GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 292 Promulgation of Marine Resources Act, 2000 (Act 27 of 2000), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No.292 2000

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. 27 of 2000: Marine Resources Act, 2000.

Act No. 27, 2000 **MARINE RESOURCES ACT, 2000**

ACT

To **provide for the conservation of the marine ecosystem and the responsible utilization, conservation, protection and promotion of marine resources on a sustainable basis; for that purpose to provide for the exercise of control over marine resources; and to provide for matters connected therewith.**

(Signed by the President on 21 December 2000)

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SCHEDULE

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

PARTI
PRELIMINARY PROVISIONS

Definitions

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

"advisory council" means the Marine Resources Advisory Council established by section 24;

“agency" means the Fisheries Observer Agency established by section 8;

"Agreement" means the Agreement referred to in section 11;

“annual plan" means a plan prepared by the agency on an annual basis setting out the agency's activities for the coming year and the resources required to carry out those activities;

"board" means the management board of the agency, contemplated in section 12;

"by-catch" means any marine resource harvested in an attempt to harvest a different marine resource;

- commercial purposes" with respect to harvesting marine resources means -

(a) with the intention of selling, bartering, pledging or otherwise disposing of, or delivering or offering to do any of the things mentioned in this paragraph in respect of such resources;

(b) using purse seine, trawl or long line, or such other fishing or harvesting methods as may be prescribed; or

(c) exceeding the limits prescribed for the harvesting of marine resources for own use;

“exploratory right" means a right to harvest marine resources on an exploratory basis, granted under section 34;

“fisheries agreement” means an agreement entered into under section 35;

“fisheries inspector” means a person designated as a fisheries inspector under section 4;

“fisheries observer" means a person appointed under section 7 as a fisheries observer;

"Fisheries Observer Fund” means the Fisheries Observer Fund established by section 46;

“fishing gear" means any net oz other implement or means used or capable of being used for the harvesting of marine resources;

“fishing industry" means the whole of the trade engaged in the harvesting o r acquisition by any other means of marine resources, the processing of those resources and the provision or delivery for trade, purposes of those resources;

"fishing vessel” means any vessel which is used for harvesting marine resources; "foreign flag vessel" means a vessel-

(a) registered in any foreign country under the relevant laws in force in that country; or

(b) not being registered or licensed or required to be registered or licensed in Namibia under the Merchant shipping Act, 1951 (Act No. 57 of 195 1);

"harvest" means

(a) searching for, catching, taking or attempting to catch or take any marine resource;

(b) placing, or having, fishing gear in the sea or using it on the sea shore or on an island;

(c) engaging in any other activity that can reasonably be expected to result in the locating, catching or taking of marine resources;

(d) undertaking any operations at sea or on an island in preparation for any activity mentioned in sub-paragraph (a), (b), or (c);

"honorary fisheries inspector" means a person appointed as an honorary fisheries inspector under section 6;

"licence" means a licence issued under section 40;

“marine resources" means all marine organisms, including, but not limited, to, plants, vertebrate and invertebrate animals, monerans, protists (including seaweeds), fungi and viruses, and also includes guano and anything naturally derived from or produced by such organisms;

"Marine Resources Fund” means the fluid continued under section 45;

“master" in relation to a vessel, means the person having command of the -vessel;".

"Minister" means the Minister responsible for marine resources;

"Ministry" means the Ministry responsible for marine resources;

"Namibian flag vessel" means a vessel registered or licensed or required to be registered or licensed in Namibia under the Merchant Shipping Act, 1951 (Act No. 5 7 of 195 1);

"Namibian waters" means the internal waters, the territorial sea, the contiguous zone and the exclusive economic zone of Namibia as defined in the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), and includes the sea bed up to the high water mark;

"Permanent Secretary" means, the Permanent Secretary of the Ministry;

“prescribed" means prescribed by regulation.,

“quota" means the part of the total allowable catch which may be harvested by a holder of a right or a group of holders of a right in respect of a given marine resource and which is allocated under section 39;

"right" means a right to harvest marine resources, granted under section 33;

“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995;

“strategic plan" means a plan prepared by the agency, setting out the agency's long term plans and objectives;

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

"total allowable catch" means a total allowable catch set under section 3 8;

"vehicle" means any conveyance capable of transporting goods or persons;

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

PART II
GENERAL POLICY FOR CONSERVATION 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 marine resources m order to realize the greatest benefit for all Namibians both present and future.

Control over marine resources

3. (1) 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 No. 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.

(2) The management, protection and utilization of marine resources in Namibia and Namibian waters shall be subject to this Act.

PART III
OFFICERS

Fisheries inspectors

4. (1) The Minister may, subject to the Public Service Act, 1995 (Act No. 13 of 1950.5) designate any staff member within the Ministry to be a fisheries inspector.

(2) The Minister may, by notice in the *Gazette,* designate any staff member or official of any other ministry or government department, any regional, local or statutory authority to be a fisheries inspector, provided he or she has received the approval of the Minister, the head of the Government department or the authority concerned, to do so.

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

(4) The Minister may, with the approval of the Minister responsible for finance, determine the additional remuneration, if any, which is payable to a person designated under subsection (2).

(5) A fisheries inspector may be designated either by name or ex officio, but no such designation shall be made unless the Minister is satisfied that the person to be designated is suitably qualified to exercise the powers of a fisheries inspector.

Powers of fisheries inspectors

5. (1) A fisheries inspector may, at any time and without a warrant -

(a) board any vessel and inspect such vessel, its fishing gear, cargo and stores, any marine resources aboard and any document or other item required to be kept under this Act and may, for the purposes of that inspection, stop that vessel;

(b) enter any premises, other than a dwelling house, or any vehicle, in which marine resources or any fishing gear are kept or are being transported, as the case may be, and inspect the premises or vehicle, and may, for the purpose of inspecting a vehicle in which marine resources are being transported, stop that vehicle;

(c) stop any vehicle for the purpose of carrying out a routine check for marine resources;

(d) examine any fishing gear or object which he or she has reasonable grounds to suspect is being used or intended for use in the harvesting, handling or processing of marine resources;

(e) question any person who, in his or her opinion, may be capable of furnishing any information which he or she may require; and

(f) require any person employed on a vessel to assist him or her in the examination of any container, fishing gear, marine resources or document on or in such vessel in order to ascertain whether this Act has been complied with.

(2) Where a fisheries inspector has reasonable grounds to suspect that an offence under this Act has been committed he or she may

(a) stop and inspect any vehicle which he or she reasonably suspects is carrying marine resources which have been harvested or fishing gear which has been used;

(b) where reasonably necessary to preserve evidence or items subject to forfeiture or to prevent the continuation or repetition of the offence

(i) seize any vessel, vehicle, fishing gear, marine resources, document or other item; and

(ii) order the master of any vessel in respect of which the offence has been committed or which has been used in its commission or which may provide evidence of the offence to transit to a specified port; and

(c) require any person who may have information concerning the offence to furnish his or her name and address.

(3) A fisheries inspector may exercise the powers conferred by subsections (1) and (2)

(a) with respect to Namibian flag vessels inside and outside Namibian waters; and

(b) with respect to foreign flag vessels inside Namibian waters and, to the extent authorized by international agreements to which Namibia is a party, outside Namibian waters.

Honorary fisheries inspectors

6. (1) The Minister may, by written notice to a person, appoint him or her as an honorary fisheries inspector.

(2) The Minister may, at any time by written notice to an honorary fisheries inspector, and without giving reasons, withdraw his or her appointment as an honorary fisheries inspector if the Minister considers it desirable to do so.

(3) An honorary fisheries inspector may -

(a) examine any marine resource and any fishing gear or object which is being used or intended for use in the harvesting, handling or processing of marine resources;

(b) where he or she has reasonable grounds to suspect that an offence under this Act has been committed, require any person who may have information concerning the 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; and

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

Act No. 27, 2000 **MARINE RESOURCES ACT, 2000**

Fisheries observers

7. (1) There shall be fisheries observers who shall be appointed by the agency to-

(a) observe the harvesting, handling, and processing of marine resources and related operations and to record data concerning such operations;

(b) collect and record biological and other information related to activities governed by this Act;

(c) collect samples of marine resources harvested;

(d) report to the agency any observations and information obtained under this subsection; and

(e) perform such other activities as may be agreed upon between the Minister and the agency, but not inconsistent with paragraphs (a) to (d).

(2) The Minister may require a person harvesting marine resources, under a right, an exploratory right or a fisheries agreement to

(a) carry a fisheries observer aboard any fishing vessel;

b) admit a fisheries observer to any land and any premises used for harvesting marine resources;

(c) allow the fisheries observer referred to in paragraphs (a) and (b) access to all parts of the fishing vessel, land and premises as well as to any records, documents and marine resources found there;

(d) provide reasonable accommodation for the fisheries observer referred to in paragraphs (a) and (b); and

(e) allow the fisheries observer referred to in paragraphs (a) and (b) the use of all equipment necessary for the performance of his or her functions.

PART IV
FISHERIES OBSERVER AGENCY

Establishment of Fisheries Observer Agency

8. There is hereby established a juristic person to be known as the Fisheries Observer Agency.

Functions of agency.

9. The functions of the agency are to -

(a) provide fisheries observers to perform the tasks enumerated in section 7(1) for the benefit of the Ministry;

(b) provide appropriate expertise and facilities to train fisheries observers; and

(c) pursuant to an agreement managing marine resources outside Narnibian waters, and to which Namibia is a party, make fisheries observers available

on a commercial basis to organisations managing marine resources outside Namibian waters and established by that agreement.

Functions of Minister

10. The Minister shall –

(a) determine the overall policy within which the agency shall operate;

(b) approve the agency's annual budget by the 3 Oth September of each year for the coming financial year

(c) review the Agreement on an annual basis;

(d) approve the annual plan, the annual budget Proposal, the annual report and* the strategic plan submitted to him or herbythe board under section 12(2); and

(e) review the report on the auditing of financial statements of the agency.

Agreement

11. (1) The agency shall carry out its functions subject to an Agreement between the agency and the Ministry specifying details of the services to be provided by the agency to the Ministry.

(2) The Agreement referred to in subsection (1) shall include, but not be limited to the -
(a) funding of the agency;

(b) standards of performance of fisheries observers and of the services to be provided by the agency;

(c) skills and qualifications of fisheries observers;

(d) requirements for the annual report, the annual plan and the strategic plan of the agency;

(e) financial planning and control in the agency;

(f) human resource management in the agency;

(g) guidelines for the structure of and the conditions of service for the staff of the agency; and

(h) code of conduct for fisheries observers.

(3) The Agreement shall be reviewed annually, and subject to agreement between the Minister and the board, is renewable every five years.

(4) In discharging functions under this Act, the agency and any other person exercising powers granted under this Act shall have regard to the Agreement.

Board

12. (1) There shall be a management board which shall be the governing body of the agency and which shall have the authority to exercise and perform the functions conferred on the agency under this Act.

(2) Without prejudice to the generality of subsection (1), the board shall -

(a) provide guidelines for the activities of the agency;

(b) submit an annual plan to the Minister for approval;

(c) submit an annual budget proposal to the Minister for approval;

(d) submit an annual report to the Minister on the performance of the agency;

(e) submit, from time to time, a strategic plan to the Minister;

(f) serve as the body of appeal in any disciplinary matter or point of dispute in matters relating to staff of the agency; and

(g) submit the annual report on the auditing of financial statements to the Minister for review.

(3) The board shall be accountable to the Minister for ensuring the implementation of the Agreement, and for this purpose, shall monitor the performance of the agency.

Constitution of board

13 (1) The board shall consist of six persons appointed by the Minister as follows:

(a) Two staff members from the Ministry;

(b) a staff member from the Ministry responsible for finance nominated by the Minister responsible for finance;

(c) two persons who, in the opinion of the Minister, fairly represent the fishing industry or any branch of the fishing industry; and

(d) one person not from the fishing industry appointed for his or her knowledge of business management.

(2) The Minister shall appoint two members of the board to be its chairperson and vice-chairperson, respectively.

(3) Before making an appointment under subsection (1)(c), the Minister shall consult with any trade association which, in the opinion of the Minister, is representative of the fishing industry or of any branch of the fishing industry.

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

Disqualification for appointment as member of board

14. A person shall not qualify for appointment as a member of the board 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 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 board

15. Subject to section 16, a member of the board shall hold office for a period of three years and shall at the expiry of that period be eligible for re-appointment.

Vacation of office and filling of vacancies

16. (1) A member of the board shall cease to hold office if he or she -

(a) becomes subject to a disqualification referred to in section 14;

(b) resigns that office by written notice to the Minister;

(c) is absent from three consecutive meetings of the board without it leave;

(d) is convicted of an offence under this Act; or

(c) is removed from office under subsection (2).

(2) The Minister may, by notice in writing, remove a member of the board from office if the Minister, after giving the member concerned 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 unable or unfit to discharge the functions of a member of the board.

(3) If a member of the board dies, or his or her office becomes vacant in accordance with subsection (1), the Minister shall, with due regard to section 13(1), and in the case of a member referred to in section 13(1)(c), with due regard to section 13(3) as well, appoint a person to fill the vacancy for the unexpired portion of the term of office of the member 'm whose stead he or she is appointed.

Meetings of board

17. (1)The first meeting of the board shall be held at such time and place as the Minister may determine, and thereafter, meetings of the board shall be held at such times and places as the board may determine, but the board shall hold at least one meeting every three months.

(2) The chairperson of the board shall convene a special meeting of the board when

(a) the Minister in writing requests him or her to do so; or

(b) at least two members of the board request him or her to do so.

(3) The chairperson of the board, or in his or her absence, the vice-chairperson of the board, or in the absence of both the chairperson and the vice-chairperson, such member of the board as the members present shall elect shall preside at a meeting of the board.

(4) Four members of the board shall form a quorum at a meeting of the board.

(5) A decision of a majority of the members of the board present at a meeting of the board shall be the decision of the board and, in the event of an equality of votes, tile person presiding shall have a casting vote in addition to his or her deliberative vote.

(6) A decision of the board, or an act performed under the authority of such a decision, shall not be rendered invalid by reason only of a vacancy on the board or the fact that a person who is not entitled to sit as a member of the board did so sit when the decision was taken, if such decision was taken by the requisite majority of the members of the board who were present at the time and entitled to vote.

(7) The chairperson of the board shall cause a record to be kept of the proceedings of its meetings, and shall cause that record to be submitted to the Minister as soon as possible after a meeting of the board.

(8) The board shall make rules relating to procedure at its meetings and at meetings of committees established under section 18.

Committees of board

18. (1) The board may from time to time establish committees to perform, subject to the directions of the board, such of its functions as the board may determine.

(2) The board may appoint as a member of a committee any person who is not a member of the board, but at least one member of the committee shall be a member of the board.

(3) The chairperson of a committee shall be appointed by the board from amongst members of the board.

Remuneration and allowances of members of board and of committees

19. (1) There shall be paid to a member of the board and to a member of any committee established under section 18 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.

(3) The agency may reimburse a member of the board and of any committee established under section 18 for expenses reasonably incurred by him or her while travelling to, or attending, a meeting of the board or of a committee or while performing any work of the agency, and allowed by the board.

Chief executive officer and other staff

20. (1) There shall be a chief executive officer of the agency who shall, subject to the directions of the board and the Agreement, be responsible to the board for the day-to-day administration of the agency.

(2) The chief executive officer shall be appointed by the board in consultation with the Minister, through open competition.

(3) The agency shall, in addition to the chief executive officer and fisheries observers appointed under section 7, appoint such other staff as it may consider necessary to carry out its functions

Financial year

21. The financial year of the agency shall commence on 1 April and end on 31 March of the ensuing year.

Accounting and auditing

22. (1) The board shall cause to be kept proper accounts and records of all moneys received or expended by the agency, and of all assets, liabilities and financial transactions of the agency.

(2) The board shall cause the accounts and records of the agency to be audited annually by a person registered as an auditor under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 195 1) and appointed by the board with the prior consent of the Auditor-General.

Annual report

23. (1) Subject to subsections (2) and (3), the board shall, as soon as possible, but not later than three months after the end of each financial year, cause to be prepared and submitted to the Minister

(a) audited financial statements of the agency and a report of the auditor on those statements; and

(b) a report on the activities of the agency during that financial year.

(2) The audited financial statements referred to in subsection (1)(a) shall contain -

(a) detailed particulars of moneys received by the agency and expenditure incurred by the agency during, and its assets and liabilities at the end of, the financial year in question; and

(b) such additional particulars as the Minister may determine.

(3) The Minister shall lay upon the Table of the National Assembly the audited financial statements and reports received by him or her under subsection (1), within 3 0 days from the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 30 days after the commencement of its next ordinary session.

PART V
MARINE RESOURCES ADVISORY COUNCIL

Establishment of Marine Resources Advisory Council

24. There is hereby established a council, to be known as the Marine Resources Advisory Council, which shall advise the Minister in relation to any matter on which the Minister is required to consult the advisory council under this Act and any matter which the Minister refers to the advisory council for investigation and advice.

Constitution of advisory council

25. (1)The advisory council shall consist of the Permanent Secretary and such other persons as the Minister may appoint, Of whom. 7

(a) one shall be a staff member of the Ministry;

(b) five shall be persons who, in the opinion of the Minister, have knowledge in matters relating to marine resources or any other expertise of relevance to the issues on which the Minister is required to consult the advisory council under this Act; and

(c) five shall be persons who, in the opinion of the Minister, fairly represent the fishing industry or employees in the fishing industry.

(2) Before making an appointment under subsection (1)(c), the Minister shall consult with any trade association or trade union which, in the opinion of the Minister, is representative of the fishing industry or 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 advisory council in an advisory capacity.

(4) The Minister may appoint a secretary to the advisory council to perform such tasks as the Minister may designate.

(5) 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.

(6) In making appointments tinder subsection (1), the Minister shall take gender balance into consideration.

Disqualification for appointment as member of advisory council

26. A person shall not qualify for appointment as a member of the advisory council if he or she 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 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 fin. e.

Term of office of members of advisory council

27. A member of the advisory council, other than the Permanent Secretary, shall hold office for a period of three years and shall at the expiry of that period be eligible for re-appointment.

Vacation of office and filling of vacancies

28. (1) A member of the advisory council, other than the Permanent Secretary, shall cease to hold office if he or she
(a) becomes subject to a disqualification referred to in section 26;

(b) resigns that office by written notice to the Minister;

(c) is absent from three consecutive meetings of the advisory council without its leave;

(d) is convicted of an offence under this Act; or

(e) is removed from office under subsection (2).

(2) The Minister may, by notice in writing, remove a member of the advisory council from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that such member
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) lf a member of the advisory council dies or his or her office becomes vacant in accordance with subsection (1), the Minister shall, with due regard to section 25(1), and in the case of a member referred to in section 25(1)(c), with due regard to section 25(2) as well, 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 advisory council

29. (1)The first meeting of the advisory council shall be held at such time and place as the Minister may determine, and thereafter, meetings of the advisory council shall be held at such times and places as the advisory council may determine, but the advisory council shall hold at least one meeting every year.

(2) The chairperson shall convene a special meeting of the advisory council

(a) the Minister in writing requests him or her to do so; or

(b) at least four members 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 member as the members present shall elect shall preside at a meeting of the advisory council.

(4) Seven members shall form a quorum at a meeting of the advisory council.

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

(6) A decision of the advisory council, or an act performed under the authority of such a decision, shall not be rendered invalid by reason only 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 did. so sit when the decision was taken, if such decision was taken by the requisite majority of the members of the advisory council who were present at the time and entitled to vote.

(7) The advisory council may permit any person, other than a member of the advisory, 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 advisory council as in the opinion of the advisory council relate to such matter, but such person or representative shall not be entitled to vote.

(8) The chairperson of the advisory council shall cause a record to be kept of the proceedings of its meetings, and shall cause that record to be submitted to the Minister as soon as possible after a meeting of the advisory council.

(9) The advisory council shall make rules relating to procedure at its meetings and at meetings of committees established under section 30.

Committees of advisory council

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

(2) The advisory council may appoint as a member of a committee any person who is not a member of the advisory council, but at least one member of the committee shall be a member of the advisory council.

(3) The chairperson of a committee shall be appointed by the advisory council from amongst members of the advisory council.

Remuneration and allowances of members of advisory council and other persons

31. (1) There shall be paid to a member of the advisory council, to a member of a committee established under section 30 and to a person appointed as an advisor under section 25(3), 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.

(3) The advisory council may reimburse a member of the advisory council, a member of any committee established under section 30 and a person appointed as an advisor under section 25(3) for expenses reasonably incurred by him or her while travelling to, or attending, a meeting of the advisory council or of a committee or while performing any work of the advisory council, and allowed by the Minister.

PART VI

COMMERCIAL HARVESTING OF MARINE RESOURCES

Prerequisites to harvesting

32. (1) No person shall in Namibia or in Namibian waters harvest any marine resource for commercial purposes, except under a light, an exploratory right or a fisheries agreement.

(2) In the. case of a marine resource which has been made subject to a quota, no person shall in Namibia or in Namibian waters harvest such a resource for commercial purposes, except in terms of a quota or of permitted by-catch under a right, an exploratory right or a fisheries agreement.

(3) No person shall in Namibian waters use any vessel to harvest any marine resource for commercial purposes, except in terms of a licence issued under section 40.

(4) No person shall use a Namibian flag vessel to harvest any marine resource in any waters outside of Namibian waters, except in terms of a licence issued under section 40.

(5) Where Namibia is authorized by any international agreement to grant a right or exploratory right, or to allocate a quota, in respect of harvesting marine resources outside Namibian waters, no person shall use a Namibian flag vessel to harvest any marine resource to which the agreement applies, except in terms of a right granted under section 33, an exploratory right granted under section 34 or a quota allocated under section 39, as applicable.

(6) The issue and validity of a right, an exploratory right or a quota required under subsection (5), and the manner of its suspension or cancellation or limitation, shall be subject to the terms of the agreement referred to in that subsection.

Right to harvest marine resources

33. (1) The Minister may from time to time, by notice in the *Gazette,* announce a period during which applications may be made for rights to harvest for commercial purposes any marine resource, and the conditions on which such marine resource may be harvested, and the Minister shall not consider any application received outside such period.

(2) A person who wishes to a apply for a right referred to in subsection (1) shall submit an application to the Minister in the manner prescribed.

(3) The Minister may, subject to subsection (4), grant a right to harvest any marine resource for commercial purposes to any person who applies for such a right under subsection (2), subject to such conditions in addition to those specified in the notice under subsection (1) as may be determined by the Minister.

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

(a) whether or not the applicant is a Namibian citizen;

(b) where the applicant is a company, the extent to which the beneficial control of the company vests 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 in a satisfactory manner;

(e) the advancement of persons in Namibia who have been socially, economically or educationally disadvantaged by discriminatory laws or practices which were enacted or practised before the independence of Namibia;

(f) regional development within Namibia;

(g) co-operation with other countries, especially those in the Southern African Development Community;

(h) the conservation and economic development of marine resources;

(i) whether the applicant has successfully performed under an exploratory right in respect of the resource applied for;

(j) socio-economic concerns;

(k) the contribution of marine resources to food security; and

(1) any other matter that may be prescribed.

(5) A right shall be valid -

(a) for such period as may be prescribed or if no period is prescribed, for such period as the Minister may specify; and

(b) for harvesting the marine resource for which it is granted and for' such by catch as may be prescribed or as the Minister may specify.

(6) If at any time before the expiry of a right, the holder of that right has met the prescribed criteria that would have permitted a longer term at the time of granting the right, or no longer fulfils the prescribed criteria for the term that was granted the Minister may vary the period of validity of the right to the period for which the holder qualifies, and when so varying the period, may also vary any condition attaching to the right or impose any additional condition.

Exploratory right to harvest marine resources

34. (1) The Minister may upon application grant to no more than one person at any one time an exploratory right - ~

(a) to harvest a marine resource in respect of which no right has been granted to any other person so as to allow that person to explore the commercial viability and biological sustainability of that marine resource; or

(b) to harvest a marine resource for which that person has not been granted a right so as to allow that person to research the commercial viability of a method of harvesting not ordinarily used for the harvesting of that particular marine resource in Namibian Waters.

(2) A person who wishes to apply for an exploratory right shall submit an application to the Minister in the manner prescribed, and may do so at any time.

(3) Notwithstanding the provisions of any other law, the Minister may require the applicant to carry out or cause to be carried out such. Environmental impact studies, as the Minister may consider necessary for the purposes of this Act.

(4) The Minister may approve the application and grant an exploratory right for such fixed period and subject to such conditions, including permitted by-catch, as may be determined by the Minister, or may refuse the application.

(5) Upon the expiry of an exploratory right, the Minister shall determine whether the resource or method of harvesting is commercially viable and biologically sustainable, and if he or she determines that it is, no further exploratory right may be granted in respect of that resource or method of harvesting.

(6) In the event that the commercial viability and biological sustainability of the resource or method of harvesting is unclear, the Minister may extend the exploratory right once only for a period not exceeding one year or, if the commercial viability, and biological sustainability are unclear due to the poor execution of the exploratory right, a farther exploratory right may be granted to an applicant other than the holder of the original exploratory right.

(7) If before the end of the term of an exploratory right it becomes clear that the resource or method of harvesting is commercially viable and biologically sustainable, the Minister may terminate the exploratory right and announce a period during which
applications for rights may be made under section 33(1).

Fisheries agreements

35. (1) The President may enter into a fisheries agreement with a member country of the Southern African Development Community, providing for such country to harvest marine resources in Nainibian waters.

(2) A person nominated by the responsible authorities of a party to a fisheries agreement shall be entitled to apply for a quota under section 39 and a licence under section 40 as though he or she were the holder of a right.

(3) Every quota allocated and every licence issued to a person entitled under subsection (2) shall be subject to such quantitative or other limits which a fisheries agreement may specify as well as to all other provisions of this Act.

Publication of fisheries agreements

36. Where a fisheries agreement has been entered into the President shall, by proclamation in the *Gazette,* publish that agreement.

Giving effect to fisheries and international agreements

37. (1) The Minister may, for the purpose of any fisheries agreement entered into under section 35 or any international agreement to which Namibia is a party, make such regulations as the Minister may consider necessary or expedient for the carrying out and for giving effect to the provisions of any such agreement or any amendment of such agreement.

(2) The Minister shall publish in the *Gazette* the texts of all conservation and management measures adopted under any international agreement to which Namibia is a party and any measure so published shall be deemed to be a regulation prescribed under section 61.

(3). For the purposes of -

(a) subsection (2), "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea of 10 December 19 82, and the Implementation Agreement; and

(b) paragraph (a) of this subsection "Implementation Agreement' means the Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

Total allowable catch

38. (1) The Minister may, from time to time in accordance with subsection (2), set a total allowable catch to limit the quantity which may be harvested in respect of any marine resource m a given period.

(2) Where, under subsection (1), the Minister decides to determine a total allowable catch, he or she shall, on the basis of the best scientific evidence available, and having requested the advice of the advisory council, determine the total allowable catch by notice in the *Gazette*.

Measures and quotas

39. (1) The Minister may, by notice in the *Gazette,* subject the harvesting of any marine resource to such measures as he or she may consider necessary, and which may include quotas.

(2) At any time that quotas are available for allocation, the Minister may, by written notice to the holders of a right for which quotas are allocated, determine the date by which applications for the allocations of such quotas may be received and the conditions to which such quotas shall be subject.

(3) The Minister may, upon application in the prescribed manner, but having regard to the matters set out in section 33(4) and to others that may be prescribed, allocate a quota to the holder of a right or to a person nominated under section 35(2), subject to such conditions, in addition to the conditions specified in the notice under subsection (2), as the Minister may determine.

(4) Where it is appropriate not to allocate quotas to individual holders of a right, the Minister may allocate a quota under subsection (3) to a group of holders of a right to harvest the resource in question.

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

(6) The aggregate of quotas allocated under subsection (3) in respect of any marine resource shall not exceed the total allowable catch set for that resource.

Licensing of fishing vessels

40. (1) A holder of a right or an exploratory right or a person nominated under section 35(2) who wishes to use a fishing vessel for commercial purposes in Namibian waters or a person who wishes to use a Namibian flag vessel for harvesting. any marine resource outside Namibian waters shall apply for a licence to the Permanent Secretary in the manner prescribed.

(2) A licence to use a fishing vessel to harvest a marine resource shall only be valid if the licensee holds a right or an exploratory right for that resource, and if a quota has been allocated, holds a quota for that resource.

(3) The Minister may, upon application by a person referred to in subsection (1), issue a licence to that person in respect of a fishing vessel, authorising such activities, subject to such conditions and valid for such period, as the Minister may determine and state in the licence.

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

(a) the information furnished in the application is incorrect or incomplete;

(b) the vessel in question is not intended for use as a fishing vessel;

(c) the approval of the application will not be in the interest of the sector of the fishing industry harvesting a particular resource;

(d) the issue ofthe licence would be inconsistent with an international agreement to which Namibia is a party; or

(e) the approval might threaten the sustainability of a particular marine resource.

(5) If- if

(a) any change. has occurred in the information submitted by a licensee in connection with the application referred to in subsection (1); or

(b) the vessel for which the licence has been issued ceases to be used as a fishing vessel,

the licensee shall, within a period of 21 days from the date such event occurred, inform the Permanent Secretary of that fact.

Suspension, cancellation or reduction of rights, quotas and licences

41. (1) Where the holder of a right, an exploratory rig lit, a quota or a licence -

(a) has furnished information which is untrue or incomplete in connection with his or her application for the right, the exploratory right, the quota or the licence;

(b) contravenes or fails to comply with a condition imposed under this Act in respect of the right, the exploratory right, the quota or the licence;

(c) contravenes or fails to comply with a provision of this Act; or

(d) is convicted of an offence under this Act,

the Permanent Secretary shall, by written notice delivered to the holder of such right, exploratory right, quota or licence or sent by registered post to the holder's last known address, request the holder to show cause, in writing, within a period of 21 days from the date of the notice, why such right, exploratory right, quota or licence should not be suspended, cancelled or reduced.

(2) The Permanent Secretary shall, after expiry of the period of 21 days referred to in subsection (1)

(a) refer the matter, together with any reasons furnished by the holder of the right, the exploratory right, the quota or the licence, to the Minister for the Minister's decision; and

(b) if no response has been received from the holder of the right, the exploratory right, the quota or the licence, suspend such right, exploratory right, quota or licence until such time as a response is received and shall inform the holder thereof.

(3) Where a matter is referred to the Minister under subsection (2), the Minister may
(a) suspend the right, the exploratory right, the quota or the licence in question for a period determined by the Minister;

(b) cancel the right, the exploratory right, the quota or the licence in question from a date determined by the Minister;

(c) reduce the duration or the amount of the right, the exploratory right, the quota or the licence in question;

(d) amend the conditions of the right, the exploratory right, the quota or the licence in question; or

(e) decide not to take any action on the matter.

(4) Notwithstanding subsections (1), (2) and (3), the Minister may, whenever he or she is of the opinion that it is in the interest of the promotion, protection or utilization on a sustainable basis of a particular marine resource, at any time by written notice to the holder of a right, an exploratory right, a quota or a licence in respect of that resource, suspend, cancel or reduce the duration or the amount of, or amend the conditions of such right, exploratory right, quota or licence.

(5) Notwithstanding subsections (1), (2) and (3), where a licensee has committed one of the actions contemplated by subsection (1) or is convicted of an offence under this Act, the Minister may, by giving due notice by such means as may appear most effective in the circumstances, suspend the validity of the licence in respect of harvesting any marine resource outside Namibian waters, for such period as the Minister considers fit.

Transfer of rights, exploratory rights, quotas and licences

42. (1) No right or exploratory right may be transferred to another person 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 or exploratory right is also transferred to the same person.

(2) No quota for any marine resource, except a quota held by a person nominated under section 3 5(2), may be transferred to the holder of a right valid for the same resource, except with the approval of the Minister.

(3) No licence, except a licence held by a person nominated under section 3 5(2), may be transferred, except with the approval of the Minister, and subject to subsections (2) and (3) of section 40.,

Register

43. (1) The Permanent Secretary shall keep a register showing, in respect of every right, exploratory right, quota and licence, such particulars as may be prescribed.

(2) Any suspension, cancellation, reduction or transfer of a right, an exploratory right, a quota or a licence under section 41 shall be *recorded in the register referred to in subsection (1).

(3) The register kept under 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.

PART VII
FINANCIAL PROVISIONS

Fees and levies

44. (1) The Minister may, after consultation with the advisory council, and with the approval of the Minister responsible for finance, by notice in the *Gazette,* detemine fees which shall be payable in respect of the harvesting of marine resources.

(2) A fee determined under subsection (1) may be based upon quotas allocated, the level of effort for harvesting a particular marine resource or the amount or value of the resources harvested, and may vary according to species, area or disposition of harvesting, or the criteria set out in paragraphs (a), (b) and'(c) of section 33(4).

(3) The Minister may, after consultation with the advisory council, and with the approval of the Minister responsible for finance, by notice in the *Gazette,* impose levies in respect of harvesting any marine resource, to be paid into the Marine Resources Fund referred to in section 45 for the purposes of the fund.

(4) The Minister may, after consultation with the advisory council, and with the approval of the Minister responsible for finance, by notice in the *Gazette,* impose a levy in respect of the harvesting of any marine resource, to be paid into the Fisheries Observer Fund referred to in section 46 for the purposes of the fund.

(5) A levy imposed under this section may be based upon and vary according to the factors set out in subsection (2), as well as the potential benefit from the activities to be funded by the levy and the contribution made to such activities.

(6) A notice under this section shall state the time and manner of payment of the fee or levy and may provide for the payment of interest, at a rate specified in the notice, on late payments in respect of the fee or levy:

(7) A notice under this section may prescribe penalties, which shall not exceed the penalties prescribed by section 52, for any contravention of or failure to comply with the notice.

Marine Resources Fund

45. (1) The Sea Fisheries Fund established by section 23 of the Sea Fisheries Act, 1992 (Act No. 29 of 1992), shall, notwithstanding the repeal of that Act by section 64, continue to exist under the name Marine Resources Fund, into which shall be paid -

(a) moneys collected in respect of levies imposed under section 44(3);

(b) moneys appropriated by Parliament 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 responsible for finance, may accrue to the Marine Resources fund from any other source; and

(c) interest accruing by virtue of subsection (5).

The Minister shall utilize the moneys available in the fund to defray the expenses of research, development, training and education relating to marine resources.

(3) The Minister may, from moneys available in the fund, arrange for the undertaking of research, development, training and education relating to marine resources by any competent institution of the State or any person or body, or grant financial assistance m connection therewith on the conditions determined by the Minister with the approval of the Minister responsible for finance.

(4) The fund shall be administered by the Permanent Secretary in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister, after consultation with the advisory council, and by the Minister responsible for finance, and no expenditure payable from the fund may be incurred except in accordance with such approved estimate of expenditure.

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

(6) The financial year of the fund shall commence on 1 April and end on 31 March of the ensuing year.

(7) 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.

(8) The Auditor-General shall annually audit the books and accounts of the

Fisheries Observer Fund

46. (1) There is hereby established a fund to be known as the Fisheries Observer Fund, into which shall be paid

(a) moneys collected in respect of the levy imposed under section 44(4);

(b) moneys appropriated by Parliament 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 responsible for finance, may accrue to the fund from any other source; and

(e) interest recovered by virtue of section 44(6).

(2) The Minister shall utilize the moneys available in the fund to finance the activities of the agency.

(3) The fund shall be administered by the Permanent Secretary, with the approval of the Minister responsible for finance, in accordance with an estimate or a supplementary or revised estimate of revenue and expenditure approved by the Minister, after consultation with the advisory council, and by the Minister responsible for finance, and no expenditure payable from the Fund may be incurred except in accordance with such approved estimate of expenditure.

(4) The Permanent Secretary shall invest moneys in the fund not required for immediate use in such manner as the Minister responsible for finance may approve.

(5) The financial year of the fund shall commence on 1 April and end on 31 March of the ensuing year.

(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.

PART VIII

MANAGEMENT AND CONTROL MEASURES

Management measures

47. (1) No person shall use an explosive, poison or noxious substance to kill or disable any marine animal, and firearms shall be used for such purpose only as may be prescribed.

(2) No person shall seek to harvest any marine animal 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 marine resources.

(3) The Minister may prescribe measures for the conservation of marine resources, for the control of harvesting of such resources and. for the protection of the marine environment, including-

(a) the place and time in which harvesting operations may be conducted;

(b) species, size and other characteristics and quantity of marine resources that may be harvested;

(c) methods and gear that may be used; and

(d) measures to limit the amount of harvesting capacity.

(4) A measure under subsection (3) may apply to some or all marine resources and methods of harvesting and different provisions may apply to different marine resources and methods of harvesting.

Keeping of records and reporting

48. (1) Every person holding a right, an exploratory right, a quota, a licence or other authorization under this Act shall, in relation to the activity subject to such right, exploratory right, quota, licence or other authorization, keep such records, and famish the Permanent Secretary with such information, in such form as may be prescribed.

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

(3) Any staff member authorized under subsection (2), may at all reasonable times, and on production of the Minister's written authority, board any vessel or enter any premises, other than a dwelling house, or vehicle for the purpose of exercising any power conferred by that subsection.

Stowing of fishing gear

49. (1) Whenever any vessel not authorized by a licence to harvest marine resources is in Namibian waters, all fishing gear carried on board of such vessel shall be dismantled, stowed or secured in such manner as not to be readily available for harvesting or as may be prescribed.

(2) Whenever a fishing vessel authorized by a licence to harvest marine resource s is at sea in an area in which it is not so authorized, including any marine reserve, any fishing gear or other specified implements on board such vessel shall, while the fishing vessel is in such area, be dismantled, stowed or secured in such manner as not to be readily available for harvesting or as may be prescribed.

Transhipment and landing

50. (1) No vessel in the territorial sea or internal waters of Narnibia, no vessel licensed under section 40 and no Narnibian flag vessel shall tranship, land, attempt to tranship or land, or assist any other vessel to tranship or land any marine resources, unless such transhipment or landing

(a) is authorized by a licence or other authorization obtained from the Minister; and

(b) is executed in accordance with any conditions contained in the licence or authorization in question.

(2) Notwithstanding subsection (1), marine resources may be transhipped between and landed in the territorial sea or internal waters of Namibia by vessels that are not fishing vessels.

Marine reserves

51. (1) The Minister may, by notice 'm the *Gazette* describing the boundaries of any area of

(a) Namibian waters;

(b) with the consent of the Minister under whose authority an area of State land falls, such State land; and

(c) upon appropriate consultation with the competent authorities, land subject to the jurisdiction of a traditional authority,

declare such area to be a marine reserve for the protection or regeneration of marine resources.

(2) Prior to the declaration of each reserve, the Minister shall, after consultation with interested persons, establish objectives for the management of the reserve and may by notice specify the activities that may be conducted within the reserve and such other requirements respecting the reserve as may be appropriate for achieving, such objectives, including

(a) the species of marine resources, if any, that may or may not be harvested within the marine reserve;

(b) the conditions subject to which such marine resources may be harvested; and

(c) conditions of access to the marine reserve.

(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 objectives for which the marine reserve has been set aside.

(4) The Minister may, by notice in the *Gazette,* in accordance with subsection (1), abolish a marine reserve or alter its boundaries.

PART IX
OFFENCES AND PROCEEDINGS

Offences and penalties

52. (1) Any person who, being the owner, the lessee, the charterer or the master of a foreign flag vessel uses such vessel in Namibian waters for harvesting marine resources, or allows it to be so used without the authorization of a valid licence in respect thereof shall be guilty of an offence and liable on conviction to a fine not exceeding N$2 000 000.

(2) Any person who, being the owner, the. lessee, the charterer or the master of a Namibian flag vessel, uses such vessel to harvest marine resources, or allows it to be so used, without the authorisation of a valid licence in respect thereof shall be guilty of an offence and liable on conviction to a fine not exceeding N$2 000 000.

(3) Any person who -

(a) harvests any marine resource except under a right, an exploratory right or a fisheries agreement;

(b) for commercial purposes harvests any marine resource subject to quotas except m terms of a quota or of permitted by-catch under a right, an exploratory right or a fisheries agreement;

(c) being the holder of a quota, harvests any marine resource in contravention of any measures, including quotas, to which the Minister has subjected such resources;

(d) being the holder of a quota, harvests any marine resource in contravention of the conditions which may have been determined for a right or a quota;

(e) lands or tranships any marine resource in any place or manner not authorized by or under this Act;

(f) assaults, obstructs, resists, hinders, threatens or intimidates a fisheries inspector, an honorary fisheries inspector, a fisheries observer, a staff member referred to in section 48(2), or any person authorized by any international agreement to which Namibia is a party to board or inspect a Namibian flag vessel on the high seas, in the exercise of any power or the performance of any duty under this Act;

(g) where required by section 48 to record or report any matter or to supply any. information, fails so to do or records, reports or supplies false information or willfully submits any document, statement or representation knowing it to contain false or misleading information;

h impersonates a fisheries inspector or an honorary fisheries inspector;

(i) gives, offers or agrees or attempts to give any gift or consideration to a fisheries inspector, an honorary fisheries inspector, a fisheries observer or a staff member referred to in section 48(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;

(j) being a fisheries inspector, an honorary fisheries inspector, a fisheries observer or a staff member referred to in section 48(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;

(k) willfully 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; or

(l) being the owner, the lessee, the charterer or the master of a vessel not authorized by a licence to harvest marine resources, allows the vessel to be in Namibian waters without its fishing gear being dismantled, stowed or secured in accordance with section 49(1),

shall be guilty of an offence and liable on conviction to a fine not exceeding N$1 000 000.

(4) Any person who -

(a) violates any condition of a right, an exploratory right, a fisheries agreement, a quota or a licence;

(b) harvests marine resources in contravention of section 47 or any regulation prescribed thereunder;

(c) being the owner, the lessee, the charterer or the master of a vessel, allows the vessel to be in any area where it is not authorized to harvest marine resources without its gear being stowed in accordance with section 49(2);

(d) in a marine reserve, without having been granted permission to do so under section 51(3), 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;

(e) discharges in or allows to enter or permits to be discharged in Namibian waters anything which is or may be injurious to marine resources or which may disturb or change the ecological balance in- any area of the sea, or which may detrimentally affect the marketability of marine resources, or which may hinder their harvesting;

(f) kills or disables any marine animal by means of any explosive, poison or noxious substance, or by means of a firearm except as may be prescribed; or

(g) harvests any marine animal 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 marine resources,

shall be guilty of an offence and liable on conviction to a fine not exceeding N$500 000.

(5) Any fine imposed upon conviction under this section shall be recoverable as if it were a civil judgement.

Determination of monetary value of advantage in consequence of offence

53. If a person is convicted of an offence under 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 other penalty that may be imposed in respect of that offence, impose a fine equal to three times the value so determined, which fine may be recovered as a civil judgement..

Forfeiture

54. (1) Where a court convicts a person of an offence under this Act the court may, in addition to any other penalty it may impose

(a) order any marine resource, fishing gear, vessel. vehicle or item in respect of which the offence was committed or which was used in connection with the commission thereof, to be forfeited to the State, subject to paragraph (c);

(b) cancel or suspend, for such period as the court may consider fit, any licence or other authorization issued or given to such person under this Act; or

(c) where the marine resources, fishing gear, vessel or item have been released under section 55(4), order the amount guaranteed in respect of the value thereof under that section to be forfeited to the State.

(2) A forfeiture order made under subsection (1) or (6)(a) in respect of any vessel, vehicle, fishing gear or item shall not affect any right of any person who is not the convicted person and who-

(a) is the owner of the vessel, the vehicle, the fishing gear or the item in question;

(b) in the case of a vessel, is the holder of an unsatisfied mortgage bond registered over the vessel; or

(c) has sold the vessel, the vehicle, the fishing gear or the item in question to the convicted person in pursuance of a contract under which such person becomes the owner of the vessel, the vehicle, the fishing gear or the item in question, 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, the vehicle, the fishing gear or the item 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 knew that the vessel, the vehicle, the fishing gear or the item was being used or would be used for the purpose of or in connection with the commission of the offence in question and that such person took all reasonable steps to prevent such vessel, vehicle, fishing gear or item *from being used for or in connection with activities in contravention of this Act..

(3) The court which granted a forfeiture order under subsection (1) or (6)(a) in respect of any vessel, vehicle, fishing gear or item, 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 period of six months with effect from the date of the forfeiture orde r, upon the application of any person who claims to have any right referred to in subsection (2)(a), (b) or (c), 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 subsection (2)(a), the court shall set aside the forfeiture order and direct that the vessel, the vehicle, the fishing gear or the item, as the case may be, be returned to such person, or, if the State has disposed of the vessel, the vehicle, the fishing gear or the item in question, direct that such person be compensated by the State to the extent to which the State has been enriched by such disposal; and

(b) in the case of a right referred to in subsection (2)(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, the vehicle, the fishing gear or the item, 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, the vehicle, the fishing gear or the item in question, the court shall direct that the seller be likewise compensated.

(4) Upon payment by the State to the mortgagee or the 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 subsection (3)(b)(i) or (3)(b)(ii), the mortgage bond or the contract, as the case may be, shall in relation to the State or any person by whom the vessel, the vehicle, the fishing gear or the item was bought or to whom it was disposed of by the State, as the case may be, be deemed to have been discharged.

(5) Any marine resource, vessel, vehicle, fishing gear or item forfeited to the State under this section shall be dealt with or disposed of in such manner as the Minister may direct.

(6) Where an accused person who is in custody in respect of an offence under this Act escapes from custody, or who has been released on bail in respect of an offence under this Act absconds, the court before which the matter is pending may

(a) order any vessel or vehicle or any other property seized under section 5(2)(b)(i) 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 55(4), order the amount guaranteed under that section in respect of the value thereof and of any fine, or any part of such amount, to be forfeited to the State.

Custody of seized items

55. (1) Any vessel seized under section 5(2)(b)(i) shall be taken to such Namibian port as the Permanent Secretary may direct.

(2) Any perishable item seized under section 5(2)(b)(i) may be sold or destroyed on order of the Permanent Secretary, and the proceeds if any retained in place of the item.

(3) The Permanent Secretary shall transfer all seized vessels, other items and the proceeds thereof to the custody of the Minister as soon as is practicable.

(4) The Minister may, upon application by the owner, the lessee, the charterer or the master of a foreign flag vessel seized under section 5(2)(b)(i), whether or not together with any fishing gear or marine resources 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, the lessee, the charterer or the master in question, subject to such conditions as the Minister may determine.

(5) The Minister shall not exercise the power conferred by subsection (4) unless the owner, the lessee, the charterer or the master in question furnishes the Minister with a guarantee, approved by the Minister, securing the payment to the State, in accordance with subsection (6)

(a) of an amount equal to the reasonable value, as the case may be, of the vessel or the fishing gear, marine resources or the vessel and such property, sought to be released., and

(b) 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.

(6) A guarantee furnished under subsection (5) shall become payable -

(a) in respect of the amount contemplated in paragraph (a) of that subsection, on the date on which a court makes an order under section 54(1)(c);

(b) in respect of the amount referred to in paragraph (b) 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 under section 54(6) and to the extent ordered by the court

(7) Any payment received by the State under a guarantee in respect of an amount referred to in subsection (5)(b) shall be considered to be payment or part 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.

(8) Any item not sold, destroyed or released under this section and all proceeds, guarantees and payments received in respect of any item shall be held as the court may direct pending the conclusion of any proceedings. 1

(9) Where the Prosecutor-General determines that no prosecution is likely to be brought, the court may order the disposition of anything held under subsection (8) to any person who appears entitled thereto or its forfeiture to the State if no such person is identified.

Jurisdiction

56. (1) If a person is charged with having committed an offence under this Act within the Namibian waters-

(a) the High Court of Namibia;

(b) any magistrate's court whose area jurisdiction borders on or includes any part of the sea in the vicinity where the offence has allegedly been committed; or

(c) any magistrate's court whose area of jurisdiction includes the port where the vessel has been taken,

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) A magistrate's court shall have jurisdiction to impose the penalties set out in section 52 and the additional penalty set out in section 53 and to order the forfeitures authorized by section 54 even though either penalty or the value of the forfeiture may, either alone or together, exceed the punitive jurisdiction of a magistrate's court.

Evidence

57. (1) Where a vessel or a vehicle has been used in connection with an offence under this Act, or if any marine resources or fishing gear in respect of or by means of which such an offence has been committed, is found or proved to have been upon or in a vessel or a vehicle, the offence shall, in the absence of evidence to the

contrary, be deemed to have been committed in respect of all marine resources or by means of all fishing gear which were found or are proved to have been upon or in that vessel or vehicle at that time.

(2) If any person purporting, to have harvested marine resources for recreational purposes sells or trades or attempts to sell or trade such resources, the harvesting shall be considered as harvesting for commercial purposes and all provisions of this Act concerning harvesting for commercial purposes shall apply thereto.

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

(a) that samples taken of marine resources on board a vessel have certain characteristics or are of a particular species, it shall be presumed, in the absence of evidence to the contrary, that the whole cargo has the same characteristics or is composed of marine resources of that species; or

(b) that a vessel has been used for harvesting marine resources and -

(i) that the vessel and its fishing gear are of a type customarily used for conducting such activities for commercial purposes; and

(ii) that the owner or the master had previously harvested marine resources for commercial purposes or that the vessel had been so used,

it shall be presumed in the absence of evidence to the contrary, that the vessel was being used for commercial purposes.

(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 in the absence of evidence to the contrary;

(b) a certificate purporting to have been signed by the Permanent Secretary stating that no licence 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;

(c) against the owner, the lessee, the charterer, the 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 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; and

(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, shall be presumed in the absence of evidence to the contrary, 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 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, in the absence of evidence to the contrary, 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.

Bail

58. If an accused person who is the master of a vessel is granted bail in respect of an offence under this Act, the court granting bail may, if it thinks it necessary or desirable in the circumstances of the case, impose a condition whereby, pending the conclusion of the case, the accused is prohibited access to the vessel or is allowed access only on conditions determined by the court.

Preservation of secrecy

59. (1) No member of the board, member of the advisory council, member of a committee established under this Act or a staff member authorised under section 48(2) shall disclose any information obtained by him or her in carrying out his or her functions under this Act, except

(a) to the extent to which it may be necessary for the proper administration of this Act;

(b) with the consent of the Minister; or

(c) for the purposes of any legal proceedings relating to a matter under this Act.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding N$8 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.

Limitation of liability

60. (1) The State, the Minister, a member of the board, 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 this Act.

(2) The State, the Minister or a person in the employment of the State shall not, except in the case of any intentional act or omission on the part of the State, the Minister or any such person, be liable-

(a) to any person who, other than in the performance of a duty or function under this Act or any other law-

(i) makes use of an aircraft, a vessel or a vehicle which is the property of the State or under the control of the State;

(ii) is present in any harbour or on an island; or

(iii) leaves any fishing or other vessel or any other property in a harbour or makes use of the facilities of a fishing harbour; or

(b) to the spouse or a dependant of any person referred to in paragraph (a), 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 'm any manner connected with-

(i) the use by the person referred to in paragraph (a) of any aircraft, vessel or vehicle 'referred to in paragraph (a)(i);

(ii) the presence of any person referred to in paragraph (a) in any harbour or on an island; or

(iii) the leaving by the person referred to in paragraph (a) of any fishing or other vessel or any other property in a harbour or the use by such person of a harbour or facilities 'm a harbour.

(3) Any civil proceedings against the State or any person in respect of anything done under 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.

(4) A notice referred to in subsection (3) 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.

PART X
GENERAL

Regulations

61. (1) The Minister may make regulations, not inconsistent with this Act -

(a) in relation to any matter required or permitted by this Act to be prescribed, or which the Minister considers necessary or expedient to prescribe for the purposes of this Act;

(b) prescribing the form and manner 'm which any application under this Act shall be made and the form of any licence or authorisation which may or is required to be issued or given under this Act;

(c) prescribing criteria for determining the duration of any right, exploratory right, quota, licence or authorization issued or given under this Act;

(d) prescribing the conditions and restrictions which shall apply in relation to any right, exploratory right, quota, licence or authorisation issued or given under this Act;

(e) requiring a permit for any equipment or the conduct of any activity in connection with marine resources not already covered in the Act, and providing for the issue of such permit and the payment of any fees in connection therewith;

(f) prescribing requirements in relation to the display on a fishing vessel of its name, registration number or licence number, radio call sign or any other identification mark or information or the showing of its flag;

(g) prescribing requirements in relation to the display on any fishing gear of identification marks or information;

(h) prohibiting the harvesting, possession or transportation of any marine resources -

(i) exceeding a specified number or a specified mass in aggregate; or

(ii) not conforming to specified limitations in respect of size or mass or specified requirements in respect of characteristics or condition;

(i) prescribing methods for measuring quantity, size, mass or composition of marine resources;

(j) regulating or prohibiting the sale or disposal in any other manner, the transportation, importation or exportation of marine resources;

(k) establishing permitted levels of by-catches, and providing for the disposal thereof and the levying of fees in respect thereof;

(l) in. relation to the reporting of-

(i) the entry into or departure from Namibian waters of fishing vessels;

(ii) the position of fishing vessels., and

(iii) the commencement and termination of harvesting operations by a fishing vessel;.

(m) in relation to the registers, records or other, docum ents to be kept for the purposes of this Act, the information to be recorded therein and the inspection thereof;

(n) providing for the carrying on board fishing vessels of fisheries inspectors, observers or other persons designated by the Minister;

(o) in relation to.-,

(i) the powers and functions to be exercised by fisheries inspectors, honorary fisheries inspectors and fisheries observers;

(ii) the procedures to be followed in the exercise of the powers referred to in subparagraph (i); and

(iii) the means by which fisheries inspectors, honorary fisheries inspectors and fisheries observers shall be identifiable as such;

(p) in relation to the installation and maintenance of communication, safety or surveillance equipment on fishing vessels;

(q) prescribing rules to be observed during operations for the harvesting of marine resources and measures aimed at preventing interference with or conflict between such operations;

(r) regulating or prohibiting the discharge in the sea or discarding on the seashore and land of specified substances or materials, or substances or materials not complying with specified requirements or having specified properties;

(s) in relation to the erection, maintenance, use and protection of and control over boundary beacons, buoys, notices, notice-boards or other marks used m connection. with the harvesting or protection of marine resources;

(t) providing for the regulation of and exercise of control over research and development activities in connection with the harvesting and protection of marine resources;

(u) providing for the making of surveys and the gathering of information regarding –

(i) the requirements and demand in respect of marine resources;

(ii) the state and potential of marine resources; and

(iii) the harvesting, processing, transport, and disposition of marine resources;

(v) in relation to the supply or delivery by a quota holder to such quota holder's employees, or any other persons, of marine resources, whether as remuneration or otherwise;

(w) in relation to the utilisation of charter vessels fishing or the harvesting of marine resources for own use.

(2) Regulations made under subsection (1) may -

(a) be made to apply to marine resources in general or a particular marine resource or may differentiate between different marine resources, different fishing vessels, or in respect of any other matter which the Minister may consider necessary; and

(b) prescribe penalties for any contravention of or failure to comply with their provisions not exceeding the penalties mentioned in section 53(4).

Exemptions

62. (1) 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.

(2) With regard to subsection (1)(a), the Minister may distinguish between commercial and non-commercial research.

Delegation of powers

63. (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, in respect of any marine resource 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 as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992).

(2) 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.

(3) The Permanent Secretary may, on conditions determined by him or her, delegate to a staff member of the Ministry, any power conferred upon him or her by or under this Act.

Repeal of laws and savings

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

(2) Any regulation, determination, licence, 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 subsection (2), shall be construed in accordance with this Act, in so far as they relate to those provisions, unless it would in any particular case be obviously inappropriate; and

(b) a notice issued under section 20 or 25 of the Sea Fisheries Act, 1992, and in force immediately before the commencement of this Act, shall, in so far as it imposes a quota fee or a levy, continue to be in force and be deemed to be a notice issued under section 44 of this Act, and any amount specified in such notice as a quota fee or a levy shall be deemed to be a fee determined under section 44(1) of this Act, and any amount specified in such notice as a levy shall be deemed to be a levy imposed under section 44(3) of this Act.

(4) Any person who, at the commencement of this Act, is the holder of or was deemed to be the holder of aright of exploitation under the Sea Fisheries Act, 1992, shall, for the purposes of section 33 and any other relevant provision of this Act, be deemed to have been granted a right tinder section 33(3), valid until such date as is indicated in the right of exploitation.

(5) Any person who, at the commencement of this Act, is the holder of a permit in respect of the harvesting of seals under the Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973), shall, for the purposes of section 34 and any other relevant provision of this Act, be deemed to have been granted a right under section 34(4), valid until 21 December 2000 or such later date as the Minister may, by notice in the Gazette, determine as the expiry date of such right.

Act No. 17, 2000 **MARINE RESOURCES ACT, 2000**

Short title

(1) This Act shall be called the Marine Resources Act, 2000 and shall come into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3)

SCHEDULE

(Section 64)

Laws repealed

Ordinance No. 16 of 1968	Fishing Boat and Factory Owners' Committee Ordinance, 1968	The whole
No. R. 176 of 1969	South-West African Affairs Act, 1969: Amendment of the Fishing Boat and Factory Owners' Committee Ordinance, 1968	The whole
No. 46 of 1973	Sea Birds and Seals Protection Act, 1973	The whole
Act No. 57 of 1975	General Law Amendment Act, 1975	Sections 42 and 43
Act No. 29 of 1992	Sea Fisheries Act, 1992	The whole