

GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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No. 49

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 135

1992

**PROMULGATION OF ACT OF
THE NATIONAL ASSEMBLY**

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 29 of 1992: Sea Fisheries Act, 1992.

Act No. 29, 1992

SEA FISHERIES ACT, 1992**ACT**

To provide for the conservation of the marine ecology and the orderly exploitation, conservation, protection and promotion of certain marine resources; for that purpose to provide for the exercise of control over sea fisheries; and to provide for matters connected therewith.

(Signed by the President on 18 September 1992)

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BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions

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

"advisory council" means the Sea Fishery Advisory Council established by section 8;

"aquatic plant" means any kind of plant, alga or other plant organism found in the sea;

"catch" means:

- (a) searching for or taking or attempting to take fish out of the sea;
- (b) placing or having fishing gear in the sea;
- (c) engaging in any other activity that can reasonably be expected to result in the locating or taking of fish out of the sea;
- (d) any operations at sea in preparation for any activity mentioned in paragraph (a), (b), or (c);

"exclusive economic zone" means the exclusive economic zone of Namibia as defined in section 4 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);

"exploiter" means a person to whom a right of exploitation has been granted in terms of section 14;

"factory" means any premises, vehicle or vessel on or in which fish or fish products are salted, dried, smoked, packed, chilled, frozen, canned or otherwise treated or processed for commercial purposes or fish is kept alive for commercial purposes, but excluding any premises on which a person conducts business in the ordinary retail trade and carries on any of such activities solely for the retail trade;

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"factory vessel" means a vessel used or equipped for use as a factory;

"fish" means every species of sea animal, whether vertebrate or invertebrate, including the spawn or larvae of such sea animal, but excluding any seal or bird;

"fisher" means a person who catches fish on a full-time or part-time basis for the purpose of selling or attempting to sell or otherwise disposing or attempting to dispose of such fish at a consideration, and includes a person assisting therewith;

"fishery control officer" means an incumbent of a post or rank designated under section 5;

"fishing gear" means any net or other apparatus or means used or capable of being used for the catching of fish;

"fishing harbour" means a fishing harbour declared as such under section 22;

"fishing industry" means the whole of the trade engaged in the catching, breeding or acquisition by any other means of fish, the processing thereof and the provision or delivery for trade purposes of fish or fish products;

"fishing vessel" means any vessel which is used by a fisher for catching fish or which is used for the processing, storing or transport of fish caught by a fisher;

"fish product" means any product, whether in a processed form or not, wholly or partly derived from fish;

"foreign vessel" means a vessel

(a) registered in any foreign country under the relative laws in force in that country or recognized as a vessel of a foreign country; or

(b) not being registered or licensed or required to be registered or licensed in Namibia in terms of the Merchant Shipping Act, 1951 (Act 57 of 1951);

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"fund" means the Sea Fisheries Fund referred to in section 23;

"high-water line" means the line of highest astronomical tide;

"honorary fishery officer" means a person appointed as such under section 6;

"internal waters" means the internal waters of Namibia as defined in section 3 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);

"licensee" means the holder of a licence issued under section 26;

"local authority" means a local authority established by or under the laws governing local authorities;

"low-water line" means the line of lowest astronomical tide;

"master", in relation to a fishing or other vessel,
means -

- (a) the person having command or control of the vessel;
- (b) the person having control of the catching of fish from the vessel;

"Minister" means the Minister of Fisheries and Marine Resources;

"Ministry" means the Ministry of Fisheries and Marine Resources;

"Namibian waters" means the internal waters, the territorial sea and the exclusive economic zone of Namibia;

"nautical mile" means the international nautical mile of 1 852 metres;

"Permanent Secretary" means the Permanent Secretary: Fisheries and Marine Resources;

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"police officer" means a member of the Namibian Police Force established by section 2 of the Police Act, 1990 (Act 19 of 1990);

"prescribed" means prescribed by regulation;

"quota" means the maximum mass or quantity of fish of a particular species allocated to a person which such person may catch during a specified period and in a defined area;

"quota holder" means the person to whom a quota has been allocated under section 16;

"regulation" means a regulation made under this Act;

"right of exploitation" means a right of exploitation granted under section 14;

"sea" means the water and the bed of the sea, including -

(a) the sea-shore; and

(b) the water and the bed of any tidal lagoon, being a lagoon in which a rise and fall of the water level takes place as a result of the tide;

"sea-shore" means the water and the land between the low-water line and the high-water line;

"shell" means the shell or portion of the shell of any sea animal found in the sea or on the sea-shore;

"territorial sea" means the territorial sea of Namibia as defined in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);

"this Act" includes any regulation or notice made or issued under this Act;

"vehicle" means any vehicle in, on or with which goods can be transported; and

"vessel" means any water-navigable craft of any description, whether self-propelled or not.

PART I
GENERAL POLICY FOR CONSERVATION AND
UTILIZATION OF AND CONTROL OVER
MARINE RESOURCES

Minister may determine
general policy.

2. The Minister may from time to time determine the general policy with regard to the conservation and utilization of the Namibian marine resources to be applied with a view to -

- (a) the protection of the marine ecology;
- (b) the promotion, protection and sustained utilization of the sea, its resources and derivatives thereof to the greatest benefit of all Namibians both present and future.

Control over marine resources

3. Subject to any right conferred by or under this Act, all fish, aquatic plants, shells and guano found in -

- (a) the internal waters and the territorial sea shall be subject to the sovereignty of Namibia;
- (b) the exclusive economic zone, shall be subject to the sovereign rights of Namibia with respect to their exploration and exploitation.

PART II
ADMINISTRATION OF ACT

Power of president to de-
termine southern and
northern limits of terri-
torial sea and exclusive
economic zone.

4. For the purposes of this Act, but subject to the determination of the extent of Namibia's territorial sea and exclusive economic zone by an agreement as contemplated in section 5 of the Territorial Sea and Exclusive Economic Zone Act, 1990 (Act 3 of 1990), the southern and northern limits of the territorial sea and exclusive economic zone shall be as determined by the President by proclamation in the *Gazette*, which boundaries may be described in such proclamation with reference to a map compiled for that purpose and kept in the office of the Surveyor-General.

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SEA FISHERIES ACT, 1992**Fishery control officers.**

5. (1) The Minister may, subject to the provisions of the Public Service Act, 1980 (Act 2 of 1980), designate posts in the Ministry of which the incumbents shall be fishery control officers.

(2) The Minister may by notice in the *Gazette*, and with the concurrence of -

- (a) the Minister of Wildlife, Conservation and Tourism, designate posts in the Ministry of Wildlife, Conservation and Tourism;
- (b) the Minister of Works, Transport and Communication, designate posts in the Ministry of Works, Transport and Communication;
- (c) the Minister of Defence, designate a particular rank or ranks in the Namibia Defence Force;
- (d) a local authority or statutory body, designate posts in such local authority or statutory body, of which the incumbents shall be fishery control officers.

(3) The Minister may at any time withdraw or, with the concurrence of the authority concerned mentioned in subsection (2), alter a designation made under that subsection.

(4) The Minister may, with the concurrence of the Minister of Finance, determine the additional remuneration (if any) which is payable to the incumbents of posts designated under paragraph (d) of subsection (2).

(5) Every incumbent -

- (a) of a post designated under subsection (1) or paragraph (a) or (b) of subsection (2) shall be furnished with an identity card;
- (b) of a post or rank designated under paragraph (c) or (d) of subsection (2), shall be furnished with a written authority signed by the Minister,

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stating that the person concerned has been appointed or, as the case may be, designated as a fishery control officer under this Act.

(6) Whenever a fishery control officer exercises a power or performs a duty or function in terms of this Act, he or she shall, at the request of any person affected thereby, produce the identity card or written authority to such person for inspection.

Honorary fishery officers

6. **(1)** The Minister may by written notice to a person appoint him or her as an honorary fishery officer.

(2) The Minister may at any time by written notice to an honorary fishery officer, and without giving reasons, withdraw his or her appointment as such if the Minister deems it desirable.

(3) An honorary fishery officer may

(a) exercise the powers conferred upon a fishery control officer and a police officer by subsection (1)(b) and (d) of section 7;

(b) require any person whom he or she on reasonable grounds suspects

(i) has committed an offence in terms of this Act; or

(ii) has at his or her disposal, information in connection with the commission or suspected commission of any such offence,

to furnish him or her with his or her name and address;

(c) for the purpose of exercising any power referred to in paragraph (a) or (b), board any vessel or enter any premises or vehicle;

(d) exercise such other power as may be prescribed.

(4) Every person appointed under subsection (1) as an honorary fishery officer shall be furnished with a certificate of appointment.

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(5) Whenever an honorary fishery officer exercises a power or performs a duty or function in terms of this Act, he or she shall, at the request of any person affected thereby, produce his or her certificate of appointment to such person for inspection.

**Powers of fishery control
officers and police officers.**

7. (1) A fishery control officer and a police officer may-
- (a) board any fishing or other vessel or enter any factory or any premises or place used for the storage or sale of fish, fish products, aquatic plants, shells or guano or any vehicle used for the transport or sale of fish, fish products, aquatic plants, shells or guano, and may perform on such fishing or other vessel, premises, place or vehicle or in such factory, such acts as may be necessary to ascertain whether the provisions of this Act have been or are being complied with;
 - (b) examine any fishing gear or object which he or she has reasonable grounds to suspect is being used or intended for use in the catching or handling of fish, the processing of fish products or the collection of aquatic plants, shells or guano;
 - (c) if he or she has reasonable grounds to suspect that an offence in terms of this Act has been committed in respect of any fish, fish products, aquatic plants, shells or guano or has been or is about to be committed in respect of or by means of any fishing gear, and that such fish, fish products, aquatic plants, shells, guano or fishing gear is upon any fishing or other vessel, vehicle or premises or at any place or in any factory, at any time enter and search such premises, vessel, vehicle, place or factory and search, or cause to be searched, any person thereupon or therein, and seize any such fish, fish products, aquatic plants, shells, guano, fishing gear or such fishing or other vessel or vehicle, or any book, document or other thing on such premises, place, vessel or vehicle or in such factory;

- (d) if he or she has reasonable grounds to suspect that any fishing or other vessel, factory, premises or vehicle has been or is being used in connection with an offence in terms of this Act, or that any fish, fish products, aquatic plants, shells, guano or fishing gear as to which there are reasonable grounds for suspecting that an offence in terms of this Act has been committed in respect thereof or by means thereof, is or has been on any fishing or other vessel, vehicle or premises or in any factory, require the persons on such vessel, vehicle or premises or in such factory, to furnish him or her with their names and addresses or, in the case of a fishing vessel licensed in terms of this Act, require, the licensee of such fishing vessel to furnish him or her with the names and addresses of the master and of the members of the crew of such fishing vessel;
- (e) by a prescribed signal order the master of a fishing vessel to stop such vessel or to transit to a harbour or to a place at sea indicated by the fishery control officer or police officer;
- (f) order the master of a fishing vessel to remove it at or within a specified time from a fishing harbour or not to bring it into a fishing harbour -
 - (i) if such fishing vessel is a foreign fishing vessel; or
 - (ii) if any person who is a member of the crew of such fishing vessel, was at any time in terms of this Act, or a law repealed by section 43, convicted of an offence committed on such fishing vessel while it was within the Namibian waters; or
 - (iii) if the fishery control officer or police officer is satisfied, upon reasonable grounds, that such fishing vessel was at any time used within the Namibian waters in connection with activities that constituted an offence in terms of any law;
- (g) question any person who, in his or her opinion, may be capable of furnishing any information which he or she may require, and for that purpose

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require any fishing or other vessel or any vehicle to be stopped;

- (h) require any person to produce to him or her any invoice, delivery note or other document in such person's possession in connection with any fish or fish products which are or, in his or her opinion, may be the subject of any criminal proceedings in terms of this Act, and, in his or her discretion, seize any such invoice, note or document for production to and disposal of by a court;
- (i) require any person employed on a fishing or other vessel or vehicle or at or in a factory, to assist him or her in the examination of any container, fishing gear, fish or fish products on or in such vessel, vehicle or factory in order to ascertain whether the provisions of this Act have been complied with.

(2) The powers conferred by subsection (1) upon a fishery control officer, may, in respect of any fishing or factory vessel licensed in terms of this Act or any vessel used as a fishing or factory vessel in the Namibian waters and in respect of any person or any fish, fish products, aquatic plants, shells, guano or fishing gear thereon, be exercised also outside the Namibian waters.

(3) Any fish, fish products, aquatic plants, shells, guano or fishing gear seized under subsection (1)(c), except any of such goods seized on board of a foreign vessel, but subject to section 35(2)(a), shall be forfeited to the State: Provided that -

- (a) in the event of the fish, fish products, aquatic plants, shells, guano or fishing gear forming the subject of a prosecution, the court may set aside the forfeiture: and
- (b) in any other case, the Minister may set aside the forfeiture if the owner of the fish, fish products aquatic plants, shells, guano or fishing gear, as **the** case may be, satisfies the Minister, within thirty days after the seizure, that no offence was committed by him or her or by any other person with his or her knowledge or consent, in respect of the fish, fish products, aquatic plants, shells or guano or by means of the fishing gear:

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Provided further that any fish, fish products, aquatic plants, shells or guano so seized may be sold or destroyed at any time after the seizure, and if the forfeiture is set aside in terms of paragraph (a) or (b), the proceeds of the sale, if any, shall be handed over to the owner.

(4) A fishery control officer shall in the exercise of his or her powers under subsection (1) be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(5) A search of a person or a dwelling in terms of a power conferred by subsection (1), shall not be carried out without a search warrant, unless -

- (a) the person concerned or the owner or occupier of the dwelling, as the case may be, has consented to the search;
- (b) the fishery control officer or police officer on reasonable grounds believes -
 - (i) that a search warrant will be granted if applied for; and
 - (ii) that the delay in obtaining such warrant would defeat the object of the search.

(6) The provisions of sections 21 and 29 of the Criminal Procedure Act, 1977 (Act 51 of 1977) shall *mutatis mutandis* apply with reference to the obtaining and execution of a search warrant referred to in subsection (4), and, in the application of those provisions, a reference to a police official shall be construed as including a reference to a fishery control officer.

(7) In so far as this section provides for a limitation of the fundamental rights contemplated in Article 13 of the Namibian Constitution, in that it authorizes interference with the privacy of a person's home, correspondence or communications, such limitation is enacted on authority of the said Article 13.

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SEA FISHERIES ACT, 1992PART III
SEA FISHERY ADVISORY COUNCIL**Establishment of Sea
Fishery Advisory Council**

8. There is hereby established a council, to be called the Sea Fishery Advisory Council, to advise the Minister in relation to -

- (a) any matter on which the Minister is required to consult the advisory council in terms of this Act;
- (b) the management and development of sea fisheries in Namibia;
- (c) any matter which the Minister refers to the advisory council for investigation and advice.

**Constitution of advisory
council.**

9. (1) The advisory council shall consist of the Permanent Secretary and such number of other persons, not being less than fifteen, as the Minister may appoint and of whom -

- (a) three shall be officers of the Ministry;
- (b) one shall be an officer of the Ministry of Trade and Industry, nominated by the Minister of Trade and Industry;
- (c) one shall be an officer of the Ministry of Finance, nominated by the Minister of Finance;
- (d) one shall be an officer of the Ministry of Wildlife, Conservation and Tourism, nominated by the Minister of Wildlife, Conservation and Tourism;
- (e) two shall be persons who are not in the full-time employment of the State and who, in the opinion of the Minister, have the required knowledge and expertise in the field of marine biology or sea fishery economics;
- (f) two shall be persons who, in the opinion of the Minister, fairly represent employees in the fishing industry;
- (g) five shall be persons who, in the opinion of the Minister, have had experience in or shown

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capacity in any matter relating to any branch of the fishing industry.

(2) Before an appointment under paragraph (f) of subsection (1) is made, the Minister shall consult with any labour union which, in the opinion of the Minister, is representative of employees engaged in the fishing industry.

(3) The Minister may from time to time and for such period and on such terms and conditions as the Minister may determine, appoint any person to assist the council in an advisory capacity.

(4) The Permanent Secretary shall be the chairperson of the advisory council and the Minister shall appoint one other member of the advisory council to be the vice- chairperson thereof.

(5) Whenever the chairperson is unable to perform his or her duties, the vice-chairperson shall act in his or her stead.

(6) No person shall be appointed as a member of the advisory council if -

- (a) he or she is an unrehabilitated insolvent:
- (b) he or she has been declared mentally ill under any law; or
- (c) he or she has been convicted of an offence and sentenced to a period of imprisonment without the option of a fine.

Term of office and vacating of office by members of advisory council

10. (1) A member of the advisory council, other than the Permanent Secretary, shall hold office for such period, but not exceeding three years, as the Minister may determine at the time of his or her appointment, and shall be eligible for reappointment.

(2) A member of the advisory council, other than the Permanent Secretary, shall cease to hold office if -

- (a) he or she becomes subject to any disqualification mentioned in section 9(6);

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- (b) he or she is convicted of an offence in terms of this Act;
- (c) he or she is absent from three consecutive meetings of the advisory council without its leave;
- (d) he or she by notice in writing delivered to the Minister resigns as member of the advisory council; or
- (e) he or she is removed from office under subsection (3).

(3) The Minister may at any time remove a member of the advisory council from office if in the Minister's opinion such member is unfit or unable to discharge the functions of a member or to represent the interests which he or she is required to represent.

(4) Where a member of the advisory council ceases to hold office before the expiration of his or her term of office, the Minister may appoint another person in his or her stead to hold office for the unexpired period of his or her term of office.

Meetings of advisory council.

11. (1) The first meeting of the advisory council shall be held at a time and place determined by the chairperson, and thereafter, subject to subsection (2), meetings shall be held at such times and places as the advisory council may determine, but which shall be not less than twice a year.

(2) The chairperson may at any time convene a special meeting of the advisory council.

(3) A quorum for a meeting of the advisory council shall be ten members.

(4) If both the chairperson and the vice-chairperson are absent from a meeting of the advisory council, the members present shall elect one of their number to preside at that meeting.

(5) A decision of a majority of the members of the advisory council present at a meeting shall constitute a decision of the advisory council and, in the event of an equality of votes on any matter, the person presiding shall have a casting vote in addition to his or her deliberative vote.

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(6) A decision of the advisory council, or an act performed under the authority of such a decision, shall not be rendered invalid merely by reason of a vacancy on the advisory council or the fact that a person who is not entitled to sit as a member of the advisory council sat as such when the decision was taken, if the decision was taken by a majority of the members of the advisory council present and entitled to vote.

Committees.

12. (1) The advisory council may establish committees to perform, subject to the directions of the advisory council, such functions of the advisory council as the advisory council may determine.

(2) A committee may consist of one or more members of the advisory council and, if the advisory council deems it necessary, one or more persons who are not such members and whom the advisory council may deem fit to appoint on the committee.

(3) The chairperson of a committee shall be designated by the advisory council.

Remuneration of members of advisory council and other persons.

13. A member of the advisory council and a person appointed as an adviser under section 9(3) or as a member of a committee, who is not in the full-time employment of the State, shall be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

**PART IV
RIGHTS OF EXPLOITATION****Granting and termination of right of exploitation.**

14. **(1)** Any person who desires to acquire a right to utilize living marine resources, aquatic plants, shells or guano for commercial purposes, may, during a period announced under subsection (2) apply to the Minister in the prescribed manner for a right of exploitation.

(2) The Minister may from time to time by notice in the *Gazette* announce, for the purposes of subsection (1), a period during which applications for rights of exploitation may be made.

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(3) The Minister shall not consider any application for a right of exploitation received by the Minister at a time other than within a period announced under subsection (2).

(4) The Minister may in his or her discretion, but subject to subsections (5) and (6), approve the application and grant a right of exploitation to the applicant on conditions determined by the Minister, or may refuse the application.

(5) Where application for a right of exploitation is made with respect to an area which is situated within or adjacent to the area of jurisdiction of a local authority, the Minister shall, before granting such right, consult with the local authority concerned.

(6) When considering an application for a right of exploitation, the Minister may have regard to -

- (a) whether or not the applicant is a Namibian citizen;
- (b) where the applicant is a company, whether the beneficial control of the company is vested in Namibian citizens;
- (c) the beneficial ownership of any vessel which will be used by the applicant;
- (d) the ability of the applicant to exercise the right of exploitation in a satisfactory manner; and
- (e) any other matter as may be prescribed.

(7) The Minister may, before granting a right of exploitation, and whenever the Minister deems it desirable, require that notice of the application be given by the applicant, at the applicant's expense, in such manner and to such person or persons, (including the public in general) as the Minister may determine, and such notice shall invite the person or persons concerned or the members of the public, as the case may be, to submit to the Permanent Secretary, within thirty days from the date of the notice, in writing any objections to or representations in connection with the application.

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(8) A right of exploitation -

(a) shall be valid for such period as may be determined and specified by the Minister;

(b) may be suspended or terminated by the Minister
if-

(i) the exploiter is convicted of an offence in terms of this Act; or

(ii) the Minister is of the opinion that the continued participation of the exploiter concerned is no longer in the interest of either the industry or the resource in question;

(c) may from time to time, upon application by the exploiter concerned before the lapse of the period of validity thereof, be extended by the Minister for such period as the Minister may determine.

(9) When extending a right of exploitation under paragraph (c) of subsection (6), the Minister may vary any condition attaching to such right or impose any additional condition.

(10) A right of exploitation is not transferable except with the approval of, and subject to the conditions determined by, the Minister, but such approval may only be granted if the quota (if any), or a portion thereof, connected with the right of exploitation is also transferred to the same person.

PART V
QUOTAS

**Determination of total
allowable catch.**

15. The Minister shall from time to time, after consultation with the advisory council, determine, by notice in the *Gazette*, the total allowable catch in respect of a particular species of fish which shall be available for the allocation of quotas during a period specified in the notice and specify the conditions which the Minister may deem necessary or expedient to impose in connection therewith.

Allocation of quotas.

16. (1) Any person who holds a right of exploitation or is an applicant for a right of exploitation may apply to

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the Minister in the prescribed manner for the allocation of a quota, and the Minister may, in his or her discretion, but in accordance with such guidelines as may be prescribed, grant to the applicant, subject to such conditions as the Minister may determine, a quota or refuse the application.

(2) The Minister shall cause every applicant for a quota to be notified in writing of his or her decision in connection with the application.

**Suspension, cancellation
or reduction of quotas.**

17. (1) Where a quota holder -

- (a) has furnished information which is not true or complete in connection with his or her application for the allocation of a quota;
- (b) contravenes or fails to comply with a condition imposed under section 16(1) in respect of the quota or a condition attached to a right of exploitation granted to the quota holder;
- (c) contravenes or fails to comply with any condition or restriction on which a licence has been issued to him or her in terms of section 26;
- (d) contravenes or fails to comply with a provision of this Act;
- (e) is convicted of an offence in terms of this Act,

the Permanent Secretary may, by written notice delivered to the quota holder or sent by registered post to the quota holder's last known address, request the quota holder to show cause in writing, within a period of twenty-one days from the date of the notice, why the quota allocated to such quota holder should not be suspended, cancelled or reduced.

(2) The Permanent Secretary shall, after expiry of the period of twenty-one days referred to in subsection (1), refer the matter, together with any reasons furnished by the quota holder, to the Minister for the Minister's decision.

(3) Where a matter is referred to the Minister in terms of subsection (2), the Minister may-

- (a) suspend the quota in question for a period determined by the Minister;

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- (b) cancel the quota in question from a date determined by the Minister;
- (c) reduce the quota in question; or
- (d) decide not to suspend, cancel or reduce the quota in question.

(4) Notwithstanding the provisions of subsection (1), (2) and (3), the Minister may, whenever the Minister is of the opinion that it is in the interest of the promotion, protection or utilization on a sustainable basis of a particular resource, at any time by written notice to a quota holder, suspend, cancel or reduce the quota allocated to such quota holder in respect of that resource.

Transferability of quotas

18. No person to whom a quota has been allocated under section 16 may transfer such quota or a part thereof to any other person, except with the prior written approval of the Minister granted upon an application to the Minister in the prescribed manner.

Register of quotas.

19. (1) The Permanent Secretary shall keep a register showing, in respect of every quota allocated, such particulars as may be prescribed.

(2) Any suspension, cancellation, reduction or transfer of a quota in terms of section 17 or 18, shall be recorded in the register referred to in subsection (1).

(3) The register referred to in subsection (1) shall be available for inspection by any person at such place, during such times and upon payment of such fees (if any) as may be prescribed.

Quota fee.

20. (1) The Minister, with the concurrence of the Minister of Finance, may by notice in the *Gazette* determine fees which shall be payable in respect of quotas allocated under section 16.

(2) A notice referred to in subsection (1) shall specify-

- (a) the amount of the fee;

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- (b) the species of fish in respect of which the fee is payable;
- (c) the time when and place where the fee is payable.

(3) The Minister may, in determining the amount of a quota fee under subsection (1), differentiate between different species of fish or different areas within which fish may be caught or according to the purpose for which fish caught under the quota is intended or the place where such fish will be processed or, in accordance with criteria as are mentioned in paragraphs (a), (b) and (c) of subsection (6) of section 14, between different categories of quota holders.

(4) The Minister may by notice in the *Gazette* withdraw or amend a notice referred to in subsection (1).

(5) The Permanent Secretary may by notice sent by registered post to a person liable for the payment of a quota fee

- (a) direct that person to furnish the Permanent Secretary with any information specified, and within a period mentioned, in the notice;
- (b) require that person to render returns to the Permanent Secretary and prescribe the form in which and the times when the returns shall be rendered, the particulars the returns shall contain and the statements which shall accompany them.

Keeping of records.

21. (1) A quota holder shall keep and maintain such records and furnish the Permanent Secretary with such information as may be prescribed.

(2) Any officer of the Ministry authorized in writing thereto by the Minister, may demand from any person who is required to keep and maintain any record in terms of subsection (1), to produce such records for inspection, and may take extracts from, or make copies of, any such records.

(3) An officer authorised under subsection (2), may at all reasonable times, and on production of the Minister's written authority, board any vessel or enter any premises or vehicle for the purpose of exercising any power conferred by that subsection.

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PROMOTION OF FISHING INDUSTRY AND LEVIES**Development and fishing harbours
and other facilities.**

- 22.** (1)(a) Subject to the provisions of paragraph (b), the Minister may, by notice in the *Gazette*, declare a harbour or a defined portion of a harbour or a defined area of the sea and seashore, to be a fishing harbour.
- (b) The Minister shall, before declaring a commercial harbour or a portion of such a harbour to be a fishing harbour, obtain the approval of the Minister of Works, Transport and Communication therefor.

(2) The Minister may within or outside any fishing harbour, in the sea, on the sea-shore or on adjacent land, from funds appropriated for that purpose by the National Assembly, erect or acquire and maintain and control the use of buildings, works and facilities which in the opinion of the Minister are necessary for the promotion of the interests of the fishing industry, and may allow that such buildings, works and facilities be erected, acquired, maintained or controlled by any other person.

(3) The Minister may, with the concurrence of the Minister of Finance, determine the fees payable in respect of the use of a fishing harbour or the facilities in a harbour.

Sea Fisheries Fund..

23. (1) The Sea Fisheries Research Fund established by section 19 of the Sea Fisheries Act, 1973 (Act 58 of 1973), shall, notwithstanding the repeal of that Act by section 43, continue to exist under the name Sea Fisheries Fund, and into which shall be paid -

- (a) moneys collected in respect of levies imposed under section 25;
- (b) moneys appropriated by the National Assembly for the realization of the objects of the fund;
- (c) interest on investments;
- (d) moneys which, with the approval of the Minister and the Minister of Finance, may accrue to the fund from any other source; and

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(e) interest recovered by virtue of the provisions of section 25(2)(e).

(2) The fund shall be administered by the Permanent Secretary, with the concurrence of the Minister of Finance, in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister and the Minister of Finance in respect of every financial year of the fund, and no expenditure payable from the fund may be incurred except in accordance with such approved estimate of expenditure.

(3) The financial year of the fund shall end on 31 March of each year.

(4) The Permanent Secretary shall be the accounting officer charged with the responsibility of accounting for moneys received and expenditure incurred by the fund.

(5) The Permanent Secretary shall invest moneys in the fund not required for immediate use in such manner as the Minister of Finance may approve.

(6) Any unexpended balance in the fund at the end of a financial year shall be carried forward as a credit in the fund to the next financial year.

(7) The Auditor-General shall annually audit the books and accounts of the fund.

Appropriation of fund.

24. (1) The Minister may, from moneys available in the fund, undertake research and development in connection with sea fisheries, including research and development with relation to -

- (a) the utilization, conservation, protection and management of the marine resources;
- (b) the utilization of the sea and sea-shore in so far as they may be necessary to protect the marine resources;
- (c) improved methods for the catching of fish;
- (d) the breeding of fish or the cultivation of aquatic plants; and

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(e) the manufacturing of fish products or products wholly or partially obtained from aquatic plants and the packing, processing and marketing of such products.

(2) The Minister may, from moneys available in the fund, arrange for the undertaking of research and development contemplated in subsection (1) by any competent institution of State or any person or body, or grant financial assistance in connection therewith on the conditions determined by the Minister with the concurrence of the Minister of Finance.

(3) The moneys in the fund shall be appropriated for the purposes referred to in subsections (1) and (2) by the Minister with the concurrence of the Minister of Finance.

**Levy on fish , fish products
and certain other marine resources.**

25. (1) The Minister may, after consultation with the advisory council, and with the concurrence of the Minister of Finance, by notice in the *Gazette*, impose for the benefit of the fund, a levy on -

- (a) all fish or any particular species of fish caught by fishers or the quantity of fish allocated to quota holders;
- (b) any fish product;
- (c) aquatic plants collected and removed from the sea;
- (d) shells collected and removed from the sea;
- (e) guano collected and removed from any area or structure in the sea or on land used for the collection of guano.

(2) A notice referred to in subsection (1) -

- (a) shall specify -
 - (i) the rate of the levy;
 - (ii) the persons by whom the levy is payable;
 - (iii) the times when and the places where the levy is payable; and

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- (iv) the name of the person charged with the collection of the levy;

 - (b) may contain such other directions as the Minister may deem necessary for the collection of the levy and the payment thereof into the fund, including the method of determining the mass of fish or fish products for the purpose of calculating the amount payable in respect of the levy;

 - (c) may impose different levy rates in respect of different species of fish, fish products, aquatic plants, shells or guano or, in accordance with criteria as are mentioned in paragraphs (a), (b) and (c) of subsection (6) of section 14, between different exploiters;

 - (d) may provide for an exemption from payment of the levy in respect of fish caught or aquatic plants, shells or guano collected at a place or in an area specified in the notice if the proceeds of the levy, in the opinion of the Minister, would not justify the expenses of collecting the levy;

 - (e) may provide for the payment of interest, at a rate specified in the notice, on arrear payments in respect of the levy; and

 - (f) may prescribe penalties, which shall not exceed the penalties prescribed by section 33(1), for any contravention of or failure to comply with the provisions of the notice.
- (3) The Permanent Secretary may recover the amount in respect of a levy and any interest which is due and payable in terms of a notice under subsection (1) in a competent court of law.
- (4) The Minister may by notice in the *Gazette* withdraw or amend a notice referred to in subsection (2).
- (5) The Permanent Secretary may by written notice sent by registered post to a person who is liable for the payment of a levy -
- (a) direct that person to furnish the Permanent Secretary with any information specified, and within a period mentioned, in the notice;

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- (b) require that person to render returns to the Permanent Secretary and prescribe the form in which and the times when the returns shall be rendered, the particulars the returns shall contain and the statements which shall accompany them.

PART VII
LICENSING AND OTHER CONTROL MEASURES

**Licensing of fishing
vessels and factories.**

26. (1) Subject to the provisions of section 27, no person shall -

- (a) use any vessel as a fishing vessel; or
- (b) use any premises, vessel or vehicle as a factory,

unless a licence has been issued in respect thereof in terms of this section.

(2) Any person desiring to use a vessel as a fishing vessel or any premises, vessel or vehicle as a factory, as the case may be, shall apply in the prescribed manner to the Minister for a licence in respect thereof.

(3) If the Minister is satisfied that the applicant is the owner, lessee or charterer of, or has any other right to, the vessel, premises or vehicle in question, the Minister may, subject to the provisions of subsection (4), approve the application.

(4) The Minister may refuse an application for a licence if the Minister is satisfied -

- (a) that information furnished in the application is incorrect or incomplete;
- (b) where the application relates to a vessel, that the vessel in question is not intended for use as a fishing vessel or factory, as the case may be;
- (c) that the approval of the application will not be in the interest of the fishing industry or a particular resource in the fishing industry;

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- (d) that the harbour facilities in the fishing harbour where the vessel in question will be used are inadequate to accommodate more fishing vessels or factory vessels than the number already making use of those facilities;
or
 - (e) that the harbour, landing, storing or handling facilities in a particular fishing harbour are inadequate to deal satisfactorily with more than the catch of the fishing vessels already making use of that harbour.
- (5) A licence shall -
- (a) be valid for such period as may be determined by the Minister in each particular case, and which shall be stated in the licence;
 - (b) be issued by the Minister subject to such conditions as may be determined by the Minister, including, in the case of a licence in respect of a fishing vessel, conditions -
 - (i) in relation to the display of the registration number allocated in respect of the fishing vessel;
 - (ii) in relation to the use of the landing, storing, handling or any other facilities in a particular fishing harbour;
 - (iii) specifying the area within, and period during which the catching of fish by or from the vessel is authorized;
 - (iv) prescribing the type of fishing gear which may or may not be used on board of the fishing vessel or which may not be carried on board of such vessel;
 - (v) in relation to the method or methods that may or may not be employed for the catching of fish from the fishing vessel;
 - (vi) specifying any species of fish which may or may not be caught by or from the fishing vessel;

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- (vii) specifying the maximum mass or number of any species of fish which may be caught by or from the vessel during a specified period;
 - (viii) prohibiting the catching of fish of a particular species which is less than a specified size;
 - (ix) regulating or prohibiting the discard, landing or disposal of fish caught by or from the fishing vessel;
 - (x) fixing limits in respect of by-catches which may be taken, and prescribing measures in relation to the landing and disposal thereof;
 - (xi) regulating or prohibiting the transshipment of fish from or to the fishing vessel;
 - (xii) in relation to the inspection of the fishing vessel, whether at sea or in a harbour;
 - (xiii) providing for the placement on board of the fishing vessel of fishery control officers or other officers or employees in the Public Service or other persons designated by the Minister, to observe fishing operations;
 - (xiv) in relation to the conduct of fisheries research from the vessel and the disclosure of information relating to such research; and
 - (xv) in relation to any other matter which the Minister deems necessary or expedient.
- (6) The holder of a licence in respect of a vessel licensed as a fishing vessel or factory shall within twenty-one days after -
- (a) any change in the licensee's name or address;
 - (b) an alteration to the vessel in question, including a change in the name thereof, in a manner which renders the description thereof in the licence incorrect or inapplicable; or
 - (c) the licensee has sold the vessel or ceased to use it as a fishing vessel or factory, as the case may be,

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furnish the Permanent Secretary with particulars of such event in writing.

(7) If a licensee -

- (a) fails to comply with a condition attached to the licensee's licence by virtue of the provisions of paragraph (b) of subsection (4);
- (b) fails to comply with the provisions of subsection (6); or
- (c) is convicted of an offence in terms of this Act,

the Minister may, by written notice sent by registered post to the last known address of the licensee, cancel the licence in question or suspend it for a period which the Minister deems fit.

(8) A licence issued under this section shall not be transferable.

Foreign fishing.

27. (1) The President may, on conditions which the President deems fit, enter into an agreement with a foreign State, or an international organisation representing a community of States, whereby provision is made for the operation of fishing or factory vessels registered in such foreign State, or a member State of such community of States, within the Namibian waters.

(2) The Minister may, upon application by the owner of a foreign vessel to which an agreement entered into under subsection (1) relates, issue a permit to such person authorising that person to operate such vessel within the Namibian waters as a fishing vessel or factory, as the case may be.

(3) A permit shall -

- (a) be issued against payment of such fees as may be determined by the Minister;
- (b) be valid for a period determined by the Minister and specified in the licence; and
- (c) be subject to such conditions and restrictions as the Minister may determine, including conditions in relation to any matter mentioned in section 26(5)(b).

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(4) The Minister may at any time, and for any reason which the Minister deems fit, by written notice to the holder of a permit issued under subsection (2) -

- (a) cancel the permit;
- (b) suspend the permit for a period specified in the notice;
- (c) withdraw or amend any condition or restriction attached to the permit, or impose additional conditions or restrictions.

(5) A permit issued under subsection (2) shall not be transferable.

(6) The provisions of this section shall not be construed as prohibiting the granting under section 26 of a licence in respect of a foreign vessel in a case where no agreement as contemplated in subsection (1) is in force.

Register of licences and permits.

28. (1) The Permanent Secretary shall keep a register showing in respect of every licence issued under section 26 and every permit issued under section 27 such particulars as may be prescribed.

(2) The register kept in terms of subsection (1) shall be available for inspection by any person at such place, during such times and upon payment of such fees (if any) as may be prescribed.

Marine reserves .

29. (1) The Minister may by notice in the *Gazette* declare any area to be a marine reserve for the protection of fish and aquatic plants or the regeneration of any depleted aquatic life;

(2) A notice under subsection (1) -

- (a) shall contain a description of the boundaries of the marine reserve;
- (b) may specify the species of fish or aquatic plants, if any, that may be caught or collected or may not be caught or collected within the marine reserve; and

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(c) may specify the conditions subject to which such fish may be disturbed or caught.

(3) The Permanent Secretary may in a marine reserve perform any act or allow the performance of any act and take any measures which are not incompatible with the objects for which the marine reserve has been set aside.

(4) A marine reserve shall not be abolished, or its boundaries shall not be altered, except with the approval, by resolution, of the National Assembly.

(5) The Minister shall by notice in the *Gazette* give notice of any abolishment of a marine reserve or an alteration of the boundaries thereof in accordance with the provisions of paragraph (a).

Stowing of fishing gear.

30. (1) Whenever any vessel not authorized by a licence or permit issued under this Act for the catching of fish moves through any part of the Namibian waters, any fishing gear or other specified implements and any aircraft carried on board of such vessel shall, while the vessel is within the Namibian waters, be dismantled, stowed or secured in such manner as may be prescribed.

(2) Whenever a fishing vessel authorized by a licence or permit to catch fish happens to be at sea in an area which is a marine reserve by virtue of the provisions of section 29, any fishing gear or other specified implements and any aircraft on board of such vessel shall, while the fishing vessel is in such area, be dismantled, stowed or secured in such manner as may be prescribed.

Transshipment

31. No vessel shall, while within Namibian waters, transship or attempt to transship or assist any other vessel to transship any fish or fish products, unless such transshipment -

- (a) is authorised by a licence issued under section 26 or a permit issued under section 27 or by or under the regulations;
- (b) is executed in accordance with any conditions contained in the licence or permit in question or the regulations.

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REGULATIONS**Regulations.****32.** (1) The Minister may make regulations -

- (a) prescribing the nature and construction of any fishing gear or apparatus which may or shall be used in connection with the catching or handling of fish or prohibiting the possession or use of any particular kind of fishing gear or apparatus;
- (b) prescribing methods to be used for catching fish or prohibiting the catching of fish by a particular method or otherwise than by a specified method;
- (c) prescribing methods for determining the mass or composition of catches;
- (d) prohibiting the catching, possession or transportation of any fish -
 - (i) exceeding a specified number or a specified mass in aggregate;
 - (ii) not conforming to specified limitations in respect of size or mass or specified requirements in respect of biological characteristics or condition;
- (e) prescribing the manner in which the size of fish shall be determined;
- (f) regulating or prohibiting the sale or disposal in any other specified manner, the transportation, importation or exportation of fish, fish products, aquatic plants, shells or guano;
- (g) permitting or prohibiting the catching of fish, or the collection of aquatic plants, shells or guano indefinitely or during a specified period;
- (h) permitting or prohibiting the catching of fish or the collection of aquatic plants, shells or guano in general or within a specified area;

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- (i) in relation to the circumstances in which fish which has been caught shall be returned to the sea or may not be so returned or shall be released from any fishing gear or may not be so released;
- (j) providing for limitations in respect of the taking of by-catches, the disposal thereof and the levying of fees in respect thereof;
- (k) prescribing the condition or form in which fish shall be when landed;
- (l) prohibiting or regulating the transshipment of fish or fish products;
- (m) in relation to the reporting of -
 - (i) the entry into or departure from the Namibian waters of fishing or factory vessels;
 - (ii) the position of fishing or factory vessels;
 - (iii) the commencement and termination of fishing operations by a fishing vessel;
- (n) in relation to the registers, records or other documents to be kept for the purposes of this Act, the information to be recorded therein and the inspection thereof;
- (o) providing for the carrying on board of fishing or factory vessels of fishery control officers or employees in the Public Service or other persons designated by the Minister and prescribing their powers and functions;
- (p) providing for the appointment of representatives in respect of foreign vessels licensed or permitted in terms of this Act to operate within the Namibian waters as fishing vessels or factories and the functions to be performed by such representatives;
- (q) in relation to the installation and maintenance of communication, safety or surveillance equipment on fishing or factory vessels;
- (r) providing for the inspection of fishing vessels or factory vessels;

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- (s) in relation to the control over and management of fishing harbours;
- (t) regulating or prohibiting access to and the use of any fishing harbour or any part thereof by any vessel or vehicle;
- (u) prescribing requirements in relation to the packing, storing or transportation of fish or fish products, and the labelling or marking of receptacles containing fish or fish products;
- (v) prescribing rules to be observed during fishing operations and measures aimed at preventing interferences with fishing operations;
- (w) providing for the disposal of any property seized or forfeited in terms of this Act;
- (x) regulating or prohibiting the dumping in the sea of specified substances or materials, or substances or materials not complying with specified requirements or having specified properties;
- (y) in relation to the erection, maintenance, use and protection of and control over boundary beacons, buoys, notices, notice-boards or other marks used in connection with the catching or protection of fish;
- (z) providing for the regulation of and exercise of control over research and development activities in connection with the utilization and protection of marine resources;
- (aa) providing for the making of surveys and the gathering of information regarding
 - (i) the requirements and demand in respect of fish or fish products;
 - (ii) the state or potential of marine resources; and
 - (iii) the catching, collection, transport, treating, processing, refrigeration, freezing or removal of fish, fish products, aquatic plants, shells or guano;

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- (ab) providing for the registration of persons involved in any activity referred to in paragraph (aa), the collection of data by such persons, the records to be kept by them and the returns to be rendered by them;
- (ac) prescribing the form and manner in which any application in terms of this Act shall be made and the form of any permit, licence or other authorization which may or is required to be issued or given in terms of this Act, and the fees, levies or other charges payable in connection therewith;
- (ad) prescribing the conditions and restrictions which shall apply in relation to any licence, permit or other authority issued or given under this Act;
- (ae) in relation to the supply or delivery by a quota holder to such quota holder's employees, or any other persons, of fish, whether as remuneration or otherwise;
- (af) prescribing measures or imposing prohibitions for the purpose of the regulation of and exercising control over the catching of fish by anglers from the sea-shore or by or from angling boats, including requirements as to the possession of permits and the levying of fees in respect thereof;
- (ag) prohibiting the discarding, dumping or leaving of litter on the sea-shore and land adjacent thereto or any place to which the public has access;
- (ah) providing for the implementation of the provisions of any convention, treaty or agreement with relation to sea fishery matters which is binding upon Namibia;
- (ai) prescribing requirements in relation to the display on a fishing or factory vessel of its name, registration number or licence number, radio callsign or any other identification mark or information or the showing of its flag ;
- (aj) in relation to any matter required or permitted by this Act to be prescribed, or which the Minister deems necessary or expedient to prescribe for the purposes of this Act.

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- (2) Regulations made under subsection (1) may -
- (a) be made to apply to fish in general or a particular species of fish or may differentiate between different species of fish, different fish products, different fishing or factory vessels, or in respect of any other matter which the Minister may deem necessary;
 - (b) prescribe penalties for any contravention of or failure to comply with their provisions not exceeding the penalties mentioned in subsection (1) of section 33, but subject to the proviso to that subsection.

PART IX
OFFENCES AND PENALTIES AND FORFEITURE
AND SEIZURE

Offences and penalties. **33. (1)** Any person who -

- (a) catches or kills fish by means of any firearm, explosives, poison or noxious substance;
- (b) catches fish by means of a driftnet, being a gillnet or any other net, or a combination of such nets, with a total length exceeding 2,5 kilometres, or any shorter length as may be prescribed, being placed in the water and allowed to drift for the purpose of trapping or entangling fish;
- (c) catches fish by means of any fishing gear other than fishing gear which is prescribed or fishing gear the use of which is prohibited by or under this Act;
- (d) catches fish by a method other than a prescribed method or by a method which is prohibited by or under this Act;
- (e) possesses, sells or displays or offers for sale any fish or any portion of fish, the catching or possession or sale of which is prohibited by or under this Act;

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- (f) contravenes the provisions of section 26(1) or (6), any condition of a notice referred to in section 29(2) or the provisions of section 30 or 31;
- (g) returns to the sea or allows to be returned to the sea or discards at any other place any dead or dying fish, irrespective as to whether such fish may have been -
 - (i) caught inside and returned or discarded outside Namibian waters; or
 - (ii) caught outside and returned or discarded inside Namibian waters;
- (h) dumps or allows to enter or permits to be dumped or discharged in Namibian waters anything which is or may be injurious to fish, fish food or aquatic plants, or which may disturb or change the ecological balance in any area of the sea, or which may detrimentally affect the marketability of fish or aquatic plants, or which may hinder the catching of fish;
- (i) fails to comply with a requirement or order of a fishery control officer, police officer, honorary fishery officer or an officer referred to in section 21(2), in terms of this Act, or gives any false information in response to such a requirement or order or wilfully submits to such officer any document, statement or representation knowing it to contain false or misleading information;
- (j) assaults, obstructs, resists, hinders, threatens or intimidates a fishery control officer, police officer, honorary fishery officer or an officer referred to in section 21(2) in the exercise of any power or the performance of any duty in terms of this Act;
- (k) impersonates a fishery control officer or an honorary fishery officer;
- (l) uses any fishing vessel or fishing gear without the consent of the owner or master thereof;

- (m) allows any fishing vessel of which such person is the licensee to be used for the catching of fish in contravention of the provisions of this Act;

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- (n) without having been granted permission under section 29(3) to do so, in a marine reserve dredges or extracts sand or gravel, discharges or deposits waste or any other polluting matter, or constructs or erects any building or structure or in any way disturbs, alters or destroys the natural environment;
- (o) having been directed or required in terms of section 20(5) or 25(5) to furnish particulars or to render a return, furnishes particulars which are false or misleading or renders a return containing false or misleading information;
- (p) being the owner, lessee, charterer or master of a vessel registered in a foreign state, uses such foreign vessel as a fishing vessel or factory, or allows it to be so used or prepares it for such use, within the Namibian waters -
- (i) without a licence or permit having been issued in terms of section 26 or 27 in respect thereof; or
- (ii) in contravention of or without complying with a condition or restriction attached to a licence or permit so issued;
- (q) obscures, deletes, changes or falsifies the name, radio call-sign, registration number or licence number or any other identification mark or information required by or under this Act to be displayed on a vessel or uses a vessel bearing such an obscured, deleted, changed or falsified name, sign, number, mark or information;
- (r) uses or displays on a vessel a name, radio call-sign, registration number or licence number or any other prescribed identification mark or information which is not that allocated to the relevant vessel by or under this Act or any other law;
- (s) gives offers or agrees or attempts to give any gift or consideration to a fishery control officer, police officer, honorary fishery officer or an officer referred to in section 21(2) as an inducement or reward for doing, or forbearing to do, or for having done or forborne to do any act in

relation to his or her duties under this Act or for showing or forbearing to show favour or disfavour to any person in the execution of such duties;

- (t) being a fishery control officer, police officer, honorary fishery officer or an officer referred to in section 21(2), accepts or obtains or agrees to accept or attempts to obtain from any person any gift or consideration as an inducement or reward for doing, or forbearing to do, or for having done or forborne to do any act in relation to his or her duties under this Act or for showing or forbearing to show favour or disfavour to any person in the execution of such duties;
- (u) wilfully damages, destroys, discards or disposes of any vessel, fishing gear, document, book, record, chart, map or calendar or deletes or disposes of any information stored in any electronic or other equipment to prevent its seizure, forfeiture, sale, discovery or the production thereof in evidence in any proceedings before a court,

shall be guilty of an offence and liable on conviction to a fine not exceeding R 1000 000 or to imprisonment for a period not exceeding fifteen years or to both such fine and such imprisonment: Provided that no sentence of imprisonment without the option of a fine shall be imposed in respect of a convicted person who is the owner, lessee, charterer, master or a member of the crew of a foreign vessel and who is not a Namibian citizen.

(2) In any prosecution under this Act against the owner, lessee or charterer of a vessel which is a corporate body registered or incorporated under the laws of a foreign country, the master or any member of the crew of such vessel or any director of that corporate body may be cited, as representative of the corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he or she were the person accused of having committed the offence in question: Provided that -

- (a) if at any stage of the proceedings the person cited in accordance with subsection (1) as the offender absconds or is unable to attend, the court may, at the request of the prosecutor, substitute for the person concerned any other person who is a member of the crew of the vessel or a director of

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the corporate body, and thereafter the proceedings shall continue as if no substitution had taken place;

- (b) if the person prosecuted as representative of the corporate body is convicted for the offence in question, any fine imposed in respect of that offence shall be payable by the corporate body and may be recovered by attachment and sale of any property of the corporate body in accordance with the provisions of section 288 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (c) the citation of the master or a member of the crew of a vessel, or a director of a corporate body shall not exempt such master, crew member or director, as the case may be, from prosecution in his or her personal capacity for the offence in question, whether jointly with the corporate body or separately.

(3) In any prosecution against a corporate body referred to in subsection (2), a document purporting to be signed by or on behalf of a person who on the face of the document has the authority in terms of the laws of any foreign country to register or incorporate corporate bodies in that country and containing information to the effect that a corporate body by the name of the accused person is registered or incorporated as such in that country, shall on its mere production at any criminal proceedings be admissible in evidence and shall be sufficient evidence of the facts contained therein.

(4) in subsections (2) and (3) "director" means any person who controls or governs the corporate body in question or is a member of a body or group of persons who controls or governs the corporate body or, where there is no such body or group of persons, who is a member of that corporate body.

(5) For the purposes of subsections (2), (3) and (4) a reference to a corporate body and a director shall be construed as including a reference to a trust and a trustee, respectively.

Determination of monetary value of advantage in consequence of offence.

34. (1) If a person is convicted of an offence in terms of this Act, the court shall summarily enquire into and determine the monetary value of any advantage or potential advantage which such person has or could have gained in consequence of that offence, and, in addition to any

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other punishment that may be imposed in respect of that offence, impose a fine equal to three times the value so determined and in default of payment thereof impose a sentence of imprisonment for a period not exceeding fifteen years.

(2) A magistrate's court shall have jurisdiction to impose an additional penalty referred to in subsection (1) even though that penalty may, either alone or together with any other punishment imposed by such court, exceed the punitive jurisdiction of a magistrate's court.

Forfeiture and seizure.

35. (1) Where a court convicts a person of an offence in terms of this Act, other than an offence referred to in paragraph (p) of section 33(1), the court may, in addition to any other penalty it may impose -

- (a) order any fish, fish products, aquatic plants, shells, guano or fishing gear or any vessel or vehicle in respect of which the offence was committed or which was used in connection with the commission thereof, to be forfeited to the State;
- (b) cancel or suspend, for such period as the court may think fit, any licence or permit or other authorization issued or given to such person in terms of this Act.

(2) Where a court convicts a person of an offence referred to in paragraph (p) of section 33(1), the court shall, in addition to any other penalty it may impose -

- (a) order, subject to the provisions of paragraph (b)
 - (i) in the case of a conviction for an offence referred to in subparagraph (i) of the said paragraph (p), the vessel, fishing gear, fish, fish products, aquatic plants, shells or guano; or
 - (ii) in the case of a conviction for an offence referred to in subparagraph (ii) of the said paragraph (p), the fishing gear, fish, fish products, aquatic plants, shells or guano,

used in connection with the commission of the offence or in respect of which the offence was committed, as the case may be, to be forfeited to the State; or

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- (b) where the vessel, fishing gear, fish, fish products, aquatic plants, shells or guano has been released under section 38, order the amount guaranteed in respect of the value thereof in accordance with the provisions of that section to be forfeited to the State;
- (c) cancel or suspend for such period as the court may deem fit, any permit or other authorization issued or given to such person in terms of this Act.

(3) A forfeiture order made in terms of subsection (1) or (2) or (7)(a) in respect of any vessel, vehicle or fishing gear shall not affect any right of an" person who is not the convicted person and who -

- (a) is the owner of the vessel, vehicle or fishing gear in question;
- (b) in the case of a vessel, is the holder of an unsatisfied mortgage bond registered over the vessel;
- (c) has sold the vessel, vehicle or fishing gear in question to the convicted person in pursuance of a contract under which such person becomes the owner of the vessel, vehicle or fishing gear, as the case may be, upon the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of the vessel, vehicle or fishing gear upon default of payment of the stipulated purchase price, and to whom an amount in respect of such purchase price is still owing,

if it is proved that the person who claims such right did not know that the vessel, vehicle or fishing gear was being used or would be used for the purpose of or in connection with the commission of the offence in question and that all reasonable steps had been taken by such person to prevent such vessel, vehicle or fishing gear being used for or in connection with activities in contravention of this Act.

(4) The court which granted a forfeiture order in terms of subsection (1) or (2) or (7)(a) in respect of any vessel, vehicle or fishing gear, or if the judge or judicial officer concerned is not available, any judge or judicial officer of the court in question may, at any time within a

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period of six months with effect from the date of the forfeiture order, upon the application of any person who claims to have any right referred to in paragraph (a), (b) or (c) of subsection (3), inquire into and determine any such right and if the court finds that any such right vests in the applicant -

- (a) in the case of a right referred to in the said paragraph (a), the court shall set aside the forfeiture order and direct that the vessel, vehicle or fishing gear, as the case may be, be returned to such person, or, if the State has disposed of the vessel, vehicle or fishing gear in question, direct that such person be compensated by the State to the extent to which the State has been enriched by such disposal;
- (b) in the case of a right referred to in the said paragraph (b) or (c) and unless the State has paid or agreed to pay to the mortgagee or seller in question the amount owing under the mortgage bond or contract, as the case may be, the court shall direct -
 - (i) that the vessel, vehicle or fishing gear, as the case may be, be sold by public auction or in any other manner as it may determine and that the mortgagee or the seller, as the case may be, be paid out of the proceeds of the sale an amount equal to the amount determined by the court to be owing to such person under the mortgage bond or contract in question, but not exceeding the proceeds of the sale; or
 - (ii) if the State has disposed of the vessel, vehicle or fishing gear in question, the court shall direct that the seller be likewise compensated.

(5) Upon payment by the State to the mortgagee or seller in question of the amount owing under the mortgage bond or contract, as the case may be, or the payment to such mortgagee or seller of the amount referred to in subparagraph (i) or (ii) of paragraph (b) of subsection (4), the mortgage bond or the contract, as the case may be, shall in relation to the State or any person by whom the vessel, vehicle or fishing gear was bought or to whom it was disposed of by the State, as the case may be, be deemed to have been discharged.

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(6) Any fish, fish products, aquatic plants, shells, guano, vessel, vehicle or fishing gear forfeited to the State under the provisions of this section, shall be dealt with or disposed of in such manner as the Minister may direct.

(7) Where an accused person who has been released on bail in respect of an offence referred to in subsection (1) or (2) absconds the court before which the matter is pending may order

- (a) any vessel or vehicle or any other property seized under section 7(1)(c) in connection with such offence to be forfeited to the State; or
- (b) where the vessel or any of such property has been released under section 38, order the amount guaranteed in accordance with the provisions of that section in respect of the value thereof and any fine, or any part of such amount, to be forfeited to the State.

PART X
JURISDICTION, EVIDENCE LIMITATION
OF LIABILITY AND RELEASE OF SEIZED PROPERTY

Jurisdiction and evidence.

36. (1) If a person is charged with having committed an offence in terms of this Act within the Namibian waters -

- (a) the High Court of Namibia; or
- (b) any magistrate's court whose area of jurisdiction borders on or includes any part of the sea in the vicinity where the offence has allegedly been committed, and which would otherwise have jurisdiction,

shall be competent to try the charge, and the offence shall, for all purposes connected with or consequential upon the trial of the charge, be deemed to have been committed within the area of jurisdiction of such magistrate's court.

(2) Where a fishing or other vessel or vehicle has been used in connection with an offence in terms of this Act, or if any fish, fish products, aquatic plants, shells, guano or fishing gear in respect of or by means of which such an

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offence has been committed, is found or proved to have been upon or in a fishing or other vessel or vehicle, the offence shall, unless the contrary is proved, be deemed to have been committed in respect of all fish, fish products, aquatic plants, shells or guano or by means of all fishing gear which were found or are proved to have been upon or in such fishing or other vessel or vehicle at such time.

(3) If in any criminal proceedings under this Act it is proved -

- (a) that in any area in the sea within a distance of five nautical miles from any factory, including a factory other than that defined in section 1, or any other installation, any fish or fish food has been or is being injured or has died or is dying or the marketability thereof or of aquatic plants has been or is being adversely affected, or the ecological balance has been or is being disturbed or changed, it shall be presumed, unless the contrary is proved, that it has been or is being caused by something discharged from that factory or installation into the sea;
- (b) that a net, line or cable extending from a vessel into the water was cut or released or in any other manner abandoned in the sea, it shall be presumed, unless the contrary is proved, that the vessel was at that point of time being used as a fishing vessel;
- (c) that a vessel has over a period of two or more days
 - (i) maintained a presence in Namibian waters;
 - (ii) generally remained in or covered a particular area in Namibian waters; or
 - (iii) periodically reversed its course to and from Namibian waters,

and that such vessel was carrying a cargo of fish, it shall be presumed, unless the contrary is proved, that the vessel was used as a fishing vessel within the Namibian waters;

- (d) that a foreign vessel was observed on two or more occasions, within a period not exceeding two

months, to be engaged in catching fish within the Namibian waters, it shall be presumed, unless the contrary is proved, that such vessel was used as a fishing vessel in the Namibian waters for the whole period falling between the first and last date on which it was so observed;

- (e) that processed fish or fish products in excess of one metric ton was found on board of a vessel equipped to be used as a factory while the vessel was within the Namibian waters, it shall be presumed, unless the contrary is proved, that the vessel was used as a factory within the Namibian waters;
 - (f) that samples taken of fish on board of a vessel have certain characteristics or are of fish of a particular species, it shall be presumed, unless the contrary is proved that the whole cargo has the same characteristics or is composed of fish of that species;
 - (g) that any fish, fish products, aquatic plants, shells or guano was found in or on any vehicle, vessel, aircraft or in, on or at any premises or place, any person who is the owner of such vehicle, vessel, aircraft, premises or place and every person who was in, on or at such vehicle, vessel, aircraft, premises or place when the fish, fish products, aquatic plants, shells or guano was found, shall be presumed, unless the contrary is proved, to have been in possession of such fish, fish products, aquatic plants, shells or guano.
- (4) In any criminal proceedings under this Act -
- (a) any information obtained by means of an instrument or chart used to determine the position of a vessel or any distance or depth, shall be presumed to be correct unless the contrary is proved;
 - (b) a certificate purporting to have been signed by the Permanent Secretary stating that no licence or permit or other authorization or exemption specified therein has been issued or given under this Act to a specified person shall be *prima facie* proof of the facts contained therein and be admitted as evidence;

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- (c) against the owner, lessee or charterer or a master or any other member of the crew of a vessel for contravening or failing to comply with any provision of this Act, any document, book, record, chart, map, calendar or any information stored by means of or in any electronic or other equipment on board of such vessel which was made, entered, kept or stored by such master or a crew member within the course of his or her employment or the scope of his or her authority or which was at any time in his or her custody or under his or her control, shall be admissible as evidence against such person;
- (d) against the master of a vessel or any other member of the crew of a vessel with the rank of an officer for contravening or failing to comply with any provision of this Act, any document, book, record, chart, map, calendar or any information stored in or obtained from any electronic or other equipment found on such vessel and which relates to the navigation and operation of such vessel as a fishing vessel or factory, shall be presumed, unless the contrary is proved, to have been made, kept, entered, stored or otherwise retained on the instructions or with the knowledge of the master and officers of that vessel.

(5) For the purposes of subsection 4(c), any document, book, record, chart, map, calendar or information stored by means of or in any electronic or other equipment on board of a vessel which was made, entered or kept by the master or any other member of the crew of the vessel or which was at any time in his or her custody or under his or her control, shall be presumed, unless the contrary is proved to have been made, entered or kept by him or her or to have been in his or her custody or under his or her control within the course of his or her employment or the scope of his or her authority.

Limitation of liability

37. (1) The State, the Minister, a member of the advisory council or a person in the employment of the State shall not be liable in respect of anything done or omitted to be done in good faith in the exercise of any power or discharge of any duty under the provisions of this Act.

(2) The State, the Minister or a person in the employment of the State shall not, except in the case of any

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intentional act or omission on the part of any such person, be liable to any person who, other than in the performance of a duty or function in terms of this Act or any other law -

- (a) makes use of an aircraft, vessel or vehicle which is the property of the State or under the control of the State;
- (b) is present in any fishing harbour or on an island;
or
- (c) leaves any fishing or other vessel or any other property in a fishing harbour or makes use of the facilities of a fishing harbour,

or to the spouse or a dependant of such a person, for any loss or damage resulting from any loss of life or bodily injury, or loss of or damage to any property caused by or arising out of or in any manner connected with the use of such aircraft, vessel or vehicle, such presence in a fishing harbour or on an island, or the use of a fishing harbour or facilities in a fishing harbour as contemplated in paragraph (c).

- (3) (a) Any civil proceedings against the State or any person in respect of anything done in terms of this Act shall be instituted within twelve months after the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than one month before the institution of such proceedings: Provided that the Minister may at any time waive compliance with the provisions of this paragraph.
- (b) A notice referred to in paragraph (a) shall clearly and explicitly state the cause of action, the name and address of the person who is to institute proceedings, and the name and address of his or her attorney or agent, if any.

**Release of foreign
vessels and other
property seized.**

38. (1) Subject to the provisions of subsection (2), the Minister may, upon application by the owner, lessee, charterer or master of a foreign vessel seized under section 7(1)(c), whether or not together with any fishing gear, fish, fish products, aquatic plants, shells or guano on board of the vessel, direct that the vessel in question or all or any of the said property on board of it, or such vessel together with all or any of such property, be released to the owner, lessee, charterer or master in question, subject to such conditions as the Minister may determine.

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- (2) The Minister shall not exercise the power conferred by subsection (1) unless -
- (a) the owner, lessee, charterer or master in question furnishes the Minister with a guarantee, approved by the Minister, securing the payment to the State, in accordance with the provisions of subsection (3) -
 - (i) of an amount equal to the reasonable value, as the case may be, of the vessel or the fishing gear, fish, fish products, aquatic plants, shells or guano or the vessel and such property, sought to be released;
 - (ii) of an amount, if any, determined by the Minister in respect of a fine which, in the opinion of the Minister, could be imposed by a court in respect of every person charged or to be charged with the offence with respect to which the vessel, such property or the vessel and such property have been seized; and
 - (b) the Minister is satisfied, after consultation with the Prosecutor-General, that the vessel or property in question are not required for the purposes of investigation or evidence in connection with any criminal proceedings.
- (3) A guarantee furnished in terms of subsection (2)(a) shall become payable -
- (a) in respect of the amount contemplated in subparagraph (i) of that subsection, on the date on which a court makes an order in terms of section 35(2)(b);
 - (b) in respect of the amount referred to in subparagraph (ii) of that subsection, on the date on which the court sentences the accused in question to pay a fine; or
 - (c) on the date on which the court makes an order in terms of section 35(5) and to the extent ordered by the court.
- (4) Any payment received by the State under a guarantee in respect of an amount referred to in subsection (2)(a)(ii) shall be considered to be payment or part

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payment of any fine or fines imposed by the court in the particular case, and, if the amount so received exceeds such fine or fines, the balance shall be remitted to the person who had furnished the guarantee.

(5) For the purposes of subsection (2)(a)(i) the reasonable value of a vessel or any goods referred to in that section, shall be deemed to be the value thereof as determined by the Minister or any person designated by the Minister for that purpose.

(6) In any proceedings before a court, a certificate purporting to have been signed by the Minister or a person who alleges that he or she has been designated by the Minister under subsection (5), and in which a value is specified in respect of any vessel or goods mentioned in the certificate, shall upon its mere production at such proceedings, be *prima facie* proof that the value of the vessel or goods concerned is as so specified.

PART XI
MISCELLANEOUS PROVISIONS

Exemptions

39. The Minister may, subject to such conditions as the Minister may determine, exempt in writing -

- (a) any person who conducts scientific investigation, experimentation or research; or
- (b) a particular category of persons permitted or required to perform any act under any other law which would be or might result in a contravention of this Act,

from any of or all the provisions of this Act in conducting such investigation, experimentation or research or in the performance of any such act, and may at any time cancel or amend an exemption so granted

Obtaining of information by Minister.

40. The Minister may, *mutatis mutandis in accordance* with the provisions of the Statistics Act, 1976 (Act 66 of 1976), direct any person or category of persons carrying on any business or engaged in any activity in connection with the catching, transportation, treating, processing, refrigeration, freezing, collection, removal or recovery, as the case may be, of fish, fish products, aquatic

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plants, shells or guano, to furnish the Minister within the period specified in the direction, with such information in respect of that business or activity as may be so specified, and may be considered necessary for the purposes of this Act.

Proclamation of conventions, treaties or agreements, and amendments.

41. The President may by proclamation in the *Gazette* -

- (a) add to this Act any Schedule setting out any convention, treaty or agreement relating to sea fishery matters which is binding upon Namibia; and
- (b) amend any such Schedule to give effect to any amendment or substitution of a convention, treaty or agreement so set out.

Delegation of powers.

42. (1) (a) The Minister may -

- (i) on conditions determined by the Minister, delegate to any officer or employee of the Ministry any power conferred upon the Minister by or under this Act, except the power to make regulations; and
- (ii) by notice in the *Gazette*, and on such conditions as may be specified therein, delegate, in respect of any particular species of fish, aquatic plants or shells, in general or in respect of a defined area, any power conferred upon the Minister by or under this Act, except the power to make regulations, to any person employed by a local authority.

- (b) Any person to whom a power has been delegated under subsection (1) may, with the prior written approval of the Minister, delegate that power to any other person to whom the Minister could have delegated such power.

(2) The Permanent Secretary may, on conditions determined by him or her, delegate to an officer or employee of the Ministry, any power conferred upon him or her by or under this Act.

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PART XII
REPEAL OF LAWS, SAVINGS
AND SHORT TITLE**Repeal of laws and savings.**

43. (1) Subject to the provisions of subsections (2), (3) and (4), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

(2) Any regulation, licence, permit, authority, direction, notice, approval or appointment made, issued, given or anything done under any provision of any law repealed by subsection (1) shall be deemed to have been made, issued, given or done under the corresponding provision of this Act, for the unexpired period (where applicable), for which it would have been valid had this Act not been passed.

(3) For the purposes of this Act -

(a) the regulations in force by virtue of the provisions of subsection (2), shall be construed in accordance with the provisions of this Act, in so far as they relate to those provisions, unless it would in any particular case be obviously inappropriate;

(b) a notice issued under section 20A of the Sea Fisheries Act, 1973, and in force immediately before the commencement of this Act, shall, in so far as it imposes a quota levy, continue to be of force and be deemed to be a notice issued under section 20 of this Act, and any amount specified in such notice as a quota levy shall be deemed to be a quota fee imposed under section 20 of this Act.

(4) Any person who, at the commencement of this Act, is the holder of a licence in respect of a vessel or factory licensed in accordance with the provisions of the Sea Fisheries Act, 1973, shall, for the purposes of section 14 and any other relevant provision of this Act, be deemed to have been granted a right of exploitation under section 14(4), valid until 31 December 1993 or such later date as the Minister may, by notice in the *Gazette*, determine as the expiry date of such right of exploitation.

Short title.

44. This Act shall be called the Sea Fisheries Act, 1992 and shall come into operation on a date determined by the President by proclamation in the *Gazette*.

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SCHEDULE

REPEAL OF LAWS
(Section 43(1))

No. and year of Law	Short Title	Extent of Repeal
Act 58 of 1973	Sea Fisheries Act, 1973	The whole
Act 57 of 1975	General Laws Amendment Act 1975	Sections 44 and 45
Act 22 of 1976	Sea Fisheries Amendment Act, 1976	The whole
Act 99 of 1977	Sea Fisheries Amendment Act, 1977	
Proclamation AG. 6 of 1978	The Sea Fisheries Amendment Proclamation, 1978	The whole
Act 3 of 1990	Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990	The inser- tion in the Schedule relating to the Sea Fisheries Act, 1973.
Act 10 of 1990	Sea Fisheries Amendment Act, 1990	The whole