF are the applicable conservation and management measures of regional fisheries management organizations/arrangements (RFMO/As) which should also be taken into account, on a country-by-country basis, in the assessment of a given country’s EAF commitments.

It should further be noted that provisions of international non-legally binding instruments that reflect principles of international law are also legally binding and therefore relevant in the analysis of the national policy and legal frameworks.

States which are a party to multilateral conventions or agreements, as well as States which adopt or endorse international non-legally binding instruments that reflect principles of international law have the duty to align their national policy and legal frameworks with the obligations that derive from such international and regional instruments.

In light of these considerations, Table 1 below provides the present status of South Africa in respect to the EAF’s relevant international legally binding instruments selected from Appendix A of the EAF Legal Diagnostic Tool.

Table 1. Status of South Africa in selected international legally binding instruments relevant to the EAF	
Instrument	Status
1971 Ramsar Convention on Wetlands of International Importance	Party
1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora	Party
1979 Convention on the Conservation of Migratory Species of Wild Animals	Party
1982 United Nations Convention on the Law of the Sea	Party
1992 Convention on Biological Diversity	Party
1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement)	Not a Party
1995 United Nations Agreement for the Implementation of the Provisions of the LOSC relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	Party
2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement)	Party

Note: In accordance with the information provided in the secretariats of the international conventions and agreements as of October 2022.

For the international legally binding instruments that South Africa **is a Party**, and to the non-legally binding instruments that South Africa has endorsed or adopted, it is important to ensure that the relevant provisions of an EAF highlighted in Appendix A of the EAF Legal Diagnostic Tool are properly reflected in the national policy and legal frameworks.

With regard to the 1993 Compliance Agreement that South Africa is **not yet a Party**, it is important to identify and analyse the reasons preventing the country’s consent to be bound by such instruments and raise awareness to the importance of the international fisheries governance framework. Such analysis is however beyond the scope of this report.

## 2. Legal report on the ecosystem approach to fisheries: assessing a country's policy and legal framework

The EAF Legal Diagnostic Tool was the main tool used for the preparation of this report (hereafter referred to as the “EAF Legal Report”). Selected national policies and legislation were assessed and applied against the EAF Legal Checklist.

This section is divided into two subsections. Subsection 2.1 describes the methodology and scope, including the selection of the national policy and legal instruments relevant for an EAF and the assessment of the EAF legal requirements in such instruments by filling in the EAF Legal Checklist using the symbols under Table 3 below. Subsection 2.2 provides an overview of main findings, highlighting some specific parts of the policy instruments and legal provisions identified as good practice in legislating for or addressing an EAF, and summarizes the information provided by South Africa under the EAF legal questionnaire.

### 2.1 Methodology and scope

Understanding the complexities, detail and broad range of matters that the EAF comprises is a challenge due to *inter alia* its holistic nature and the context and priorities of each country. A simplified assessment methodology was therefore developed for the application of the EAF Legal Checklist against the selected national policy and legal instruments, leading to the compilation of this report.

This desk-based preliminary assessment cannot however replace an in-country detailed assessment of the national policy and legal frameworks.

#### **2.1.1 Selection and collection of national policy and legal instruments of South Africa**

The main source for the selection and collection of national policies and legal instruments was FAOLEX (FAO, n.d-b) which, besides the Constitutions of countries, provides a vast electronic repository of national policy and legal instruments on fisheries and other sectors relevant for an EAF, including on environment, sea, water, and wild species and ecosystems.<sup>1</sup>

The relevant information for the EAF available at FAOLEX in November 2020, is listed under **Appendix A** and identified by a reference letter and number to facilitate their citation in the EAF Legal Checklist provided in **Appendix B** of this report. Appendix A and Appendix B shall therefore be read together.

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<sup>1</sup> Notwithstanding the importance of certain cross-sectoral issues such as gender and climate change, these were not considered in this report.

### 2.1.2 Desk-based stepwise assessment of selected national policy and legal instruments

The selected national policy and legal instruments relevant for the EAF under **Appendix A** of this report were assessed against the EAF Legal Checklist following the steps described in Table 2 below.

Table 2. Summary of the stepwise assessment		
Steps	National policy and legal instruments analysed	Scope
1st	<b>Fisheries policy:</b> a plan, policy, strategy, action plan, policy chart concerning fisheries, aquaculture, wildlife, sea and/or oceans, sustainable development, management and/or conservation.	Searching for the EAF legal requirements with a focus on the parts of the policy that address the principles, objectives, plans, priorities, recommendations, strategies and actions.
2nd	<b>Fisheries primary legislation:</b> a fisheries act, code, law, or any other type of instrument implementing the fisheries policy as well as the general law on fisheries, forestry and wildlife providing the legal framework for fishing and fishing related activities. It is the main legal instrument on fisheries, which contains the typical outline and broadly covers the subjects described in subsection 3.1 of the EAF Legal Diagnostic Tool. It should be noted that this typical outline is without prejudice to the particular structure of the fisheries primary legislation of the assessed country.	Searching for the EAF legal requirements in each provision of the fisheries primary legislation.
3rd	<b>Fisheries secondary legislation implementing or elaborating the fisheries primary legislation:</b> fisheries decree, regulation, order, ordinance which sets out in more detail the requirements of the fisheries primary legislation – concerning e.g. fishing vessel registration, fishing vessel requirements, vessel monitoring system (VMS), fisheries research, fisheries fund, small-scale fisheries.	Searching for the EAF legal requirements not found in the relevant parts of the fisheries policy nor in the provisions of the fisheries primary legislation.
4th	<b>Other sector's primary legislation:</b> an act, code or law on the relevant sectors of <i>inter alia</i> environment, sea, water, and wildlife species and ecosystems.	Searching for the EAF legal requirements not found in the relevant parts of the fisheries policy nor in the provisions of the fisheries primary and secondary legislation.
5th	<b>Other sector's secondary legislation:</b> a decree, regulation, order, ordinance regulating the primary legislation of other sectors assessed under step 4.	Searching for the EAF legal requirements not found in the relevant parts of the fisheries policy nor in the provisions of any of the previously assessed legal instruments.

### 2.1.3 Filling in the Ecosystem Approach to Fisheries Legal Checklist of South Africa

The EAF Legal Checklist provides the EAF legal requirements structured by the 17 EAF Components, based on a step-wise methodology (FAO, 2021, Subsection 2.2), and in accordance with the typical subjects of a fisheries primary legislation, without prejudice to the particular structure of the fisheries primary legislation of South Africa (FAO, 2021, Subsection 3.2). In filling it in, priority was given to assessing the EAF legal requirements in the fisheries policies and primary/secondary legislation. In this process, the different symbols presented in Table 3 below were used.

<b>Symbol</b>	<b>Perceived level of alignment with the EAF legal requirement</b>	
✓	Full or sufficient	Part(s) in the assessed fisheries policy or provision(s) in the assessed legislation <u>totally incorporates</u> the EAF legal requirement.
∅	Partial or insufficient	Part(s) in the assessed policy or provision(s) in the assessed legislation <u>partially incorporates</u> the EAF legal requirement. <sup>2</sup>
X	None or in-existent	No part in the assessed policy nor provision in the assessed legislation was found that incorporates the EAF legal requirement.
●	Not considered	No assessment was carried out since the EAF legal requirement was fully or sufficiently found in the <b>primary</b> fisheries policy/legislation, or in the <b>primary</b> legislation of other sector.
N/A	Not applicable	The EAF legal requirement is exclusively relevant to fisheries (that is the case of all the EAF legal requirements under Fisheries Management, Monitoring, Control, Surveillance and Enforcement (MCSE) and almost all of those under enforcement processes and sanctions scheme) and therefore not applicable to other sector's legislation.
*	Optional	The EAF legal requirement is considered to have a non-mandatory nature and therefore is not expected to be found in the assessed policy or legal instrument.

The last two columns of the EAF Legal Checklist indicate: **(i)** the parts of the policy instruments and legal provisions where the EAF legal requirement was found; and **(ii)** additional relevant comments and explanatory notes that clarify, where appropriate, nuances in assessing the policy and legal instruments and the rationale for the assessment of partial or insufficient coverage of the EAF legal requirements. It should be noted that these additional comments and explanatory notes will benefit from a more in-depth analysis during the comprehensive review at country level.

The results of this assessment are presented in **Appendix B** of this report which provides the EAF Legal Checklist applied against the selected policies and legislation of South Africa.

#### **2.1.4 Additional observations**

While filling in Appendix B, some parts of the policy framework and some provisions of the legal framework which in some cases are anchored in the South Africa Constitution of 1996, as last amended in 2020, were considered particularly relevant in incorporating the EAF legal requirements. These parts and legal provisions which, without prejudice to others that may also be relevant, were considered good examples of addressing an EAF (in the case of a policy instrument) or legislating for an EAF (in the case of a legal instrument), have been highlighted in the main findings under subsection 2.2 below as good practice in legislating for an EAF.

<sup>2</sup> A more in-depth analysis will be required to understand how EAF legal requirements filled in with the ∅ symbol could be fully incorporated in legal and policy instruments or reflect potential contradictions between one legal and/or policy instrument and another. Such analysis goes beyond the scope of this desk-based preliminary assessment.

## 2.2 Overview and main findings

This subsection provides an overview of the main findings of this desk-based preliminary assessment of the EAF in the selected national policy and legal instruments of **South Africa** presented under **Appendix B**.

### 2.2.1 Fisheries policy

The assessed seven fisheries policies correspond to A1 to A7 in Appendix A. They cover **37** of the 82 EAF legal requirements.

The main fisheries policy is the *2021 General Policy on the allocation of commercial fishing rights*, which recognizes, *inter alia*, the need to ensure fisheries sustainable development, promote the long-term conservation of marine living resources, apply precautionary approaches, protect ecosystems as a whole, including non-targeted species, preserve marine biodiversity, and minimize marine pollution (Chapter 4.2). It details the application process for commercial fishing rights allocation (Chapters 5–8). Among others, this policy empowers the Ministry or Delegated Authority to determine total allowable catch (TAC) and total applied effort (TAE) to apply annually in each fishery (Chapter 8.1.1), based on prescribed criteria, such as catch data, resources users, and sustainability of fishing operations (Chapter 8.1.2). It also empowers the Ministry to determine, in consultation with the Consultative Advisory Forum, the allocation of portions of TAC, TAE, or a combination of these, to small-scale fisheries (SSF), or local commercial and foreign commercial fishing (Chapter 8.1.6).

The *National Framework on Marine Spatial Planning of 2017* is imbedded on an EAF through the principles of sustainable development, collaboration and responsible ocean governance, justice, equity and transformation, ecosystem and earth system approach, precautionary approach, adaptive management, coherent planning and management, and use of best available science and information (Chapter 2[2.4]). It has four main goals: to unlock the ocean economy, which include seeking to reduce conflicts between incompatible uses of the ocean (Goal 1); engage with the ocean, which include encouraging citizen engagement in education about the sea and participation in marine management (Goal 2); ensuring healthy marine ecosystems, including biodiversity protection, conservation and restoration (Goal 3); and contributing to good governance, based on sound knowledge and adaptive decision-making (Goal 4). This Policy provides for a National Marine Spatial Planning (MSP) Working Group, which is constituted by representatives of a range of sectors, including agriculture, forestry and fisheries (Chapter 2[2.6.1]). Also relevant for an EAF is the trans-national planning, which takes into consideration the MSP in South Africa's neighbouring countries, Namibia and Mozambique, to align planning and management at a trans-national scale namely through the Benguela Current and the Nairobi Conventions (Chapter 2[2.8]), as well as the participatory process for developing, monitoring, evaluating and revising marine area plans (Chapter 5), through the establishment of an inter-departmental approach and engagement with stakeholders.

The *Second National Biodiversity Strategy and Action Plan of 2015–2025* outlines the structures for coordination between Government spheres on environmental issues, which include the Minister and Member of the Executive Councils Committees, the Ministerial Technical Committees (MINTECH), and a series of MINTECH Working Groups (Page 70), and are particularly relevant in ensuring liaison between the Department of Environment Affairs (DEA) and the provincial institutions. A detailed plan is outlined in this strategy, specifying several activities to be undertaken, the corresponding responsible lead institution(s) and supporting institution(s), and the level of priority. Many of these activities are relevant for an EAF, especially the following: strengthening inter-agency cooperation in the conservation and management of protected areas (Page 30); integrating biodiversity considerations into the fisheries industry (Page 40); integrating biodiversity priority areas into integrated coastal management plans with the support of the fisheries department (Page 42); harmonizing regulatory requirements across different regulatory processes for both land and sea uses activities to ensure consistency on biodiversity issues (Page 44); implementing effective marine and aquatic pollution control measures with emphasis on aquatic ecosystems in biodiversity priority areas (Page 45); implementing education and awareness strategy (Page 51); and regularly monitoring and assessing the status of species and ecosystems as well as the impacts of fishing on biodiversity and marine environment (Pages 59–60).

The *Environmental Implementation and Management Plan of 2015–2020* describes several functions of the DEA in conducting its activities in collaboration with other sectors in order to prepare environmental implementation plans and environmental management plans (Page 5). It states the mission of DEA in ‘providing leadership in environmental management, conservation and protection towards sustainability for the benefit of South Africans and the global community’ (Page 11). It provides for the DEA’s functions under specific programmes, which include those on ‘legal, authorisations, compliance and enforcement’, ‘oceans and coasts’, and ‘biodiversity and conservation’, the latter involving the regulation and management of all biodiversity, heritage and conservation matters as to facilitate sustainable economic growth and development (Page 46). It has a monitoring and evaluation part, which includes the commission of environmental sustainability policy research projects (Page 82).

The *Policy for the Small-Scale Fisheries Sector of 2012* is of particular importance for an EAF in specifying several requirements on a basis of a participatory approach to fisheries management, involving the small-scale fishing (SSF) communities and ensuring mechanisms for the allocation of their fishing rights. It lists various EAF relevant principles, including: adopting an integrated and holistic approach based on human rights principles and contributing to poverty alleviation, food security and local socioeconomic development; promoting biodiversity and sustainable use and management of marine living resources and associated ecosystems; avoiding or minimizing disturbance on ecosystem and biodiversity; recognizing the interdependence of social, cultural, economic and ecological dimensions of small-scale fishery systems; multi-species approach for the allocation of resources (Chapter 3[3.1]). The community-based approach is of particular importance for an EAF in enabling multiple stakeholders, including fishing communities to participate with the Government in the development, implementation and evaluation of fishery policies and management plans (Chapter 4[4.3.1]) as well as by supporting a self-regulating role of SSF communities with

regard to compliance and enforcement (Chapter 4[4.3.2]). Other relevant feature of this policy include the promotion of capacity-building, training, research for an EAF (Chapter 4[4.4.1 and 4.4.3]), the demarcation of SSF community areas taking into account, *inter alia*, marine ecosystems components (Chapter 5[5.1.2]) and the establishment of co-management committees with representatives of all three spheres of government and members of the relevant community-based legal entity (Chapter 5[5.2.2]).

The *National Development Plan of 2011* is a broad plan that builds on the South Africa's 2030 vision statement (Pages 41–48) to address a range of issues such as employment, economic infrastructure, transitioning to a low carbon economy, inclusive rural economy, human settlements, education, innovation and training, health and social protection. While this policy is very general, the *National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries of 2008* deals in specific with the bycatch of seabirds in longline fisheries, being relevant for the EAF legal requirements on fishing gear control. Also relevant for an EAF is the provision for training of fishers on the EAF management and in particular the use of mitigation measures and enforcement (Page 24).

### **2.2.2 Fisheries primary legislation**

The assessed two fisheries primary legislation correspond to B1 and B2 in Appendix A. They cover **32** of the 82 EAF legal requirements.

The main fisheries primary legislation is the *Marine Living Resources Act of 1998*, as last amended in 2014 (hereinafter referred to as “Fisheries Act”). It provides for principles and objectives relevant for an EAF, including the need to: achieve ecologically sustainable development of marine living resources; apply the precautionary approach; protect the ecosystems, including non-targeted species; preserve marine biodiversity; achieve broad and accountable participation in decision-making processes; promote equitable access to and involvement of the fishing industry in all aspects; recognize fisheries management approaches that contribute to food security, socioeconomic development and poverty alleviation; and recognize allocation of resources based on a multi-species approach (Section 2[a]–[c][e][f][h][k]–[m]). The Fisheries Act also establishes the Consultative Advisory Forum for Marine Living Resources (Section 5), which is broadly representative and multidisciplinary (Section 7); provides for the continuation of the fund established by the *Sea Fisheries Act, 1988* (see below), entitled Marine Living Resource Fund (Section 10) and for the maintenance of a Register, by the Director-General, of all rights of access, other rights, permits and licences (Section 12).

The Fisheries Act outlines a general permit and fishing rights scheme (Sections 13, 18–28 and 39–40) and empowers the Minister to determine the TAC, TAE or a combination of both, to be allocated in any year to small-scale, recreational, local commercial and foreign fishing (Section 14[2]), with respect to a particular area, or species, gear or type of fishing vessels (Section 14[3]). The Minister is also granted with other powers, including to: by notice in the Gazette declare fishery management areas and approve its respective fishery management plans (FMP) through a consultative process (Section 15); suspend fishing activities, or restrict

the number of fishing vessels or the mass of fish allowed to be taken from a given fishery (Section 16); declare a priority fishing area (Section 17), and, pursuant to Section 9(2) of the 1996 Constitution, as last amended in 2020, establish areas or zones for subsistence fishers (Section 19). In respect of the application for rights to undertake commercial fishing, SSF, mariculture or operate a fish processing establishment, the Minister can require the applicant to submit an EIA (Section 18[3]), which is particularly relevant for an EAF.

Another important provision for an EAF in the Fisheries Act is the power granted to the Minister to, by notice in the Gazette, establish a Fisheries Transformation Council, responsible for facilitating the achievement of fair and equitable access of concerned fishing rights (Section 30), and with competence to lease rights to persons from historically disadvantaged sectors and to small and medium enterprises (Section 31[2]). The Act also ensures the broad and multidisciplinary composition of this Council (Section 34). Exchange of information, including evidentiary material, between the Government and other States for better implementing international conservation and management measures is also ensured by the Act (Section 42). The Minister is empowered to, by notice in the Gazette, declare marine protected areas (MPAs) for protecting fauna and flora, facilitate fishery management and diminish conflicts arising from competing uses (Section 43). General restrictions on fishing methods and gears are outlined in the Act, including prohibition on the use, permit to be used or attempt to use explosive, fire-arm, poison or other noxious substance for killing, stunning, disabling or catching fish, and specifically prohibition of driftnet fishing activities (Sections 44–48).

In respect of MCSE, the Fisheries Act generally provides for an observer scheme (Section 50) and sets out the powers of fishery control officers within and beyond South African waters (Sections 51–57). The holders or licenses or permits are subject to the overall duty of reporting any contravention to the Act by any person (Section 57) and offences are described in the Act with differentiated penalties for certain offences but without clarifying their level of severity (Section 58). Provisions concerning measures, such as seizure of any object used in the commission of offences and forfeiture, which can be carried out during judicial processes, are also outlined in the Fisheries Act (Sections 59–76). The Fisheries Act repeals most of the provisions of the old *Sea Fishery Act of 1988*, except those concerning the levy on fish and fishery products (Section 29), offences and penalties (Section 47) and certain provisions particularly in respect of shell resources (Sections 38, 48 and 50).

### **2.2.3 Fisheries secondary legislation**

The assessed four fisheries secondary legislation corresponds to C1 to C4. They cover **19** of the 82 EAF legal requirements.

The main fisheries secondary legislation is the *Marine Living Resources Regulations of 1998, as last amended in 2015* (hereinafter referred to as “Fisheries Regulations”), which regulates the afore mentioned Fisheries Act. These regulations elaborate on the Register of all rights of access, other rights, permits and licences, detailing the contents of the information to be recorded (Regulation 4). Relevant provisions related to an EAF comprise the specifications on

certain fisheries management measures. Temporal control is covered in the restrictions on period times specified for each species during which fishing, collecting, disturbing, keeping or controlling, or being in possession of any fish is prohibited (Regulation 9 and Annexure 2). Spatial control is also detailed through the restrictions to engage in fishing or collecting any fish in a tidal river or lagoon and other delineated areas described therein (Regulation 10). Restrictions on fishing gears, including bottom trawl net, purse-seine net, and any type of rock lobster trap, are also established (Regulation 11).

Other relevant provisions outline specifications on fishing methods and gear, including closed areas and mesh size limits for trawl fishing (Regulations 13–14), for purse-seine fishing (Regulations 16–17), for beach-seine net, staked net, set-net, hoop net, shove net, drag net, drift net and gillnet (Regulations 19–20). Species-based fishing control specifications are provided for hake longlining (Regulations 28–29), sharks (Regulations 30–31), chokka squid (Regulations 32–33) tuna (Regulations 34–35), abalone (Regulations 36–40), oyster (Regulations 41–43), rock lobster (Regulation 44), west coast rock lobster (Regulation 45–51), east coast rock lobster (Regulations 52–53) and other species (Regulations 54–57). It is prohibited to dump or discard at sea any fish for which a TAC, TAE or precautionary maximum catch limits has been set (Regulation 26). Bag limits are also established therein for certain species like sharks (Regulation 31), which apply to the holders of a recreational or subsistence fishing permits, and tuna (Regulation 35) which apply to any person.

Other provisions relevant for an EAF include the requirement on EIA in the application for a permit to undertake mariculture or related activities (Regulations 61(1) and 69) and the authorisation required for the culture and use of any genetically modified organism in mariculture (Regulation 70). Landing restrictions as well as transshipment requirements are also determined by these regulations (Regulations 75, 79 and 85) as well as the duty of any licensed foreign fishing vessel to be equipped with an automated satellite linked vessel monitoring system (VMS), according to specified requirements (Regulation 76). Also relevant for an EAF are the provisions on marking of fishing vessel (Regulation 77); the duty of the master of a licensed commercial fishing vessel to maintain a fishing logbook, landing book, and specifications on the content of catch logbooks (Regulation 79); the powers attributed to observers and fishery control officers and provisions for their safety and cooperation with masters of fishing vessels (Regulations 82–84); and the requirement on disposal of all non-biodegradable house-hold waste to be taken back to port (Regulation 87).

In addition to this Fisheries Regulations, other secondary legislation relevant to an EAF are: the *Government Notice No. 1067 of 2016*, which determines the application of a precautionary approach in small-scale fishery (SSF) and fixes the duration of the SSF right to be for a maximum of three years, potentially extendable to no more than additional two years; the *Government Notice No. 229 of 2016*, which regulates SSF, stipulating the process for the allocation of SSF rights, time periods, SSF areas and zones and management of access rights; and the *Government Notice No. 1007 of 2002*, which details the fees to be paid in the application for a fishing right.

#### 2.2.4 Other sectors primary legislation

The other sectors primary legislation corresponds to D1 to D4 in Appendix A.

The *National Environmental Management Act of 1998* (hereinafter referred to as “Environment Act”) and the *Environment Conservation Act of 1989* (hereinafter referred to as “Conservation Act”) operationalise the constitutional right of everyone to an environment that is not harmful to their health or wellbeing, to have the environment protected for present and future generations (Constitution of 1996 as last amended in 2020, Section 24).

The Environment Act follows various principles relevant for an EAF, including: sustainable development that considers avoiding, minimizing and remediating the disturbance of ecosystems and loss of biodiversity; promotion of participation of all interested and affected parties in environmental governance with the opportunity of all people to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, including by vulnerable and disadvantaged persons, the intergovernmental coordination and harmonisation of policies, legislation and actions relating to the environment; specific attention in management and planning concerning sensitive, vulnerable, highly dynamic or stressed ecosystems (Section 2[4][a][f][l][r]). Such cooperative governance is ensured with the specification on the national departments that are required to prepare an environmental implementation plan, each taking into consideration every other environmental implementation plan and environmental management plan already adopted for consistency among the plans (Section 11[1][4], Schedules 1 and 2).

The Environment Act also provides for an integrated environmental management aimed at, *inter alia*, ensuring that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them, and the adequate and appropriate opportunity for public participation in decisions that may affect the environment (Section 23[c][d]). It provides for an environmental authorization scheme for activities with potential to cause environmental impact (Sections 24–27) and requires those responsible for causing significant pollution or degradation of the environment to take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring (Section 28). Under this scheme, an EIA and other related environmental management instruments may be required, but the procedure to be followed for the preparation, evaluation and adoption of an EIA and such other instruments is to be determined by regulation of the Minister in charge of environmental affairs or a Member of the Executive Council in concurrence with the Minister (Section 24[5]).

The Environment Act repealed many provisions of the *Environment Conservation Act of 1989*, the remaining provision in force being, *inter alia*, on the identification of activities with a potential detrimental effect on the environment, which include ‘resource removal, including natural living resources’ (Section 21), prohibition of undertaking activities without the applicable authorization (Section 22), provision on limited development areas to be declared by the competent authority (Section 23), regulations regarding noise, vibration and shock

(Section 25), regulations regarding environmental impact reports (Section 26) as well as certain offences and penalties (Section 29).

The *Marine Spatial Planning Act of 2008* requires its guiding principles to be applied on the basis of a precautionary approach (Section 5[1]), including: promotion of collaboration and responsible use of the ocean through consultation and cooperation; advancing an ecosystem and earth system approach to ocean management that focuses on maintaining ecosystem structure and functioning; adaptive management, considering the dynamics of ecosystems and evolution of knowledge; and equitable resolution of conflict scenarios (Section 5[1][c][d][e][i]). It requires the Minister responsible for environmental affairs to establish a knowledge and information system with a range of information such as on ecological processes and relevant social and economic information (Section 7); and the MSP National Working Group to ensure consultation with sector departments, general public and others in the development of the MSP framework (Section 8). This Working Group comprises representatives from several departments, including defence, energy, environmental affairs, fisheries, mineral resources, planning monitoring and evaluation, public enterprises, science and technology, telecommunications, tourism, transport, rural development and land affairs (Section 9).

The *Integrated Coastal Management Act of 2008*, as amended in 2014, aims at, *inter alia*, the coordinated and integrated management of the coastal zones by all spheres of government based on the principles of cooperative governance; and to give effect to international law obligations concerning coastal management and the marine environment (Section 2[b][e]). The Minister in charge of environmental affairs is responsible for declaring any state-owned land as coastal public property for specified purposes, including to protect sensitive coastal ecosystems and to secure national functioning of dynamic coastal processes (Section 8[1][b]). This Act also requires the relevant authority, before designating coastal access land or withdrawing such designation, to assess potential environmental impacts of doing so and consult with affected parties (Section 19). The National Coastal Committee, to be established by the Minister by Notice in the Gazette, is in charge of promoting the integration of coastal management concerns and objectives into those environmental implementation plans and environmental management plans, national, provincial and municipal development policies, plans and strategies, and other plans, programmes and policies of organs of state whose activities may create adverse effects on the coastal environment (Section 35[3][b]). Provincial Coastal Committees and Municipal Coastal Committees are established therein for, *inter alia*, promoting a coordinated, inclusive and integrated approach to coastal management within the province by providing a forum for, and promoting dialogue, cooperation and coordination between the key organs of state and other persons involved in coastal management respectively in the province and within the municipality jurisdiction (Sections 39[2][d] and 42[4][d]).

The *National Environmental Management Biodiversity Act of 2004*, as amended in 2009, operationalizes requirements relevant for the management and conservation of biodiversity, sustainable use of indigenous biological resources and fair and equitable benefit-sharing (Section 2). It establishes the South African National Biodiversity Institute (Section 10), whose

various functions include the coordination and implementation of programmes for the rehabilitation of ecosystems (Section 11[1][m][n]). The national biodiversity framework is set out to provide for an integrated, coordinated and uniform approach to biodiversity management by all levels of government's spheres, non-governmental organizations, private sector, local communities and the public (Section 39[1]). This Act requires such plans not to be in conflict with any of those environmental implementation or environmental management plans, any integrated development plans adopted by municipalities, any spatial development frameworks and any other plans prepared in terms of national or provincial legislation that are affected (Section 48[1]). The Act also provides for the listing of ecosystems and species that are threatened and in need of protection by notice in the Gazette, by the Minister responsible for national environmental management, which must follow a consultative process outlined therein, including public participation (Sections 52, 56, 63[1], 99 and 100).

The *National Environmental Management Protected Areas of 2003, as last amended in 2014*, is focused on regulating the requirements and processes for managing protected areas, including through preservation of their ecological character, cooperative governance, and participation of local communities (Section 2). It is particularly relevant for the EAF legal requirements on setting out of ecologically meaningful boundaries. Protected areas are classified in five categories: special nature reserves, national parks, nature reserves and protected environments; world heritage sites; MPAs; specially protected forest areas, forest nature reserves, and forest wilderness areas; and mountain catchment areas (Section 9). This Act requires a consultative process to be followed, including public participation through written representations on or objections to the proposed notice, which is widely and timely publicised to allow for such participation (Sections 31–33). The purposes of declaring protected areas include the protection of ecologically viable areas, preservation of ecological integrity of such areas, protection vulnerable or ecologically sensitive areas, rehabilitation and restoration of degraded ecosystems as well as recovery of endangered and vulnerable species (Section 17). This Act further requires the protected area management authority, when preparing the respective management plan, to consult municipalities, other organs of state, local communities and other affected parties interested in the area and requires such management plan to take into account any applicable aspects of the integrated development plan of the municipality where the protected area is situated (Section 39[3]). Rules on co-management, monitoring and supervision are also provided (Sections 42 and 43).

Other sector's primary legislation which are particularly relevant to certain EAF legal requirements include: in respect of right to information, the *Promotion of Access to Information Act of 2000, as last amended in 2019*, which gives effect to the constitutional right of access to any information held by the State and any information held by another person that is required for the exercise or protection of any rights (Section 9); the *South African Maritime Safety Authority Act of 1998*, whose objectives are to ensure safety of life and property at sea, prevent and combat pollution of the marine environment by ships, and promote the country's maritime interests (Section 3); and the *Ship Registration Act of 1998*, which regulates the registration of ships, including South African-owned fishing vessels, except small fishing vessels (Section 16).

### **2.2.5 Other sectors secondary legislation**

The other sectors secondary legislation corresponds to E1 to E8 in Appendix A. There are numerous secondary legislation which are relevant for an EAF in South Africa. Just on protected areas, for instance, there are approximately 43 regulations.

The *Government Notice No. 382 of 2009* provides for a coastal waters discharge permit scheme (Regulations 2-10) and the *Government Notice No. 711 of 2017* provides for a dumping at sea permit scheme (Regulations 2-10).

The *Government Notice No. 476 of 2017*, in turn, provides a long list of marine species detailing its conservation status – that is, if they are critically endangered, endangered, vulnerable, protected species – and the respective activities that are restricted or prohibited (such as hunting or killing, catching or capturing, gathering or collecting) and exemptions from this restriction, including protection of marine turtle species and marine mammals.

The *Government Notices No. 477 of 2017* also concern the regulation of threatened or protected marine species, providing the permit system applicable to restricted activities involving specimens of listed threatened or protected marine species. It requires a risk assessment for restricted activities involving wild specimens of critically endangered species, restricted activities carried out in ecosystems listed as threatened in terms of Section 52 of Biodiversity Act summarised above, or release captive-bred or artificial propagated specimen of a listed threatened or protected species into a national protected area (Regulation 13[1]), outlining the content of such assessment, including management of potential risks and any other information as the issuing authority may determine (Regulation 14[2]).

The *Government Notice No. 382 of 2016*, provides norms and standards to ensure that protected areas fulfil their purposes, ensure that human induced disturbance within or originating outside of protected areas is avoided, minimized or remedied, provide a goal for protected area management authorities to strive for in managing their areas, and to ensure their effective management (Regulation 2). It follows various principles relevant for an EAF, including: to protect ecologically viable areas representative of South Africa's biodiversity and its natural landscapes and seascapes in a system of protected areas, to preserve the ecological integrity of those areas, to conserve biodiversity in those areas, to protect areas representative of all ecosystems, habitats and species naturally occurring in South Africa, to manage the interrelationship between natural environmental biodiversity, human settlement and economic development (Regulation 3).

The *Government Notice No. 982 of 2014*, as amended in 2017 and 2018, is about the process for environmental authorization application, which include the requirement of an EIA for certain listed activities, including development and operation of facilities of any size for any form of aquaculture. It requires the applicant to submit to the competent authority an EIA report (Regulation 23[1]).

The *Government Notice No. R 497 of 2002 on Ship Registration regulations*, as amended in 2008, details the application process for the registration of ships (Regulations 12–14), including fishing vessels (Regulation 3).

## 3. Conclusion

### 3.1 Main gaps in the assessed policy and legal instruments

Some of the EAF legal requirements in the EAF Legal Checklist in **Appendix B** were not incorporated (X) or were only partially incorporated (Ø) by the assessed policy and legal instruments of South Africa identified under **Appendix A**. This subsection summarizes the main gaps from the desk-based preliminary assessment without prejudice to others that may be identified in a comprehensive analysis of the national policy and legal frameworks at country level.

Of the 82 EAF legal requirements, **62** EAF legal requirements were found in South Africa's policy and legal frameworks assessed in this EAF Legal Report. It should be noted that the 82 EAF legal requirements are considered the minimum standards in legislating for an EAF which may be further elaborated and improved in advancing the implementation of an EAF. Based on the present preliminary assessment, **20** EAF legal requirements remain to be incorporated in the policy and legal frameworks of South Africa.

The results obtained in this Report indicate a substantive level of alignment of the policy and legal frameworks of South Africa with an EAF. Some key EAF legal requirements have, however, not been found in the assessed instruments.

The assessed policy and legal instruments do not provide for well publicized public hearings and meetings, an important element of stakeholder participation under EAF Component 4. Another gap was found in respect of conflict management over fisheries and the conflict management review process, as required under EAF Component 7. No references or provisions were found on integrated management of aquatic ecosystems and the review of the respective plan, which corresponds to EAF Component 8. In respect of TAC, its coordination for shared stocks or highly migratory species as well as its catch monitoring were not found in the assessed policy and legal instruments, as provided under EAF Component 9.

There are also improvements to be made with regard to FMPs- neither the minimum requirements to be included in FMPs nor the process for their approval, adoption and publication, including the participatory process for drafting, were found in the assessed fisheries policies and primary legislation, as provided under EAF Component 10. In respect of MCSE improvements are required with regard to the exercise of powers by observers, the information to be recorded and to be included in the register of fishing vessels, and the articulation between fisheries and maritime authority, as part of the legal requirements under the EAF Component 11. Other missing requirements concern the EAF Component 12, as the assessed legislation did not provide for weighing of penalties depending on the level of severity of the offence nor administrative processes. Research on EAF also lacked full alignment, indicating a gap related to EAF Component 13.

### 3.2 Level of alignment of the assessed policy and legal instruments with an ecosystem approach to fisheries

In determining the level of alignment of the assessed policy and legal instruments with an EAF in the EAF Legal Report, the following criteria were used:

Number of EAF legal requirements incorporated in the assessed policy and legal instruments	Percentage of the 82 EAF legal requirements incorporated	Overall level of alignment with an EAF
0–30	0–36%	Low
31–50	37–61%	Low-medium
51–61	62–75%	Medium
62–72	76–87%	Medium-high
73–82	88–100%	High

The policy and legal instruments of South Africa, assessed in this Report, incorporate **62** out of the 82 EAF legal requirements, therefore indicating a **medium-high** level of alignment with an EAF.

### 3.3 Final considerations and proposed way forward

Legislating for an EAF is complex and challenging. Due to the numerous national policy and legal instruments relevant to the EAF, this EAF Legal Report should be considered as a desk-based preliminary assessment. It provides the initial basis upon which countries can advance the work towards improving their national policy and legal frameworks in alignment with an EAF, contributing to the ultimate goal of sustainability in fisheries.

The incorporation in the national policy and legal frameworks of all the EAF relevant provisions from international legally binding instruments<sup>3</sup> to which South Africa is a Party, as identified under subsection 1.2 above, should be a priority in the improvement of the EAF implementation at the national level. The relevant EAF provisions from the international non-legally binding instruments that reflect principles of international law should also be incorporated in the national policy and legal frameworks.

With respect to the assessed policy and legal instruments, some gaps have been identified which should be addressed to ensure full implementation of an EAF in the country. Noting that the Fisheries Act is under review, consideration should be given to assess the gaps identified in this report in coordination with other amendments that may be provided to other relevant policy and legal instruments assessed.

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<sup>3</sup> See Appendix A of the EAF Legal Diagnostic Tool.

The following subjects could benefit from a detailed review and update in the relevant policy and legal instruments: “institutional arrangements” (especially conflict management and integrated management of aquatic ecosystems), “control on fishing operations” (especially TACs), “fisheries management” (particularly FMPs), “MCSE” (especially the detailed recording information, registration process, cooperation and coordination on registration), “research” and “sanction scheme”.

The review of the policy and legal instruments with respect to “control on fishing operations”, “fisheries management” and “MCSE” could be led by fisheries whereas others, such as “institutional arrangements”, “research” and “sanction scheme”, would require a more active involvement of other sectors in the review of their transversal relevant provisions.

This preliminary assessment is aimed at assisting legal practitioners, policymakers and fisheries managers in taking the necessary steps for improving the EAF implementation in their country.

The review of national policies and/or legislation is one of the many ways or processes through which an assessment of the implementation of the EAF can be conducted. It provides a country with the opportunity to reassess its respective policy and legal frameworks, identify the gaps and/or needs for improvement, and present recommendations for enacting new policies and/or legal instruments for an EAF, and/or amending the existing ones to bring them fully in line with an EAF.

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## Appendix A. List of national policy and legal instruments assessed in this report

Identification	Instruments of SOUTH AFRICA
<b>A</b>	<b>Fisheries Policies</b>
A1	2021 General Policy on the allocation of commercial fishing rights
A2	2017 National Framework on Marine Spatial Planning in South Africa
A3	2015–2025 Second National Biodiversity Strategy and Action Plan
A4	2015–2020 Environmental Implementation and Management Plan
A5	2012 Policy for the Small-Scale Fisheries Sector
A6	2011 National Development Plan (Vision for 2030)
A7	2008 National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries
<b>B</b>	<b>Fisheries Primary Legislation</b>
B1	Act No. 18/1998 on Marine Living Resources, as last amended in 2014
B2	Act No. 12/1988 on Sea Fishery, partially repealed by the Marine Living Resources Act
<b>C</b>	<b>Fisheries Secondary Legislation</b>
c1	Government Notice No. 1067/2016 on the duration of small-scale fishing rights
c2	Government Notice No. 229/2016 on Small-scale Fishing regulations
c3	Government Notice s No. 62/2008 Protection of Wild Abalone regulations
c4	Government Notice No.1111/1998 on Marine Living Resources regulations, as last amended in 2015
<b>D</b>	<b>Other Sector's Primary Legislation</b>
D1	Act No. 16/2008 on Marine Spatial Planning
D2	Act No. 24/2008 on Integrated Coastal Management, as amended in 2014
D3	Act No. 10/2004 on National Environmental Management Biodiversity, as amended in 2009
D4	Act No. 57/2003 on National Environmental Management Protected Areas, as last amended in 2014
D5	Act No. 2/2000 on Promotion of Access to Information, as last amended in 2019
D6	Act No. 107/1998 on National Environmental Management, as last amended in 2015
D7	Act of 1998 on Maritime Safety Authority
D8	Act of 1998 on Ship Registration
D9	Act No. 73/1989 on Environment Conservation, as last amended in 2009
<b>E</b>	<b>Other Sector's Secondary Legislation</b>
E1	Government Notice s No. 382/2019 on Coastal Waters Discharge regulations
E2	Government Notice s No. 711/2017 on Dumping at Sea regulations
E3	Government Notice No. R 477/2017 Threatened or Protected Marine Species Regulations
E4	Government Notice No. 476/2017 on the Lists of Marine Species That Are Threatened or Protected, Restricted Activities that Are Prohibited and Exemption From Restriction
E5	Government Notice No. 382/2016 on Management of Protected Areas Norms and Standards
E6	Approximately 43 regulations and notices declaring and managing multiple marine protected areas
E7	Government Notice No. 892/2014 on Environmental Impact Assessment Listing Notice, as amended in 2017 and 2018
E8	Government Notice No. R 497/2002 on Ship Registration regulations, as amended in 2008

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

## Appendix B. Ecosystem Approach to Fisheries Legal Checklist applied against selected national policy and legal instruments

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	<b>Scope and definitions</b>								
General guidelines	1.	– Clearly outline the geographic and substantive scope of the application.	✓	✓	•	✓	✓	(b1) Sections 1, 3–4 (d1) Sections 1–2 (d2) Sections 2–6 (e5) Regulation 2	Provision in (b1) defines ‘South African waters’, which is useful to delineate the geographical scope of application.
	<b>Principles and objectives</b>								
C.1 EAF concepts C.3 Precautionary approach C.4 Stakeholder participation C.6 Integration of lower level authorities	2.	– Clearly define and apply the precautionary approach.	✓	✓	•*	✓	✓	(A1) Chapter 4.2 (A2) Chapter 2(2.4) (A5) Chapter 2(2.4) (A7) Pages 25–26 (b1) Section 2(c) (d1) Section 5(1) (e3) Regulations 67(3) and 68(3)	A clear definition of the precautionary approach is only provided in (A2). Provisions in (b1), (d1) and (e3) d do not define the precautionary approach, but such definition is found in (A2).
C.7 Conflict management and C.11, C.13, C.14 and C.17	3.	– Broaden stakeholder participation with integration of lower level authorities and bodies.	✓	✓	•*	✓	•	(A2) Chapter 2(2.4) (A3) Pages 23 and 25 (A5) Chapter 3(3.1[k]) (b1) Section 2(h)(k) (d1) Section 5(1)(c)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
4.	– Ensure the right of access to fair and transparent information.		✓	X	X*	✓	●	(A2) Chapters 2(2.4) and 5(5.3) (A5) Chapter 4(4.4) (A6) Chapter 9 (D1) Section 7	
5.	– Promote institutional coordination, cooperation and integration.		✓	X	X*	✓	●	(A2) Chapter 2(2.4) (A4) <sup>4</sup> Pages 8–9 (A5) Chapter 3(3.2[h]) (D1) Section 5(1)(c) (D2) Section 2(b) (D4) Section 2(b)	
6.	– Maintain ecological relationships among harvested, dependent and associated species.		✓	✓	X*	✓	✓	(A2) Chapter 2(2.4) (B1) Section 2(e)(m) (D1) Section 5(1)(d) (E5) Regulation 3(j)	
7.	– Promote sustainable development and avoid overexploitation of marine living resources.		✓	✓	●*	✓	✓	(A1) Chapter 4.2 (A2) Chapter 2(2.4) (B1) Section 2(a)(b) (D1) Section 5(1)(a) (D6) Section 2(4)(a) (E5) Regulation 3(h)	

<sup>4</sup> Disclaimer to avoid confusion: The references to the pages of this policy correspond to the page number of the policy itself and not to the Gazette page number where it was published.

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
8.	– Preserve marine habitat, conserve and restore marine living resources and biodiversity.	✓	✓	●*	✓	✓	(A1) Chapter 4.2 (A3) Page 25 (B1) Section 2(f) (D3) Section 2 (D4) Section 2(c) (D6) Section 2(4)(a) (E5) Regulation 3(a)–(c), (j)	
9.	– Promote ecosystem well-being, including the human biotic and abiotic components.	✓	✓	●*	✓*	✓*	(A1) Chapter 4.2 (A2) Chapter 2(2.4) (B1) Section 2(e) (D1) Section 5(1)(d) (D6) Section 2(4)(a)(r) (E5) Regulation 3(d)(f)(l)	
10.	– Promote adaptive management measures, including their regular monitoring and review.	✓	X	X*	✓*	●*	(A2) Chapter 2(2.4) (A3) Page 38 (D1) Section 5(1)(e)	
11.	– Harmonize management measures, including those for shared resources.	X	∅	X*	X*	X*	(B1) Section 42	Provision in (B1) concerns exchange of information with other States that are party on conservation and management measures to which South Africa is a party.
12.	– Reduce and manage conflict between users and stakeholders over fisheries resources and ecosystems.	✓	∅	X*	✓*	●*	(A2) Chapter 2(2.4)	References in (A6) address spatial

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
							(A5) Chapters 3(3.2(b)), 4(4.4.1) and 6(6.2.8) (A6) Pages 251–253 (B1) Section 43(c) (D1) Section 5(1)(i)(2)	conflicts, which can be used as example for conflict over fisheries resources and ecosystems. Provision in (B1) concerns MPAs.
13.	– Consider socioeconomic contexts (e.g. employment, livelihoods, equity, poverty, gender) when designing and implementing management measures.	✓	✓	●*	✓*	✓*	(A1) Chapter 4.2 (A2) Chapter 2(2.4) (A3) Pages 36–37 (A5) Chapter 1 (B1) Section 2(d)(j)(l) (D1) Section 5(1)(b)(j) (D6) Section 2(1)(a)(3) (E5) Regulation 3(k)	
14.	– Promote management measures, designate the authority and outline the timeline and process for their monitoring and review.	✓	∅	X*	∅*	X*	(A3) Pages 40–41 (B1) Sections 14–17 (D1) Section 6	Provisions in (B1) and (D1) lack the definition of the timeline and the process for monitoring and review.
15.	– Provide for the establishment of MCSE measures.	✓	✓	●*	●*	●*	(A5) Chapter 4(4.3.2) (B1) Sections 50–57	
16.	– Promote ecosystem-based research plans/priorities, designate the authority and outline the timeline and process for their monitoring and review.	✓	X	X*	●*	●*	(A2) Chapter 2(2.4) (A3) Pages 61–63 and 77 (A4) Page 82 (A5) Chapter 4(4.4.3, 4.4.4)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
								(A7) Pages 23–24	
	17.	– Promote the right of access to education and awareness raising on EAF.	✓	X	X*	∅*	●*	(A2) Chapters 2(2.4) and 5 (5.4.7) (A3) Pages 50–51 (A5) Chapters 3(3.1(h)) and 4(4.4.3) (A6) Chapter 9 (D5) Section 9	Provision in (A2) encourages communities and citizens to broadly engage in education about the sea and participation in marine management. Provision in (D5) concerns the overall right to access to information.
		<b>Institutional arrangements</b>							
C.2 Management boundaries and measures	18.	– Ensure new management boundaries, measures and plans are: (a) ecologically meaningful considering resource ranges, habitats and other ecological factors.	✓	✓	X	✓*	✓*	(A5) Chapter 5(5.1.2) (B1) Section 43 (D1) Section 9(2)(b) (D2) Section 8 (D4) Sections 17 and 20 (E5) Entire Regulation	
C.4 Stakeholder participation		(b) overlapped closely and are harmonized with well-established management boundaries and governance structures.	✓	∅	X	✓*	✓*	(A5) Chapter 5(5.1.2) (B1) Section 43 (D1) Section 8 (D2) Sections 26–32 (E5) Entire Regulation	Provision in (B1) does not clearly refer to harmonization with existing management boundaries.
C.5 Coordination, cooperation and integration									

**Perceived level of alignment with the EAF legal requirement**

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
C.7 Conflict management	19.	– Promote states cooperation on the harmonization of management measures and plans (bilaterally, regionally and internationally).	✓	✓	X	✓*	●*	(A2) Chapter 2(2.8) (A3) Page 49 (B1) Section 2(i), 38(2), 42 (D1) Section 5(1)(k)(l)	
C.8 Integrated management of aquatic ecosystems	20.	– Establish transparent and accessible mechanisms, bodies (including lower level authorities) or processes to:	✓	✓	X	✓*	✓*	(A5) Chapter 5(5.1.2) (B1) Section 43 (D1) Section 9(2)(b) (E5) Entire Regulation	
		(a) support well-established management boundaries and governance structures on the basis of ecosystem considerations.	✓	✓	X	✓*	✓*	(A2) Chapter 5 (A5) Chapter 4(4.1.1 and 4.3.1) (B1) Section 15(2)(3) (D2) Sections 16–24	
		(b) outline conservation and management measures, including FMPs, at local and national levels.	✓	✓	X	✓*	●*	(A2) Chapter 5 (A5) Chapter 4(4.1.1 and 4.3.1) (B1) Section 15(2)(3) (D2) Sections 16–24	
		(c) facilitate coordination, cooperation and integration of management decisions, regulatory action, environmental policies, plans and programs.	✓	X	X	✓*	●*	(A3) Pages 30, 69–70 (D1) Section 9 (D2) Sections 16–24, 35 (D3) Sections 38–49 (D6) Section 23	
		(d) monitor, assess and align the various environmental policies and plans.	✓	X	X	✓*	●*	(A3) Page 44 (A4) Pages 37–40 (D2) Section 35 (D3) Sections 38–49 (D6) Sections 11–16	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	(e) manage conflict over fisheries, relevant resource and ecosystem, including parameters for decision-making and resolving the conflict.	✓	X	✓	∅*	●*	(A2) Chapter 2(2.4) (A5) Chapters 3(3.2[b]), 4(4.4.1) and 6(6.2.8) (A6) Pages 251–253 (c2) Regulation 5(2) (D1) Section 5(1)(i)(2), 9(3)(b) and 10(6)(b)	Provisions in (D1) concern the context of MSP.
	(f) ensure integrated management of aquatic ecosystems (e.g. integrated coastal zone) based on ecosystem delimitations.	✓	X	X	✓*	●*	(A2) Chapter 2(2.8) (A3) Pages 42–43 (D2) Section 35 (D6) Section 23	
	(g) ensure periodic reviews of managed aquatic ecosystems that assess the state of aquatic resources, levels of pollution, habitat degradation and other factors.	X	X	X	X*	X*		
	(h) ensure periodic reviews of integrated management plans to assess objectives and indicators and to determine any potential needs for adjustment or revision.	X	X	X	✓*	●*	(D2) Section 35(4)	
	(i) ensure periodic reviews of conflict management processes.	X	X	X	X*	X*		
21.	– Clearly outline powers, roles and responsibilities of all bodies, designated authorities, their relationships and processes, avoiding overlapping and conflicting mandates.	✓	✓	X	✓*	●*	(A3) Pages 10–14 (B1) Sections 6, 29–34 (D1) Sections 9(2) and 11(5) (D2) Sections 35, 39 and 42 (D3) Sections 10–11	
22.	– Outline mandates for the government institutions to:	✓	X	X	✓	●	(A2) Chapter 2(2.6.1)	

**Perceived level of alignment with the EAF legal requirement**

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	(a) coordinate efforts, cooperate and integrate approaches, from the local to the national levels.						(A3) Pages 69–70 (A4) Pages 41–44 (A5) Chapters 4(4.1.1 and 4.3.1) and 5(5.2.2) (D1) Section 9 (D2) Sections 16–24, 35, 39 and 42	
	(b) coordinate, cooperate and integrate the regional and international processes and arrangements.	✓	✓	X	✓	●	(A2) Chapter 2(2.8) (A3) Pages 49 and 63 (A4) Page 83 (B1) Section 2(i), 38(2), 42 (D2) Section 21	Provision in (B1) broadly refers to application of international law obligations.
	(c) allocate financial, human and material resources to ensure the integration of lower level authorities	✓	X	X	X	X	(A1) Chapter 8.2 (A3) Page 71–72	Provision in (A3) establish a Resource Mobilization Plan with the financial resources required for its implementation.
	<b>Stakeholder participation, coordination, cooperation and integration</b>							
C.4 Stakeholder participation C.5	23. – Ensure bodies established are broadly representative (from industry, the artisanal sector, academia, civil society and local communities) and processes allow for stakeholder and institutional participation and coordination, engaging and integrating lower level authorities or bodies when resources are affected at local level.	✓	✓	X	✓	●	(A2) Chapter 2(2.6.1) (A5) Chapter 5(5.2.2) (B1) Sections 7 and 34 (D1) Section 9(1) (D3) Sections 13–22	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
Coordination, cooperation and integration	24.	– Establish and properly publicize public meetings or hearings.	X	X	X	X	X		
C.6 Integration of lower level authorities, bodies and stakeholders	25.	– Allow for sufficient and reasonable time for comments on proposed management decisions or actions (e.g. in meetings and in writing).	X	X	X	✓	●	(D2) Section 85(1)	
C.8 Integrated management of aquatic ecosystems	26.	– Promote international cooperation for effective integrated management of aquatic ecosystems.	∅	✓	X	✓	●	(A2) Chapter 2(2.8) (A3) Page 30 (B1) Sections 2(i), 38(2), 42 (D1) Section 5(1)(k)(l)	References in (A2) and (A3) do not explicitly refer to integrated management of aquatic ecosystems.
		<b>Fisheries management</b> <b>Catch/output controls</b>							
C.9 Controls on fishing operations	27.	– Establish limits on the amount of fish that may be removed from a fishery in a given period of time (e.g. TAC), restrict the number of fish that may be landed in a day (e.g. bag limit) or place limits on the amount of acceptable bycatch and/or discards from a fishery – all based on scientific data and maximum sustainable yield and the precautionary principle.	✓	✓	✓	N/A	N/A	(A1) Chapter 8.1 (B1) Section 14(1)(3)–(5) (C4) Regulations 16–57	
C.10 Fishery management plans	28.	– Ensure authority to institute TACs and to allocate individual quotas is representative, including representatives from lower levels of government.	✓	✓	✓*	N/A	N/A	(A1) Chapter 8.1 (B1) Sections 14(2) and 31 (C2) Regulations 2–4	
C.17 Monitoring and review	29.	– Ensure procedure for TACs outlines the category of vessels to which the TAC applies; period of time for which the TAC is declared; process for sub-dividing the TAC into individual	✓	✓	✓	N/A	N/A	(A1) Chapter 8.1 (B1) Sections 14, 18 and 31	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	quotas; timeline, authority and participatory process for periodic monitoring and review.							(c2) Regulations 2–4, 6 (c4) Regulations 13–57	
	30.	– Coordinate the TACs for shared stocks or highly migratory species with international or regional management measures.	X	X	X*	N/A	N/A		
	31.	– Monitor the catch in real-time and close a fishery when the TAC is reached.	X	X	X*	N/A	N/A		
	32.	– Attach catch controls to licenses and access agreements, including authority responsible for allocating, issuing and regulating quotas, and the procedure to be followed.	X	✓	✓*	N/A	N/A	(b1) Sections 18(6A), 21(3), 38(1) (c4) Regulations 13–57	
	33.	– Outline the ability to institute additional catch controls (e.g. bag limits for recreational fishing), including the authority responsible for allocating, issuing and regulating quotas, and the procedure to be followed.	✓	✓	✓*	N/A	N/A	(A1) Chapter 8.1 (b1) Sections 31–32 (c4) Regulations 16–57	
	<i>Effort/input controls</i>								
C.9 Controls on fishing operations C.10 Fishery management plans C.17 Monitoring and review	34.	– Define a broad fishing license scheme to regulate access to fisheries and fishing vessels with timeline, authority and process for renewing the license, monitoring and compliance, and permit suspension and revocation of the license for non-compliance.	✓	✓	●*	N/A	N/A	(A1) Chapters 5–8 (b1) Sections 13, 18–28 and 39–40	
	35.	– Designate authority responsible for allocating, issuing and regulating licenses, specified license duration, requirement of a fee and conditions that may be attached to licenses.	✓	✓	✓*	N/A	N/A	(A1) Chapters 5–8 (b1) Sections 18–28 (c1) Entire regulation (c3) Entire regulation (c4) Regulations 4–7, Annexure 1	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	36.	– Outline process for establishing provisions for effort controls (e.g. limitation on vessel capacity, on expansion of fishing fleet, on allowable days spent at sea).	✓	X	✓*	N/A	N/A	(A1) Chapter 8.1 (C4) Regulations 28, 30, 33, 35, 41, 51, 53, 56	
	37.	– Outline specific details of fishing license scheme (e.g. number of licenses to be allocated, permit conditions for each fishery).	X*	X*	X	N/A	N/A		
	38.	– Empower the designated authority to establish additional regulations for licensing.	X*	✓	●*	N/A	N/A	(B1) Section 21(3)	
	39.	– Empower authority to regulate effort controls and respective parameters.	✓*	✓	●*	N/A	N/A	(A1) Chapter 8.1 (B1) Sections 14(2), 16, 18(7)	
	<b>Fishing gear and method controls</b>								
C.9 Controls on fishing operations C.10 Fishery management plans C.17 Monitoring and review	40.	– Establish requirements on fishing gear and methods that are permitted for use within a given fishery or area, including related technical specifications (e.g. general prohibitions on types of gear, methods, specifications on gear design, minimum mesh sizes).	X	✓	✓	N/A	N/A	(B1) Sections 43(2) and 45 (C4) Regulations 11–12, 25, 86	
	41.	– Outline prohibitions on highly destructive gear and fishing methods (e.g. fishing by toxic substance, explosives, electricity, fishing with the use of light).	X	✓	●*	N/A	N/A	(B1) Sections 43(2)(c) and 44	
	42.	– Outline requirements aimed at reducing negative impacts of fishing methods and gear (e.g. prohibition of trawling in areas with sensitive seabed habitat, require use of biodegradable nets, restrict the use of FADs or require use of bycatch reduction devices).	✓	✓	✓	N/A	N/A	(A7) Entire policy (B1) Sections 43(2)(e) and 47–48 (C4) Regulations 13–21	
	<b>Spatial and temporal controls</b>								
C.9	43.	– Regulate area and time in which fishing operations may or may not take place (e.g. closed areas/seasons), closed or	X	✓	✓*	N/A	N/A	(B1) Section 43(2)	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
Controls on fishing operations c.10 Fishery management plans c.17 Monitoring and review		restricted-use areas, which prohibit or limit fishing operations (e.g. protection of artisanal fishing).						(c4) Regulation 9–10, Annexure 2	
	44.	– Empower authority to define spatial and temporal controls and the procedure.	X	✓	●*	N/A	N/A	(b1) Section 17, 18(7) and 19(1)	
	45.	– Ensure stakeholder and institutional consultation, both at national and lower levels, in the process of defining spatial and temporal controls.	X	∅	X*	N/A	N/A	(b1) Sections 17 and 19(1)(b)	Provisions in (b1) only ensure stakeholder consultation with respect to priority fishing areas.
	46.	– Establish technical details and specifics on spatial controls.	X*	X*	✓	N/A	N/A	(c2) Regulation 5 (c4) Regulations 10, 16, 20, 40, 47	
		<b><i>Fishery management plans</i></b>							
C.9 Controls on fishing operations C.10 Fishery management plans C.17 Monitoring and review	47.	– Designate authority with power and responsibility to develop, approve, adopt and publicize a FMP, clearly outlining the roles and responsibilities.	∅	✓	●*	N/A	N/A	(A5) Chapter 5(5.1.3) (b1) Section 15(2)(3)	Reference in (A5) do not clearly outline the roles and responsibilities of the designated authority.
	48.	– Ensure FMPs and measures comply with established integrated management plans for aquatic ecosystems involving e.g. protected areas or critical habitat.	✓	X	X	X*	X*	(A5) Chapter 5(5.1.3)	
	49.	– Establish process for approval, adoption and publication of FMP with its periodic review.	X	∅	X*	N/A	N/A	(b1) Section 15(2)(3)	Provision in (b1) is limited to address the preparation and approval process of the FMP.
	50.	– Detail process of drafting FMP, including multi-level and multi-sector collaboration and consultation with stakeholders, and a	X	∅	X*	N/A	N/A	(b1) Section 15(2)(3)	Provision in (b1) empowers the

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	participatory transparent process for monitoring and reviewing the FMP at a minimum within five years of their development.							Minister to approve FMPs without detailing the consultation process nor the minimum time frame of duration of the plan.
51.	– List the minimum requirements in the FMPs:	X	X	X*	N/A	N/A		
	(a) management objectives that take into account EAF;	X	X	X*	N/A	N/A		
	(b) biological description of fishery and ecosystem in which it takes place;	X	X	X*	N/A	N/A		
	(c) social, economic and institutional aspects of the fishery;	✓	X	X*	N/A	N/A	(A5) Chapter 5(5.1.3)	
	(d) species composition and levels of bycatch, both retained and discarded;	X	X	X*	N/A	N/A		
	(e) ecological relationships between harvested, dependent and associated species;	X	X	X*	N/A	N/A		
	(f) impact of other anthropogenic activities on the ecosystem; and	X	X	X*	N/A	N/A		
	(g) a review of the relationship with other coastal or marine resource management plans.	X	X	X*	N/A	N/A		
	<b>Conservation measures</b>							
C.14 Habitat and biodiversity conservation and restoration	52. – Incorporate the consideration of habitat and biodiversity in the processes for establishing management measures (e.g. outline habitats and species related to the fishery and take measures to limit the negative impacts of fishing on them) or gear regulations.	✓	✓	✓*	✓*	✓	(A3) Pages 40–42, 59–60 (A4) Pages 37 and 46 (B1) Sections 43–46 (C4) Regulations 9–59 (D3) Section 57 (E4) Entire Regulation	

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
53.	– Ensure special protection for marine mammals, sea turtles and other particularly vulnerable marine life (e.g. set prohibitions or limitations), in coordination with other national designations or protections and regional and international conservation and management measures.	∅	∅	X*	●*	✓	(A7) Entire policy (B1) Section 77(2)(v) (E4) Entire Regulation	Reference in (A7) is focused on protecting seabirds from bycatch in longline fisheries  Provision in (B1) empowers the Minister to make regulations on the taking of turtles
54.	– Ensure coordination between the various authorities involved in marine environment protection.	✓	X	X*	✓*	●	(A3) Pages 69–71 (D2) Sections 35, 39 and 42	
55.	– Establish mechanisms and designation of authority responsible for establishing:  (a) designation and protection of threatened and endangered species, ensuring cooperation among the authorities throughout the listing process, definition and qualifying factors of each designation, process for listing, including steps for consultation and the special protections associated with the designations.	∅	∅	X*	✓*	✓	(A3) Pages 30–31 (B1) Section 77(2)(y) (D3) Sections 51–58 (E4) Entire Regulation (E3) Entire Regulation	Reference in (A3) outlines measures for the protection of threatened species, but not the process for their designation.  Provision in (B1) empowers the Minister to make regulations on the establishing of measures for the protection of specified species.
	(b) protected areas, ensuring the outline of the type of protected areas, description of their levels of protection (e.g. marine reserve, parks, sanctuaries or MPAs), the process for nominating, establishing and managing a protected area, including stakeholder participation particularly of local communities, consultation and	✓	∅	∅*	✓*	✓	(A3) Pages 27–30 (B1) Section 43 (C4) Regulation 75 (D3) Sections 16–24 (D3) Sections 9–36	Provisions in (B1) and (C4) do not specify the level of protection nor require stakeholder participation and coordination with the various authorities.

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	coordination with various authorities, both at national and local levels.						(E5) Entire Regulation	
	(c) the restoration of damaged habitat and ecosystems, ensuring the process through which it is decided when, where and how a damaged habitat/ecosystem shall be restored, and the establishment of funds that may be used to engage in restoration activities.	✓	X	∅*	✓*	●	(A3) Pages 35–37 and 60–62 (c4) Regulation 65(2)(3) (D2) Sections 60 and 92 (D3) Section 11(1)(m)(n) (D4) Section 17	Provision in (c4) concerns restoration of sites in the context of cessation of mariculture.
	56. – Ensure educational and awareness-raising activities for promoting habitat and biodiversity conservation and restoration with the establishment of special funds to support such activities.	✓	X	X*	✓*	●	(A3) Pages 50–51 (D2) Section 38(2)(g)	
C.15 Regulation of activities potentially harmful to aquatic ecosystems	57. – Adopt measures to:  (a) regulate and reduce pollution of the aquatic ecosystems which should apply to all activities that might have an impact (including fishing, mining, shipping, etc.) and cover all types of pollution including bycatch, discharge of waste, vessel emissions, coastal runoff.	✓	✓	✓	✓	✓	(A3) Page 45 (B1) Sections 43(2)(c) and 77(2)(w) (C4) Regulation 87 (D2) Sections 71–72 (D6) Sections 28–31 (D7) Section 3 (D8) Sections 21–23 (E1) Entire regulation (E2) Entire regulation	
	(b) promote energy efficiency and reduce emissions that are applicable to fishing vessels, merchant shipping vessels and extractive industries, including through fuel efficiency standards, vessel size limitations and equipment restrictions for fishing vessels.	∅*	X*	X*	X	X	(A3) Page 49	Reference in (A3) requires the integration of biodiversity considerations into management and tools on renewable

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
	(c) prevent and eliminate ghost fishing with the prohibition of the abandonment of fishing gear, notification of authorities when fishing gear is lost, regulation of materials used in the manufacture of gear.	X	✓	✓	X	X	(b1) Sections 46 and 49 (c4) Regulation 28(4)	and non-renewable energy.
	58. – Require authorization prior to the planned introduction of any species, including species meant for aquaculture or fish stocking, taking into account the precautionary approach, and establish measures to prevent the escape of exotic species into the wild.	X	X	✓	✓	●	(c4) Regulation 70 (d3) Sections 65–79	
	59. – Regulate marine extractive activities (e.g. marine mining for minerals or petroleum, harvesting of marine plants) and other potentially harmful activities, including the construction of installations for use by industry, laying of underwater cables, military exercises, shipping.	X	X	X	✓	●	(d3) Sections 80–93	
C.16 EIS or EIA	60. – Require EIS or EIAs for activities that have the potential to affect ecosystems that support fisheries (e.g. fishing, aquaculture, mining, petroleum extraction, coastal development).	✓	∅	✓	✓	✓	(A3) Pages 43–44 (b1) Section 18(3) (c4) Regulation 61 (1) and 69 (d3) Sections 71(2), 78(1), 89 (d6) Section 24(4a) (E3) Regulation 13 (E7) Regulation 23(1)	References in (A3) recognizes the incorporation of EIA processes in legislation and regulations. Provision in (b1) empowers the Minister to require an EIA for the application of fishing rights
	61. – Detail components of EIS or EIA, which should at least discuss the purpose/need for the activity, the ecosystem that may be affected, potential impacts of the proposed activity and	X	X*	∅*	∅	✓	(c4) Regulation 69(3) (d6) Section 24(5) (E3) Regulation 14	Provision in (c4) establishes the overall obligation to conduct an EIA empowering

**Perceived level of alignment with the EAF legal requirement**

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	potential alternatives or mitigation and rehabilitation measures.								the Minister to determine its guidelines. Provision in (b6) cross refer to regulations to be adopted by the Minister or a Member of the Executive Council to whom the Premier has assigned (MEC) in concurrence with the Minister the procedure for the preparation, evaluation and adoption of an EIA and related instruments .
62.	– Establish process for submission, review and decision-making on the EIS or EIA, with designation of authority responsible for receiving, reviewing and deciding upon the EIS or EIA (e.g. the minister responsible for environment), opportunity for public participation (e.g. comment periods and hearings), consultation with other relevant government institutions or localities, and determination of adequate mitigation measures.		X	X*	X*	∅	✓	(b6) Section 24(5) (E3) Regulation 14–21	Provision in (b6) cross refer to regulations to be adopted by the Minister or an MEC in concurrence with the Minister the procedure for the preparation, evaluation and adoption of an EIA and related instruments.
	<b>Fishery monitoring and research</b>								

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
C.13 EAF research	63.	– Establish research programme for furthering the knowledge and understanding of EAF.	✓	X	X*	∅	∅*	(A3) Pages 50–51 (A5) Chapters 3(3.1(h)) and 4(4.4.3) (A6) Chapter 9 (D3) Section 50 (E5) Regulation 12	Provision in (D3) broadly addresses research on the various components of biodiversity and in (A6) the vision for education, training and innovation is general and not directly on an EAF. Provision in (E5) is limited to research programme in protected area.
	64.	– Designate authority for conducting and involving stakeholders in the research programme.	✓	X	X*	✓	∅*	(A3) Pages 50–51 (A5) Chapters 3(3.1(h)) and 4(4.4.3) (A6) Chapter 9 (D3) Section 50 (D4) Section 55(2)(c) (E5) Regulation 12	Provision in (E5) is limited to research programme in protected area.
	65.	– Ensure the research programme’s objectives are based on EAF principles, which may include research on inter-species interactions, the impact of fishing on target and non-target stocks, the identification of spawning and nursery areas, areas of critical habitat, rates of bycatch and discards per fishery, the incidence and effect of pollution on fisheries, the status of ecosystem biodiversity, the social and economic dimensions (such as employment, food security), income distribution and other considerations.	X	X	X*	∅	∅*	(D3) Section 50 (E5) Regulation 12	Provision in (D3) lacks specific fisheries issues. Provision in (E5) is limited to research programme in protected area.

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
	66.	– Consider the findings of the EAF research in the adoption of conservation and management measures.	✓	X	X*	✓	∅*	(A5) Chapters 3(3.1(h)) and 4(4.4.3) (D3) Section 50 (E5) Regulation 12	Provision in (E5) is limited to research programme in protected area.
		<b>MCSE</b>							
C.11 MCSE	67.	– Outline an observer scheme with details on the categories of vessels/fisheries that it applies to and the role that observers play (which may be tailored to the category of vessel or the type of fishery and may be limited to the collection of catch/effort data and the collection of scientific samples, or may include the authority to register and/or report violation of management measures).	X	✓	✓	N/A	N/A	(B1) Section 50 (C4) Regulation 82	
	68.	– Ensure observers have full access to all parts of the vessel and its equipment and to any place in the country where fish that have been caught in national waters are uploaded, processed, stored or transshipped.	X	∅	∅	N/A	N/A	(B1) Section 50(5) (C4) Regulation 82(1)	Provision in (B1) requests the holder of the licence or permit to allow observers to board for the purpose of performing their functions without detailing what they can have access to in the performance of such functions which is regulated under C4. Provision in (C4) establish the powers of observers but do not specifically provide for the full access to all parts of

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
								the fishing vessel and its equipment.
69.	– Design the scheme in line with regional or international requirements, taking into account relevant regional observer programs.	X	X	X	N/A	N/A		
70.	– Ensure VMS is required for vessels licensed to fish in national waters and ABNJ, detailing specific categories of fishing vessels and/or fisheries to which it applies.	X	X	✓	N/A	N/A	(c4) Regulation 76	
71.	– Ensure reporting of catch and effort data, clearly identifying the vessels that are expected to report (at least all commercial fishing vessels that fish within national waters and all nationally-flagged vessels authorized to fish within waters under national jurisdiction and in ABNJ), to whom they are required to report (the designated authority), the frequency and timing of their reports, and the method or format in which they are required to report (e.g. weight of fish caught, including percentage of bycatch, species, dates of fishing, fishing zones, gear/methods employed, type of vessel, time of departure from national waters and catch status at that time).	∅	∅	✓	N/A	N/A	(A5) Chapter 5 (5.1.4) (B1) Section 71(1)(g), 77(2)(u), (c4) Regulations 8 and 79	Reference in (A5) establishes the general obligation of recording fisheries data as a control measure.  Provision in (B1) empowers the Minister to make regulations on the requirement of reporting statistical data, including fishing logbooks; the catch report is admissible as evidence.
72.	– Ensure the establishment and maintenance of a record of fishing vessels licensed to fish in waters under national jurisdiction and nationally flagged vessels authorised to fish in ABNJ with the designation of the authority responsible for its maintenance and information to be recorded for each category of vessel.	X	∅	X	✓	✓	(B1) Section 12 (D8) Sections 7–11, 15–18 (E8) Entire regulations	Provision in (B1) required the Director-General to keep a register of all permits and licences granted pursuant to the Act without specifying

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
									which vessels are covered.
73.	<p>– Ensure the records of industrial fishing vessels include the name of the vessel, the flag state and any previous flag states, the radio call sign, the International Maritime Organization (IMO) number, the automatic identification system (AIS) and the VMS, if relevant the vessel length and tonnage, if relevant the fishing methods and gear used, the name and nationality of operator and beneficial owners of the vessel, and any transgressions of fisheries legislation associated with the vessel.</p>		X	∅	∅	N/A	N/A	<p>(b1) Section 1 (c4) Regulation 4</p>	<p>Provision in (b1) empowers the Minister to determine the format of the register which was adopted under C4 outlining the information the register should contain.</p> <p>Provision in (C4) does not contain all the information required namely with regard to IMO number, AIS and VMS.</p>
74.	<p>– Broadly detail the registration process and ensure registration of all fishing vessels with the relevant fisheries or maritime authority, including information on the name of vessel, the flag state and any previous flag states, the radio call sign, if relevant the IMO number, the AIS and VMS, if relevant the vessel length and tonnage, the name and nationality of the beneficial owners of the vessel, and any transgressions of fisheries legislation associated with the vessel.</p>		X	X	X	∅	N/A	<p>(d8) Entire Regulation (e8) Entire Regulation</p>	<p>Reference in (d8) does not detail the registration process only generally requiring, among other, that to operate in the South African fishing industry the vessel must be registered by the South African Maritime Safety Association (SAMSA) as being suitable for fishing.</p>

Perceived level of alignment with the EAF legal requirement

✓ full    ∅ partial    X none    • not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement	Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
			1ary	2ary	1ary	2ary		
								Provision in <b>(E8)</b> broadly entitle the South African Ship Registration Office to register fishing vessels but does not require these specific information.
75.	– Detail the specifications for marking vessels and fishing gear in accordance with internationally approved standards.	X	X	∅	N/A	N/A	<b>(c4)</b> Regulation 77 and Annexure 14	Provision in <b>(C4)</b> do not require the marking of fishing gear.
76.	– Ensure cooperation and coordination between fisheries and maritime authorities throughout the registration process.	X	X	X	N/A	N/A		
77.	– Ensure authorized officers have enforcement powers, allowing them to board and search vessels (at sea and in port) and other premises related with fishing, to examine logbooks, records, gear and catch, to investigate and collect evidence, to seize fish, gear and vessels, and to interrogate, detain and arrest persons associated with reasonably suspected violations.	X	✓	✓	N/A	N/A	<b>(b1)</b> Sections 51–57 <b>(c4)</b> Regulations 83–84	
78.	– Ensure the controls placed on landing and transshipping of fish, both at sea and in port, and by national and foreign vessels, is in accordance with regional and international instruments.	X	∅	✓	N/A	N/A	<b>(b1)</b> Section 77(2)(l) <b>(c4)</b> Regulations 79 and 85	Provision in <b>(b1)</b> empowers the Minister to make regulations on landing and transshipping.
79.	– Provide additional VMS specifications and specific details on the registration process.	X*	X	∅	N/A	N/A	<b>(c4)</b> Regulation 76	Provision in <b>(c4)</b> does not provide for specific details on the registration process.
	<b>Enforcement processes and sanctions scheme</b>							

**Perceived level of alignment with the EAF legal requirement**

✓ full    ∅ partial    X none    ● not assessed    N/A not applicable    \* optional

EAF components	EAF legal requirement		Fish. policy	Fisheries legislation		Other sectors legislation		Policy and legal basis	Comments and explanatory notes
				1ary	2ary	1ary	2ary		
C.12 Offences, penalties and administrative and judicial processes	80.	– Detail the fisheries-related offences (civil or criminal) and corresponding penalties, weighted depending on the level of severity of the offence but outlined in a way that maintains their strength over time (e.g. utilize formulas such as a percentage of the total market value of the sale of the illegal catch, or penalty units).	X	∅	∅	∅	∅	(b1) Section 58 (c4) Regulation 96 (d4) Section 89 (d9) Section 29 (e3) Regulation 80	Provisions in (b1), (c4), (d4), (d9), and (e3) do not specify the level of severity of the offence, imposing inflexible penalties.
	81.	– Establish transparent and equitable administrative processes for determining and confirming offences, applying relevant penalties, with provision for compounding of offences/out-of-court settlement.	X	X	X	X	X		
	82.	– Establish judicial processes used for determining and confirming offences and applying relevant penalties to the offending parties, allowing for a right of appeal.	X	✓	X	✓	●	(b1) Sections 59–76 (d6) Sections 33–34	



The ecosystem approach to fisheries (EAF) is a risk-based management process for the planning, management, development, regulation and monitoring of fishing and fishing-related activities. EAF addresses ecological consequences of fishing as well as social, economic and institutional aspects of fisheries sustainability. Adequate legislation and regulatory frameworks are key to successful implementation of the EAF. The continuous review and update of information on legislation and regulatory instruments require the analysis of existing legal frameworks at all levels of governance, to assess whether they remain in force, valid and aligned with international fisheries law standards, including the EAF. The present work was prepared with a view to assess the level of alignment of national policy and legal frameworks of South Africa. Based on this preliminary assessment, policymakers, legal practitioners and fisheries managers can take the necessary steps for improving the EAF implementation in their country. These steps could involve the amendment of existing legislation and/or enactment of new legislation and development of new policies to bring fully in line with an EAF.

**For more information:**

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