

The Game (amendment) Act, 1991

(to be read in conjunction with the Game Act, 1953)

(Act No. 4 of 1991)

AN ACT

entitled

An Act to amend the Game Act, 1953 and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Game (Amendment) Act, 1991 and shall be read as one with the Game Act, 1953 referred to in this Act as the "principal Act".

Replacement of section 2.

2. Section 2 of the principal Act is hereby replaced with the following:

"Interpretation.

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

"aircraft" means any machine or apparatus which is capable of flying;

"animal" means any vertebrate animal which is indigenous to Swaziland;

"bird" means any bird, or part thereof, or the nest or eggs of any bird, mentioned in the Second and Third Schedules to this Act;

"common game" means any animal or bird which is named in the Third Schedule or any part of any such animal or bird;

"game" includes specially protected game, royal game and common game, or any part of any such game;

"game farm" means a defined area which is surrounded by a game fence and which is used or is intended to be used for producing sustained surpluses from viable capital stocks of animals or birds for commercial purposes;

"game farmer" means any person who has erected a game fence around his property to enclose a viable population of animals or birds for the purposes of propagating surpluses from capital stocks for commercial reasons;

"game fence" means a fence constructed to a standard which is substantially more than a stock fence and which effectively controls the movement of wild animals out of or into defined area;

"game ranger" means a game ranger appointed by the Minister in terms of subsection (1) of section 23 of this Act, or any person acting on the instruction of any such game ranger;

"hunt" includes shooting at, pursuing, taking, stealing, killing, injuring, snaring, capturing, trapping or wilfully disturbing animals, and the taking or destruction or wilfully disturbing of the eggs or nests of birds;

"manager" means a person actually present and resident upon a property and who is responsible to the owner for the administration thereof;

"Minister" means the Minister responsible for Natural Resources;

"owner" means the registered owner of land or his spouse or children;

"raw product" means the product of any animal or part of any animal which is still intact and unworked or unprocessed or unmanufactured, provided that a polished product, or a product superficially worked so as to camouflage it from being a raw product, shall constitute a raw product;

"royal game" means any animal or bird which is named in the Second Schedule of this Act or any part of any such animal or bird;

"specially protected game" means any animal which is named in the First Schedule to this Act or any part of such animal;

"Swazi area" means Swazi Nation land;

"trophy" means any animal or bird, dead or alive, mentioned in the Second and Third Schedules or any part of any such animal or bird, but shall not include the processed product or manufactured curio or other article manufactured to finished form, or the tanned or brayed skin or part thereof;

"traffick" means dealing in, selling, buying, moving, conveying, possessing or otherwise acquiring or disposing of."

Replacement of section 4.

3. Section 4 of the principal Act is hereby replaced with the following:

"Temporary protection of game.

4. The Minister may from time to time by Notice in the Gazette define areas in Swaziland within which any common game specified in such Notice shall be protected for such period as may be specified in such Notice, and may in like manner vary to revoke such Notice."

Replacement of section 6.

4. Section 6 of the principal Act is hereby replaced with the following:

"Sanctuaries

6. (1) The Minister may by Notice in the Gazette declare any specified area of Swaziland to be a sanctuary for the protection of any animals or birds specified in such Notice, whether or not such animals or birds are included in the First, Second or Third Schedule to this Act, and may in like manner vary the animals or birds to which the protection of the sanctuary shall apply, or extend or restrict the limits of or abolish any such sanctuary:

Provided that where the Minister does not specify in such Notice the animals or birds to which the protection of the sanctuary shall apply, the sanctuary so declared shall be deemed to have been declared for the protection of all indigenous animals and birds within the sanctuary.

(2) Any person who in any sanctuary hunts or attempts to hunt any animal or bird protected within the sanctuary, or takes any trophy of any such animal or bird, or who is found within a sanctuary under circumstances which show he is there for the purpose of hunting or taking trophy of any such animal or bird therein shall be guilty of an offence:

Provided that nothing in this subsection shall apply to a game ranger acting in the execution of his duties or to the holder of a special permit granted by the Minister under subsection (1) of section 16 of this Act.

(3) No person shall camp within the limits of a sanctuary unless he has first obtained a permit issued by a game ranger stating the period for which he may camp.

(4) Any person who contravenes the provisions of subsection (3) shall be guilty of an offence.

(5) It is an offence for any person, other than a police officer acting in the course of his official duty or a game ranger acting in the course of his official duty, to carry any firearm in a sanctuary except under the supervision of the game ranger in charge of the sanctuary."

Replacement of section 8 and 9.

5. Section 8 and 9 of the principal Act are hereby replaced with the following:

"Prohibition of hunting and dealing in specially protected and royal game.

8. (1) No person shall hunt or attempt to hunt or be in possession of a trophy of any specially protected game unless he holds valid permit issued under subsection (1) of section 16, and otherwise than in accordance with the conditions set out in such permit.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of not less than five years but not exceeding fifteen years, without the option of a fine.

(3) Subject to the provisions of section 16, any person who trades or trafficks in the raw product of any specially protected game shall be guilty of an offence and liable on conviction to imprisonment for a period of not less than seven years but not exceeding fifteen years, without the option of a fine.

(4) No person shall hunt or attempt to hunt, or be in possession of a trophy of any royal game unless he is in possession of a valid permit issued under subsection (1) of section 16, and otherwise than in accordance with the conditions set out in such permit.

(5) Any person who contravenes the provisions of subsection (4) shall be guilty of an offence and liable on conviction to a fine of not less than four thousand Emalangeni but not exceeding thirty thousand Emalangeni or, in default of payment, to imprisonment for a term of not less than one year but not exceeding five years:

Provided that in all cases any fine imposed shall not be less than the replacement value of the animals or birds in respect of which the offence is committed.

(6) Any person found guilty of an offence under subsection (1), (3) or (4) shall be required by the Court in addition to any penalty imposed under that subsection, to either replace that game or to compensate fully for its replacement value, failing which such person shall be liable to a further period of imprisonment of not less than two years but not exceeding six years.

(7) Any such replacement or compensation shall be made to the owner of the game or, if ownership of the game cannot be established, to the owner of the property where the game was hunted, and where the owner of such game or property cannot be determined, such replacement or compensation shall be made to the Government.

Licences to hunt game during open season.

9. (1) Subject to section 15, the Minister may issue a licence to any person to hunt common game during the open season provided that:

(a) the written permission of the landowner on whose property the game is to be hunted is produced to the Minister when the application is made for the licence;

(b) the licence clearly specifies the species and number of animals to be hunted;

(c) the licence shall be carried by the licensee when hunting and every animal shot shall be recorded on the reverse thereof immediately the animal is recovered.

(2) The Minister may from time to time by Notice in the Gazette fix the fees to be paid for licences to hunt common game during the open season."

Replacement of section 12.

6. Section 12 of the principal Act is hereby replaced with the following:

"Illegal hunting of game or possession of trophy, aiding and abetting, confiscation and disposal of arms, ammunition, etc.

12. (1) Except as otherwise provided in this section any person who without valid licence or permit issued under this Act or contrary to the provisions of any Notice issued by the Minister under section 4 hunts or attempts to hunt any game or is in possession of a trophy of any game shall be guilty of an offence.

(2) Any person who uses or issues forged or fictitious permit or licence or without lawful authority uses or issues any permit or licence for the purposes of enabling him or another person to traffick illegally in:

(a) specially protected game or any raw product thereof shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than three years but not exceeding eight years without the option of a fine; or

(b) any trophy of any game shall be guilty of an offence and liable on conviction to a fine of not less than two thousand Emalangeneni but not exceeding four thousand Emalangeneni or to imprisonment of not less than one year but not exceeding four years or to both.

(3) Any person who in any way aids, abets or solicits any person to contravene any of the provisions of this act shall be guilty of the same offence as the offender and liable to the same punishment to which the offender convicted of such offence is liable.

(4) Any person convicted of an offence under any section of this Act shall forfeit to the Government by order of the Court any firearm, ammunition, weapon, animal, vehicle, vessel or aircraft which was in his possession at the time of the commission of the offence and any such firearm, ammunition, weapon, animal, vehicle, vessel or aircraft shall be disposed of by public auction by order of the court after proper advertisement, whether or not the convicted person is the owner of such firearm, ammunition, weapon, animal, vehicle, vessel or aircraft, unless such firearm, ammunition, weapon, animal, vehicle, vessel or aircraft is proved by its owner to have been stolen and that the theft has been reported to and duly recorded by the police.

(5) No firearm, ammunition, weapon, animal, vehicle, vessel or aircraft seized by a game ranger or any person acting under his direct authority, or by a police officer, in respect of any alleged contravention of this Act, shall be released by the court unless the accused is acquitted."

Amendment of section 13.

7. In section 13 of the principal Act replace the word "aeroplane" wherever it occurs with the word "aircraft".

Replacement of sections 15 and 16.

8. Sections 15 and 16 of the principal Act are hereby replaced with the following:

"Privileges and rights of landowners, etc.

15. Notwithstanding anything to the contrary in this Act, any person who is -

- (a) the owner, lessee, or manager of any land in Swaziland; or
- (b) lawfully resident on a land in Swazi area,

may at any time, except during the closed season mentioned in section 7 of this Act, hunt any common game, other than common game protected under section 4, on such land without obtaining a licence for that purpose.

Free permits.

16. (1) The Minister or an officer authorised in that behalf by him may issue without charge a permit authorising the holder thereof:

- (a) to hunt, kill or capture any game as specified in species and number on the permit, and on such conditions and for such period as the Ministry may deem fit, if the permission in writing of the owner of the land in respect of which the permit is to be issued has been obtained;
- (b) to import or to export any trophy if it is shown that such trophy has been legally acquired.

(2) The Minister or an officer authorised in that behalf by him may issue without charge a permit to any person to possess a trophy of specially protected game or raw product thereof; provided that the source of such trophy or raw product, if in Swaziland, is authorised in writing by the person on whose land it is taken; provided further that if the source of such trophy or raw product is not in Swaziland, its possession is proved to have been legally acquired."

Replacement of section 19.

9. Section 19 of the principal Act is hereby replaced with the following:

"Export and import of game trophies, etc.

19. (1) Any person who exports from Swaziland or imports into Swaziland any trophy or raw product of any specially protected game without a valid permit issued by the Minister under subsection (2) of section 16, or contrary to the conditions of such permit, shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than five years but not exceeding fifteen years, without the option of a fine.

(2) Any person who exports from Swaziland or imports into Swaziland any trophy of any royal game without a valid permit issued by the Minister under subsection (2) of section 16, or contrary to the conditions of any such permit, shall be guilty of an offence and liable on conviction to a fine of not less than five thousand Emalangeni but not exceeding twenty thousand Emalangeni, or to a term of imprisonment of not less than three years but not exceeding eight years or both.

(3) Any person who exports from Swaziland or imports into Swaziland any trophy of any common game, or any trophy of any other indigenous animal or bird, without a valid permit issued by the Minister under subsection (2) of section 16 or contrary to the conditions of any such permit, shall be guilty of an offence and liable on conviction to a fine of not less than two thousand Emalangeni but not exceeding twenty thousand Emalangeni, or to a term of imprisonment of not less than two years but not exceeding five years or both."

Amendment of section 20.

10. Section 20 of the principal Act is hereby amended by replacing the words "District Commissioner" wherever they occur with the word "Minister".

Replacement of sections 21, 22 and 23.

11. Sections 21, 22 and 23 of the principal Act are hereby replaced with the following:

"Prohibition of trespass in pursuit of game.

21. (1) No person shall be upon any land at any time in pursuit of or in search of game, whether or not he is the holder of a licence issued under this Act, unless he has the permission in writing of the owner of such land.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) Any dog found upon land within a sanctuary may be destroyed forthwith by, or on the order of, the owner or occupier of such land and he shall not be liable to pay any compensation in respect of such destruction.

Right of search.

22. Any game ranger or a police officer who on reasonable grounds believes that there is in any house, tent, vehicle, vessel, receptacle or place -

(a) anything with respect to which an offence against this Act has been, or is suspected to have been, committed;

(b) anything that will afford evidence as to the commission of any such offence; or

(c) anything that is intended to be used for the purpose of committing any such offence,

and that the delay in obtaining a search warrant would defeat the object of the search, may himself search without a warrant for any such thing mentioned in (a), (b) or (c), and seize such thing, if found, and take them before the Court to be dealt with according to

Appointment and powers of game rangers.

23. (1) The Minister after consultation with the Swaziland National Trust Commission may from time to time appoint game rangers for good and sufficient reason may remove or dismiss any such game ranger.

(2) Any game ranger or person acting on the instructions of a game ranger shall have the powers and the right:

(a) to carry and use firearms in the execution of his official duty provided such firearms are properly licensed;

(b) to use firearms in self defence or if he has reason to believe that his life, or the life of any of his colleagues, is threatened or is in danger;

(c) to arrest without a warrant any person suspected upon reasonable grounds of having contravened any of the provisions of this Act or regulations made thereunder;

(d) to use reasonable force necessary to effect the arrest of or to overpower any person who resists arrest and who is suspected on reasonable grounds of having contravened any of the provisions of this Act;

(e) to carry out searches without a warrant under section 22 of this Act.

(3) A game ranger or person acting on the instructions of a game ranger shall not be liable to prosecution in respect of any act or omission done in the exercise of his powers or rights under subsection (2) of this section."

Amendment of section 24.

12. Section 24 of the principal Act is hereby amended as follows:

(i) by replacing subsection (1) with the following:

"Evidence

24. (1) Any trophy seized from any person charged with an offence under this Act or any regulations made thereunder shall be *prima facie* evidence against such person that he has hunted such game."

(ii) by inserting after subsection (4) the following new subsection:

"(5) Where a trophy is required to be produced as an exhibit in any evidence before a court it shall not be necessary to produce any more than a piece of skin, trotter, head or fur or other distinctive part of the animal sufficient to identify such animal and to determine the number of such animal to be produced before the court."

Amendment of section 25.

13. Section 25 of the principal Act is hereby amended by inserting before the words "the Minister" the words "Subject to the provisions of section 15", and by deleting therefrom the words "game reserve or" wherever they occur.

Replacement of section 26.

14. Section 26 of the principal Act is hereby replaced with the following:

"Penalties.

26. (1) Any person who contravenes the provisions of sections 6(2) or (5), 7(1), 12(1), 13, 14 or 20(1), (2) or (3) shall on conviction be liable to a fine of not less than six hundred Emalangenani but not exceeding two thousand Emalangenani or to imprisonment for a period of not less than six months but not exceeding two years.

(2) Any person who contravenes the provisions of section 6(4) or 21(1) shall on conviction be liable to a fine of not less than two hundred Emalangenani but not exceeding five hundred Emalangenani or to imprisonment for a period of not less than one month but not exceeding one year.

(3) In addition to any penalties levied under subsection (1), any person who contravenes the provisions of sections 6(2) or 12(1), shall be required by the Court to either replace that game or to compensate fully for its replacement value, failing which such person shall be liable to a further period of imprisonment of not less than one year but not exceeding three years.

(4) Any such replacement or compensation shall be made to the owner of the game or, if ownership of the game cannot be established, to the owner of the property where the game was hunted, and where the owner of such game or property cannot be determined, such replacement or compensation shall be made to the Government."

Insertion of new sections 27, 28, 29, 30 and 31.

15. There is hereby inserted immediately after section 26 of the principal Act the following new sections:

"Previous convictions.

27. (1) Before passing sentence on any person convicted under this Act, the court shall call upon the prosecutor for a record of previous convictions of that person if any.

(2) Any person who has previously been convicted of an offence under this Act, other than an offence under sections 6(3) and 21(1) shall, upon a second or subsequent conviction, be sentenced to the maximum penalty prescribed in relation to the offence for which he is charged.

(3) Any person including an official who wilfully interferes with the investigation of any case or who in any way obstructs or frustrates the criminal prosecution of any case or who withholds, suppresses or destroys or causes to be withheld, suppressed or destroyed any evidence including records in connection with such case or in any way attempts to defeat the ends of justice shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than twelve months and not more than twenty four months without the option of a fine.

Suspended sentences prohibited.

28. No sentence or part of any sentence imposed under any of the provisions of this Act in respect of any offence shall be suspended by the court.

Reward for informants.

29. Any person who gives any information which leads to the arrest and conviction of another person for an offence under this Act shall receive such reward as may be determined by the Minister.

The Minister to appoint Advisory Committee.

30. The Minister may appoint a committee consisting of such members as he may determine to monitor the administration and enforcement of this Act and to advise him from time to time.

Application of Act.

31. Notwithstanding the provisions of section 43bis of the Swaziland National Trust Commission Act, 1972, the provisions of this Act shall apply within the boundaries of any park, reserve, monument or relic proclaimed under the National Trust Commission Act, 1972 in relation to any game of the class referred to in this Act."

Replacement of First, Second and Third Schedules.

16. The First, Second and Third Schedules to the principal Act are hereby replaced with the following:

FIRST SCHEDULE

SPECIALLY PROTECTED GAME

Elephant
White rhinoceros
Black rhinoceros
Lion

Loxodonta africana
Ceratotherium simum
Diceros bicornis

SECOND SCHEDULE

ROYAL GAME

Animals

Hedgehog
Thick-tailed bushbaby
Samango monkey
Pangolin
Red rock hare
Aardwolf
Cheetah
Leopard
Caracal
African wild cat
Serval
Wild dog
Cape fox
Side-striped jackal
Cape clawless otter
Spotted-necked otter
Honey badger
Striped weasel
Zorilla
African civet
Antbear
Hippopotamus
Giraffe
Black wildebeest
Red hartebeest
Tsessebe
Blue duiker
Red duiker
Klipspringer
Oribi
Steenbok
Sharpe's grysbok
Suni
Grey rhebok
Roan antelope
Sable
Buffalo
Kudu
Nyala
Bushbuck
Eland
Reedbuck
Mountain reedbuck

Erinaceus frontalis
Galago crassicaudatus
Ceropithecus albogularis
Manis temminckii
Pronolagus crassicaudatus
Proteles cristatus
Acinonyx jubatus
Panthera pardus
Felis caracal
Felis lybica
Felis serval
Lycaon pictus
Vulpes chama
Canis adustus
Aonyx capensis
Poeciogale albinucha
Ictonyx striatus

Civettictis civetta
Orycteropus afer
Hippopotamus amphibius
Giraffa camelopardis
Connochaetes gnou
Alcephalus buselaphus
Damaliscus lunatus
Cephalophus monticola
Cephalophus natalensis
Oreotragus oreotragus
Ourebia ourebi
Raphicerus campestris
Raphicerus sharpei
Neotragus moschatus
Pelea capreolus
Hippotragus equinus
Hippotragus niger
Syncerus caffer
Tragelaphus sterspseceros
Tragelaphus angasii
Tragelaphus scriptus
Taurotragus oryx
Redunca arundinum
Redunca fulvorufula

Waterbuck

Kobus ellipsiprymnus

Birds

All species of birds other than those Gazetted from time to time by the Minister as common game, and those listed on the Third Schedule.

THIRD SCHEDULE

COMMON GAME

Animals

Scrub hare

Rock hyrax

Burchell's zebra

Bushpig

Warthog

Blue wildebeest

Blesbok

Grey duiker

Impala

Lepus saxatilis

Procavia capensis

Equus burchellii

Potamochoerus porcus

Phacochoerus aethiopicus

Connochaetes taurinus

Damaliscus dorcas phillipsi

Sylvicapra grimmia

Aepyceros melampus

Birds

Crowned guineafowl

Numida mitrata

Repeals.

16. Sections 5, 17, 18 and 20(3) of the principal Act are hereby repealed.