



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GOVERNMENT NOTICE

No. 91	Promulgation of Inland Fisheries Resources Act, 2003 (Act No. 1 of 2003), of the Parliament	1
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Government Notice

OFFICE OF THE PRIME MINISTER

No. 91	2003
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PROMULGATION OF ACT OF PARLIAMENT

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

No. 1 of 2003: Inland Fisheries Resources Act, 2003.

ACT

To Act to provide for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources; to provide for the control and regulation of inland fishing; and to provide for related matters.

(Signed by the President on 3 April 2003)

ARRANGEMENT OF SECTIONS

PART I INTERPRETATION

1. Definitions

PART II POLICY FOR CONSERVATION AND UTILIZATION OF INLAND FISHERIES RESOURCES

2. Minister determines policy

PART III INLAND FISHERIES COUNCIL

3. Establishment of Council
4. Constitution of Council
5. Disqualification for appointment as member of Council
6. Term of office of members of Council
7. Vacation of office and filling of vacancies
8. Meetings of Council
9. Committees of Council
10. Remuneration and allowances of members of Council and other persons

PART IV FISHING LICENCES AND REGISTRATION OF NETS

11. Fishing licence required for fishing
12. Fees and duration of fishing licence
13. Conditions applicable to a fishing licence
14. Cancellation of fishing licence or refusal to renew
15. Fishing licence not transferable
16. Marking of fishing nets

PART V CONTROL OF FISHING ACTIVITIES

17. Prohibited fishing methods
18. Fishing in game park or nature reserve

PART VI CONSERVATION AND PROTECTION MEASURES

19. Introduction, import or export of fish
20. Construction of dams or other structures or works in rivers or streams
21. Endangered species of fish
22. Fisheries reserves and limitation of licences

PART VII ENFORCEMENT

- 23. Inspectors
- 24. Remuneration
- 25. Powers of inspectors
- 26. Disposal of fish and other seized articles

PART VIII OFFENCES AND PENALTIES

- 27. Offences and penalties
- 28. Forfeiture

PART IX GENERAL

- 29. Regulations
- 30. Delegation of powers
- 31. Exemptions and application
- 32. Amendment of the Nature Conservation Ordinance, 1975
- 33. Short title and commencement

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

PART I INTERPRETATION

Definitions

- 1. (1) In this Act, unless the context otherwise requires -
 - “Council” means the Inland Fisheries Council established by section 3;
 - “designated officer” means a person designated under section 1(2);
 - “fish” means any freshwater vertebrate or crustaceans and the larvae or eggs of such vertebrate or crustaceans, but excludes amphibians, reptiles, birds and mammals;
 - “fishing” means an act directed at the taking, killing or injuring of fish;
 - “fishing licence” means a fishing licence issued under section 11;
 - “inland waters” means a river, stream, watercourse, lake, swamp, pond, dam, reservoir or any other freshwater body, excluding a freshwater body situated on private property, other than property owned or controlled by any board, institution or other authority established by any law;
 - “inspector” means an inland fisheries inspector designated or appointed under section 23;
 - “local authority council” means a municipal council, town council or village council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);
 - “Minister” means the Minister responsible for inland fisheries;
 - “Ministry” means the Ministry responsible for the administration of inland fisheries;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribed” means prescribed by regulation;

“recreational fisheries” means fisheries conducted by individuals primarily for sport but with a possible secondary objective of catching fish for domestic consumption but not for onward sale;

“regional council” means a regional council established by section 2 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regulated fishing gear” means -

- (a) a rod, reel, line and hook; or
- (b) a net.

“shared resources” means shared aquatic ecosystem, shared fishery and shared fish stock;

“subsistence fisheries” means those fishing activities whose fishers regularly catch fish using traditional fishing gear for personal and household consumption and engage from time to time in the local sale or barter of excess catch;

“this Act” includes any regulation or notice made or issued under this Act;

“traditional authority” means a traditional authority established in terms of section 2 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000);

“traditional fishing gear” means gear manufactured by the local population in an artisanal manner making use of natural materials available from the local environment;

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

(2) The Minister may by notice in the *Gazette* designate -

- (a) any staff member of the Public Service;
- (b) any officer of a regional council;
- (c) any officer of a local authority council; or
- (d) any other person,

to perform all or any specified functions assigned to a designated staff member or officer by this Act, and subject to such conditions as the Minister may determine in the notice.

PART II

POLICY FOR CONSERVATION AND UTILIZATION OF INLAND FISHERIES RESOURCES

Minister determines policy

2. (1) The Minister must from time to time, taking into account relevant economic, social and environmental factors and on the basis of the best scientific information available, formulate the general policy with regard to the conservation and utilization of the Namibian inland fisheries resources with a view to -

- (a) the management, protection and conservation of inland aquatic ecosystems;

- (b) the promotion, sustainable utilization and protection of inland fisheries resources;
- (c) the promotion of co-operation with other countries for research, management and development of shared resources.

(2) In determining the general policy to be applied in a particular area, the Minister must consult with the regional council and any local authority councils or traditional authorities in that area.

(3) The Minister must promote sustainable harvesting, management, conservation and protection arrangements for freshwater fish and their ecosystems in accordance with international law, international agreements and arrangements to which Namibia is a party.

PART III INLAND FISHERIES COUNCIL

Establishment of Council

3. There is established a council, known as the Inland Fisheries Council, which shall advise the Minister in relation to any matter on which the Minister is required to consult the Council under this Act and any matter which the Minister refers to the Council for investigation and advice.

Constitution of Council

4. (1) The Council consists of the Permanent Secretary and such other persons as the Minister may appoint, including -

- (a) one staff member of the Ministry;
- (b) two persons nominated by the Association of Regional Councils;
- (c) one person nominated by the Association of Local Authorities;
- (d) three persons nominated by the Council of Traditional Leaders;
- (e) four persons who, in the opinion of the Minister, have knowledge in matters relating to inland fisheries and ecosystems, recreational fisheries or any other expertise of relevance to the issues on which the Minister is required to consult the Council under this Act.

(2) 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.

(3) The Minister may appoint a staff member as secretary to the Council to perform such tasks as the Minister may determine.

(4) The Permanent Secretary is the chairperson of the Council and the Minister must appoint one other member of the Council to be the vice-chairperson thereof.

(5) In making appointments under subsection (1), the Minister must take gender balance into consideration.

Disqualification for appointment as member of Council

5. A person does not qualify for appointment as a member of the Council if he or she -

- (a) is an unrehabilitated insolvent;
- (b) has been declared mentally ill under any law; or
- (c) has during the period of ten years immediately preceding the date of the commencement of this Act, or at any time after that date, been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

Term of office of members of Council

6. A member of the Council, other than the Permanent Secretary, holds office for a period of three years and is at the expiry of that period eligible for re-appointment.

Vacation of office and filling of vacancies

7. (1) A member of the Council, other than the Permanent Secretary, ceases to hold office if he or she -

- (a) becomes subject to a disqualification referred to in section 5;
- (b) resigns that office by written notice to the Minister;
- (c) is absent from three consecutive meetings of the Council without its leave;
- (d) is convicted of an offence under this Act or of any other offence for which he or she is convicted to a term of imprisonment without the option of a fine; or
- (e) is removed from office under subsection (2).

(2) The Minister may, by notice in writing, remove a member of the Council from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that such member -

- (a) is incapacitated by physical or mental illness; or
- (b) for any other good reason is unfit or unable to discharge the functions of a member or to represent the interests which he or she is required to represent.

(3) If a member of the Council dies or his or her office becomes vacant in accordance with subsection (1), the Minister must appoint a person to fill the vacancy for the unexpired portion of the term of office of the member in whose stead he or she is appointed.

Meetings of Council

8. (1) The first meeting of the Council must be held at such time and place as the Minister may determine, and thereafter, meetings of the Council are held at such times and places as the Council may determine, but the Council must hold at least one meeting every year.

- (2) The chairperson must convene a special meeting of the Council when -
 - (a) the Minister in writing requests him or her to do so; or

- (b) at least four members in writing request him or her to do so.
- (3) The chairperson, or in his or her absence, the vice-chairperson or in the absence of both the chairperson and the vice-chairperson, such other member as the members present may elect presides at a meeting of the Council.
- (4) A majority of the members of the Council forms a quorum at a meeting of the Council.
- (5) A decision of a majority of the members present at a meeting of the Council constitutes the decision of the Council and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.
- (6) A decision of the Council, or an act performed under the authority of such a decision, is not rendered invalid by reason only of a vacancy on the Council or the fact that a person who is not entitled to sit as a member of the Council did so sit when the decision was taken, if such decision was taken by the requisite majority of the members of the Council who were present at the time and entitled to vote.
- (7) The Council may permit any person, other than a member of the Council, who has an interest in any matter to be considered at any meeting, or any representative of that person, to attend and to take part in such discussions of the Council as in the opinion of the Council relate to such matter, but such person or representative is not entitled to vote.
- (8) The chairperson of the Council must cause a record to be kept of the proceedings of its meetings, and must cause that record to be submitted to the Minister as soon as possible after a meeting of the Council.
- (9) The Council may make rules relating to procedure at its meetings and at meetings of committees established under section 9.

Committees of Council

- 9. (1) The Council may from time to time establish committees to perform, subject to the directions of the Council, such of the Council's functions as the Council may determine.
- (2) The Council may appoint as a member of a committee any person who is not a member of the Council, but at least one member of the committee must be a member of the Council.
- (3) The chairperson of a committee must be appointed by the Council from amongst members of the Council.

Remuneration and allowances of members of Council and other persons

- 10. (1) There must be paid to a member of the Council, to a member of a committee established under section 9 and to a person appointed as an advisor under section 4(2), who is not in the full-time employment of the State, such remuneration and allowances as the Minister, with the approval of the Minister responsible for finance, may determine.
- (2) Different allowances may be determined under subsection (1) according to the different offices held by the persons concerned or the work performed by them.

PART IV
FISHING LICENCES AND REGISTRATION OF NETS

Fishing licence required for fishing

11. (1) A person may not engage in fishing in any inland waters by means of any regulated fishing gear -

- (a) without being the holder of a fishing licence issued by the Minister or a designated officer authorising fishing by means of the particular type of regulated fishing gear which the person is using or intends using;
- (b) contrary to any condition applicable to the licence in terms of section 13.

(2) An application for a fishing licence must be made in the prescribed manner to the Minister or a designated officer and can be made, at the election of the applicant, for a fishing licence authorising fishing by means of -

- (a) a rod, reel, line and hook only;
- (b) a net only; or
- (c) both a rod, reel, line and hook and a net.

(3) A person who holds a fishing licence must make it available for inspection at the place where he or she fishes when required to do so by an inspector.

Fees and duration of fishing licence

12. A fishing licence -

- (a) is issued only on payment of the prescribed fee; and
- (b) is valid for such period as may be prescribed.

Conditions applicable to fishing licence

13. (1) A fishing licence is subject to such conditions -

- (a) as are prescribed; and
- (b) as the Minister or a designated officer may impose in a particular case.

(2) Conditions prescribed or imposed under subsection (1) may relate to -

- (a) bag limits;
- (b) fishing gear;
- (c) areas in which fishing is restricted or prohibited;
- (d) closed seasons when fishing is not permitted;
- (e) furnishing of catch reports; and
- (f) any other matter which the Minister deems appropriate.

Cancellation of fishing licence or refusal to renew

14. (1) The Minister, or a designated officer, may cancel or refuse to renew a fishing licence if -

- (a) the licence holder has failed to comply with a condition applicable to the licence;
- (b) the licence holder is convicted of an offence in terms of this Act; or
- (c) the sustainable utilization of any species of fish or inland fisheries resources in general is threatened.

(2) The Minister or a designated officer, instead of cancelling or refusing to renew a fishing licence in a case referred to in subsection (1)(a), may in writing vary any condition applicable to the licence or impose any further condition.

Fishing licence not transferable

15. A fishing licence authorises fishing only by the holder thereof and is not transferable.

Marking of fishing nets

16. A person may not for the purpose of fishing use or have in his or her possession a net, unless the net -

- (a) is a net of which the use is authorised by a fishing licence;
- (b) is marked in the prescribed manner; and
- (c) conforms to the prescribed requirements.

PART V
CONTROL OF FISHING ACTIVITIES

Prohibited fishing methods

17. (1) A person may not use for fishing -

- (a) any chemical, poison, poisonous plant or any noxious or other injurious substance;
- (b) any explosive, firearm or electrical device; or
- (c) any light at night to lure or attract fish.

(2) A person who uses a net for fishing may not use the net -

- (a) within 100 meters of a bridge, culvert or spillway when water is flowing through such structures; or
- (b) in a manner that obstructs more than one half of the width of any watercourse where fishing is carried out.

Fishing in game park or nature reserve or on land owned or controlled by statutory institutions

18. A fishing licence does not authorise the holder of the fishing licence -

- (a) to fish in an area which has been declared as a game park or a nature reserve under section 14(1) of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975), except if the holder of the fishing licence is permitted under the provisions of that Ordinance to fish in such area;
- (b) to enter any land owned by or under the control of any board, institution or authority established by any law for the purpose of fishing in the inland waters extending over that land without the permission of that board, institution or other authority.

PART VI

MANAGEMENT, CONSERVATION AND PROTECTION MEASURES

Introduction or transfer of fish and import or export of fish

- 19.** A person may not without written permission granted by the Minister -
- (a) introduce or cause to be introduced into any inland water system, or transfer from one water system to another, any species of fish;
 - (b) import into Namibia any live fish;
 - (c) export from Namibia any live fish declared as endangered species under section 21;

Construction of dams or other structures or other works in rivers or streams

20. Any power conferred by any law on an authority to grant permission for the construction of a dam, or the erection or installation of any structure in a river or stream must be exercised after consultation with the Minister.

Endangered species of fish

21. (1) The Minister may by notice in the *Gazette* declare any species of fish as an endangered species for the purpose of protecting or regenerating such species.

- (2) A person may not -
- (a) catch and retain;
 - (b) kill or injure; or
 - (c) without the written permission of the Minister remove from its environment or possess,

any fish belonging to a species declared under subsection (1) to be an endangered species.

Fisheries reserves and limitation of licences

22. (1) The Minister, on his or her own initiative, or in response to an initiative of any regional council, local authority council or traditional authority, and in consultation with the regional council, local authority council or traditional authority concerned, may by notice in the *Gazette* declare any area of inland waters as a fisheries reserve if the Minister considers that special measures are necessary -

- (a) to preserve the aquatic environment;
- (b) to protect, preserve or rehabilitate the natural environment of fish, related ecosystems including wetlands, lakes, lagoons, nursery and spawning areas, which are essential to maintaining the integrity of an ecosystem, species or assemblages of species;

- (c) to promote the regeneration of fish stocks;
 - (d) to protect fish resources and their environment from destruction, degradation, pollution and any other adverse impacts through human activities that threaten their health and viability.
- (2) A person may not in a fisheries reserve declared under subsection (1), without the written permission of the Minister -
- (a) engage in any activity for fishing; or
 - (b) dredge or extract any material or discharge or deposit any waste or other polluting matter or in any other way destroy, disturb or interfere with the natural environment of fish and related ecosystems.
- (3) If the Minister is of the opinion that the sustainable utilization of fish is threatened, the Minister may by notice in the *Gazette* prohibit or limit the number of licences that may be issued in respect of any one or both the types of regulated fishing gear either in general or in respect of a particular area or for a specified period.

PART VII ENFORCEMENT

Inspectors

23. (1) Subject to the Public Service Act, 1995 (Act No. 13 of 1995), the Minister may designate any staff member in the Ministry as an inspector for the purposes of this Act.

- (2) The Minister may, by notice in the *Gazette*, with the concurrence of -
- (a) the Minister responsible for environmental affairs;
 - (b) the Minister responsible for rural development; or
 - (c) a regional council or local authority council,

designate a staff member or officer holding any post in that Ministry, regional council or local authority council, as the case may be, as an inspector for the purposes of this Act.

(3) The Minister, after consultation with a traditional authority, may by notice in the *Gazette* appoint a person nominated by that traditional authority as an inspector.

(4) The Minister may at any time, after consultation with the relevant Minister referred to in subsection (2)(a) or (b) or the regional council or local authority council or traditional authority concerned, withdraw or alter a designation or appointment made under subsection (2) or (3).

Remuneration

24. The Minister, with the concurrence of the Minister responsible for finance and after consultation with the traditional authority concerned, may determine the remuneration, if any, payable to an inspector appointed under section 23(3).

Powers of inspectors

- 25.** An inspector may -
- (a) stop and board any vessel which is used or suspected of being used for fishing and perform any act necessary to ascertain whether the provisions of this Act have been or are being complied with;

- (b) seize any vessel or fishing gear which the inspector has reason to believe has been used for fishing contrary to this Act or a condition of a fishing licence;
- (c) seize any fish that the inspector has reason to believe has been caught or is being possessed in contravention of this Act or a condition of a fishing licence;
- (d) seize any equipment, article or substance that the inspector has reason to believe has been used for fishing in contravention of this Act or a condition of a fishing licence.

Disposal of fish and other seized articles

26. (1) An inspector who seizes a vessel or other article under section 25 may remove the vessel or article to a place determined by the Minister for safe-keeping pending the conclusion of any criminal proceedings concerning such vessel or article and a determination by a court in terms of section 28 as to the forfeiture of the vessel or article concerned.

(2) Notwithstanding subsection (1), any fish seized under section 25 that is likely to perish may be disposed of in such manner as may be prescribed.

PART VIII OFFENCES AND PENALTIES

Offences and penalties

- 27.** (1) A person is guilty of an offence who -
- (a) contravenes any of the provisions of sections 11(1) or (3), 16, 17(1) or (2), 19, 21(2) or 22(2);
 - (b) without the required permission fishes or attempts to fish in any waters referred to in section 18(a) or (b);
 - (c) catches or attempts to catch fish by a method other than a prescribed method or by a method which is prohibited by or under this Act;
 - (d) dumps or allows to enter or permits to be dumped or discharged in inland waters anything which is or may be injurious to fish, or which may disturb or alter the ecological balance in such waters, or hinders the catching of fish;
 - (e) assaults, obstructs, threatens or intimidates an inspector in the exercise or performance of the inspector's powers or duties in terms of this Act;
 - (f) uses a forged licence.
- (2) A person convicted of an offence -
- (a) for a contravention of section 19 or an offence referred to in subsection 1(b) or (f), is liable to a fine not exceeding N\$1000 or imprisonment for a period not exceeding 3 months;
 - (b) for a contravention of section 17(1) or (2), or an offence referred to in subsection (1)(c), is liable to a fine not exceeding N\$10 000 or imprisonment for a period not exceeding 12 months;

- (c) for a contravention of section 21(2), section 22(2), or an offence referred to in subsection (1)(d) or (e), is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 3 years or to both such fine and such imprisonment.

(3) A person who commits a second or subsequent offence under this Act is on conviction liable to a penalty not exceeding N\$20 000 in addition to any other penalty which may be imposed in respect of that offence.

Forfeiture

28. A court convicting a person of an offence under this Act may, in addition to any other penalty it may impose -

- (a) order that any vessel, fishing gear, explosive, firearm, poison, poisonous plant, electrical device, substance or any other object used in or in connection with the commission of the offence, or any fish caught in the commission of the offence, be forfeited to the State;
- (b) order that any fishing licence held by the person under this Act be cancelled and that the person may not be issued with any further licence for such period, not exceeding 6 months, as the court may consider appropriate;
- (c) declare a holder of a fishing licence with previous convictions unfit to be issued with a further licence for such period, less than 12 months, as the court may consider appropriate.

PART IX GENERAL

Regulations

29. (1) The Minister may make regulations in relation to any matter which is permitted or required to be prescribed in terms of this Act or which the Minister considers necessary or expedient to prescribe for achieving the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under subsection (1) may -

- (a) prescribe conditions under which recreational fisheries may be undertaken, including conditions as to methods and fishing gear that may be used or may not be used;
- (b) prescribe conditions under which subsistence fisheries may be undertaken, including conditions as to methods or traditional fishing gear that may not be used;
- (c) provide for the establishment of inland fisheries committees for purposes of managing the fisheries in particular water bodies or in particular areas and define the functions, powers and duties of such committees;
- (d) prescribe conditions on which (d) prohibiting the catching of fish in general or within a specified area;
- (e) prescribe the requirements with which vessels or fishing gear to be used for fishing must comply;
- (f) prescribe the size of fishing nets to be used, the minimum mesh sizes of such nets and the manner by which the mesh sizes must be measured;

- (g) prohibit the catching of fish by a particular method or otherwise than by a stipulated method;
- (h) prescribe the minimum sizes of fish caught that may be retained and the manner by which such sizes must be measured;
- (i) prescribe the manner in which registered fishing nets must be marked;
- (j) prescribe conditions under which angling competitions may be held to protect fish and their environment and for the safety of competition participants;
- (k) prescribe conditions and restrictions for stocking or undertaking fisheries;
- (l) prescribe the method in which any fishing gear may be used;
- (m) provide for the making of surveys and gathering of information regarding -
 - (i) requirement and demand in respect of any fish;
 - (ii) the state and potential of any fish; and
 - (iii) the harvesting, processing, transportation, disposition and marketing of fish.
- (3) Regulations made under subsection (2) may -
 - (a) be made to apply to fish in general or to a particular species of fish or may differentiate between different species of fish in different areas or in respect of any other matter which the Minister deems necessary;
 - (b) prescribe penalties for any contravention of or failure to comply with their provisions not exceeding a fine of N\$1000 or imprisonment for a period not exceeding 3 months.

Delegation of powers

- 30.** (1) The Minister may -
- (a) on conditions determined by the Minister, delegate to any staff member of the Ministry any power conferred upon the Minister by or under this Act, except the power to make regulations; and
 - (b) by notice in the *Gazette*, and on such conditions as may be specified therein, delegate either in general or in respect of a particular species of fish or in respect of a defined area, any power conferred on the Minister by or under this Act, except the power to make regulations, to an inspector who is not a staff member in the Ministry or to a person employed by a regional council or a local authority council.
- (2) A person to whom a power has been delegated under subsection (1)(a) may, with the prior approval of the Minister, delegate that power to any other person to whom the Minister could have delegated such power.
- (3) The Permanent Secretary may, on conditions determined by the Permanent Secretary, delegate to a staff member of the Ministry or to an inspector who is not a staff member in the Ministry or to a person employed by a regional council or a local authority council, any power conferred upon the Permanent Secretary by or under this Act.

Exemptions and application

31. (1) The Minister may, subject to such conditions as the Minister may determine, exempt in writing and application -

- (a) any person who conducts any scientific investigation, experiment or research; or
- (b) any category of persons permitted or required by law to perform a particular act,

from any or all the provisions of this Act, and may at any time cancel or amend an exemption so granted.

(2) The provisions of PART IV do not apply to subsistence fisheries by means of traditional fishing gear.

Amendment of the Nature Conservation Ordinance, 1975

32. The Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975) is amended -

- (a) by the insertion in subsection (1) of section 18 of the following paragraph:

“(fA) in any waters in a game park or nature reserve -

 - (i) catch or attempt to catch fish, whether or not such person is the holder of a fishing licence issued under any law governing inland fisheries resources; or
 - (ii) place or release any fish;
 - (iii) place or dump any explosive or any poison or other noxious material or substance which may be harmful to fish or their environment”;
- (b) by the deletion of paragraphs (n), (o) and (p) of subsection (1) of section 84; and
- (c) by the repeal of sections 65, 66, 67, 68, 69, 70 and 71.

Short title and commencement

33. This Act is called the Inland Fisheries Resources Act, 2003, and shall come into operation on a date fixed by the Minister by notice in the *Gazette*.
