



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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N\$7.20

WINDHOEK - 27 May 2016

No. 6017

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#### GOVERNMENT NOTICE

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## Government Notice

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### MINISTRY OF FISHERIES AND MARINE RESOURCES

No. 99

2016

#### PUBLICATION OF CO-OPERATION AND DESIGNATION AGREEMENTS BETWEEN MINISTRY OF FISHERIES AND MARINE RESOURCES AND NATIONAL FISHING CORPORATION OF NAMIBIA LIMITED: MARINE RESOURCES ACT, 2000

In terms of section 3(3) and (4) of the Marine Resources Act, 2000 (Act No. 27 of 2000) read with section 13 of the Interpretation of Laws Proclamation, 1920 (Act No. 37 of 1920), I

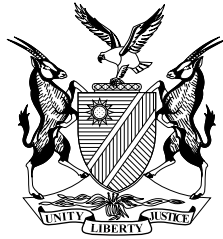
- (a)      make known that the Ministry of Fisheries and Marine Resources and the National Fishing Corporation of Namibia Limited entered into a Co-operation Agreement and a Designation Agreement set out in the Schedule as Annexure A and Annexure B, respectively; and
- (b)      withdraw Government Notice No. 74 of 29 April 2016.

**B. ESAU**

**MINISTER OF FISHERIES AND MARINE RESOURCES**

Windhoek, 9 May 2016

**ANNEXURE A**  
**CO-OPERATION AGREEMENT**  
**BETWEEN**



**MINISTRY OF FISHERIES AND MARINE RESOURCES**

[Hereinafter represented by the Minister of Fisheries and Marine Resources, Bernhard Esau, duly authorized under section 5 (1)(a)(i) and (ii), (b) and (c) of the National Fishing Corporation of Namibia Act, 1991 (Act No. 28 of 1991) to consent to the activities of the National Fishing Corporation of Namibia, read together with section 39(3A) of the Marine Resources Act, 2000 (Act No. 27 of 2000)]

(hereinafter referred to as the Minister)

**AND**



**THE NATIONAL FISHING CORPORATION OF NAMIBIA LIMITED**

[Hereinafter represented by the Chairperson of the Board of Directors, J.N. Hatuikulipi, duly authorized by resolution of the Board of Directors under to act under section 5 (1)(a)(i) and (ii), (b) and (c) of the National Fishing Corporation of Namibia Act, 1991 (Act No. 28 of 1991) and to further seek the concurrence of the Minister]

[hereinafter referred to as the Corporation]

**RECORDALS**

**WHEREAS** Section 5 of the National Fishing Corporation of Namibia Act, 1991 (Act No. 28 of 1991) (“Fishcor Act”) empowers the National Fishing Corporation of Namibia (“Corporation”) to carry on the business of:

- (a) (i) exploiting the fish and other marine resources, including aquatic plants, salt and guano; and
- (ii) buying, selling, processing and marketing of fish, fish products, such other marine resources or products derived therefrom and manufacturing fish products and products wholly or partly derived from such other marine resources; and
- (iii) facilitating, promoting, guiding and assisting in the financing of-

- (aa) new businesses and undertakings; and
  - (bb) the expansion, better organisation and modernisation of and the more efficient carrying out of operations in existing businesses and undertakings in the fishing industry;
- (b) to undertake research or other projects and to carry out such other activities for the development of the fishing and marine sector, or any related sector, as shall be agreed from time to time with the Minister or with any other person or body, local or foreign, provided that the Corporation shall be compensated for any costs incurred in undertaking or carrying out any such activities;
- (c) to finance, by funds transferred to the Corporation by the Government, such operations or projects of such businesses and undertakings engaged in the fishing industry as the Minister may specify, and to enter into contracts with such businesses and undertakings to ensure that the operations or projects specified by the Minister are carried out.

**AND WHEREAS** the Parties recognise that in order for the Corporation to achieve the objects set out in Section 5 of the Fischcor Act for the benefit of Namibia, the Parties will have to co-operate and support each other in various endeavours;

**AND WHEREAS THE PARTIES HEREBY ENTER** into a Co-operation Agreement specifying their principle common ambitions, expectations, commitments and understanding with respect to the Corporation's performance for the duration of this Agreement, as prescribed by the Fishcor Act.

**WHEREFORE IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATION**

1.1 Unless otherwise determined by the context, the following words and phrases shall have the meanings set out below:

- |       |                                |   |
|-------|--------------------------------|---|
| 1.1.1 | <b>“Agreement”</b>             | means the co-operation agreement set out in this document, together with any annexes hereto;  |
| 1.1.2 | <b>“Board”</b>                 | means the Board of the Corporation;   |
| 1.1.3 | <b>“Commercial Harvesting”</b> | has the meaning ascribed thereto in the Marine Resources Act;   |
| 1.1.4 | <b>“Corporation”</b>           | means the National Fishing Corporation of Namibia, a public company with limited liability incorporated according to the laws of the Republic of Namibia with registration number: Reg. No. 93/513, established in terms of section 2(1) of the Fischcor Act; |
| 1.1.5 | <b>“day”</b>                   | means any day of the week, excluding Saturdays, Sundays, and public holidays;   |
| 1.1.6 | <b>“Effective Date”</b>        | means the date on which this contract is signed by both parties;  |
| 1.1.7 | <b>“Fishcor Act”</b>           | means the National Fish Corporation of Namibia, 1991 (Act No. 28 of 1991) (as amended);   |

- 1.1.8 **“Investment Activities”** has the meaning ascribed thereto in clause 3.1;
- 1.1.9 **“Marine Act”** means the Marine Resources Act, 2000 (Act No. 27 of 2000) (as amended);
- 1.1.10 **“Ministry”** means the Namibian Ministry of Fisheries and Marine Resources and MFMR has a corresponding meaning;
- 1.1.11 **“Minister”** means the Minister of Fisheries and Marine Resources;
- 1.1.12 **“month”** means a calendar month, and more specifically:
- 1.1.12.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and
- 1.1.12.2 in any other context, a month of the calendar, that is, one of the twelve (12) months of the calendar,
- and **“monthly”** has the corresponding meaning;
- 1.1.13 **“Non-Commercial Harvesting”** has the meaning ascribed thereto in the Marine Resources Act;
- 1.1.14 **“Parties”** collectively means the signatories to this Agreement and **“Party”** means any one of them as the context may require;
- 1.1.15 **“Quota”** has the meaning ascribed thereto in the Marine Resources Act;
- 1.1.16 **“Reserve”** has the meaning ascribed thereto in the Marine Resources Act;
- 1.1.17 **“year”** means a period of twelve (12) consecutive months commencing on the date on which this agreement comes into operation or any anniversary of that date.
- 1.1.18 References to notices, statements and other communications by or from the Ministry include notices by or from the Minister.
- 1.1.19 Expressions in the singular also denote the plural, and vice versa.
- 1.1.20 Words and phrases denoting natural persons refer also to juristic persons and trusts, and vice versa.
- 1.1.21 Pronouns of any gender include the corresponding pronouns of the other genders; and
- 1.1.22 Clause headings appear in this agreement for purposes of reference only and shall not influence the proper interpretation of the subject matter.

## 2. SCOPE OF AGREEMENT

This Agreement shall form the basis of co-operation between the Parties and shall serve to strengthen and formalise the existing relationship between the Parties in the fields of

mutual co-operation and assistance in respect of matters arising under the Fishcor Act and the Marine Resources Act.

### **3. AREAS OF CO-OPERATION**

- 3.1 In terms of Section 5(1)(b), the Corporation is desirous of carrying out certain projects and activities for the development of the fishing and marine sector, in particular the Corporation is desirous of undertaking the following (“Investment Activities”):
- 3.1.1 the establishment of a land based processing plant; and
  - 3.1.2 acquisition of a suitable vessel for the harvesting of horse mackerel to supply the processing plant mentioned above; and
  - 3.1.3 engage suitably experienced foreign expertise to assist with the implementation of the above mentioned activities; and
  - 3.1.4 any further activities that the Parties may agree to, in writing.
- 3.2 The benefits applicable to the Investment Activities are the following:
- 3.2.1 the Investment Activities will result in the creation of approximately 300 (three) hundred employment opportunities;
  - 3.2.2 it will be a prime example of local value addition in the marine resource process, which will encourage other operator to follow suit;
  - 3.2.3 it provides the Government, through the Corporation, an opportunity to participate in the fishing sector and therefore fulfil its investment obligations in terms of the Fishcor Act; and
  - 3.2.4 it provides an opportunity for local fish distribution.
- 3.3 The Minister hereby approves the Investment Activities and will use the Ministry’s best endeavours to assist the Corporation in its implementation of the Investment Activities and further provide its co-operation to the Corporation in procuring resources required to implement the Investment Activities.

### **4. ALLOCATION OF QUOTA**

- 4.1 The Parties acknowledge that the Corporation has the right to harvest marine resources in terms of section 5 of the Fishcor Act and is therefore entitled to apply for Quota for Commercial Harvesting of any marine resource in terms of the Marine Resources Act.
- 4.2 In terms of section 38(2) of the Marine Resources Act, the Minister may determine the total allowable catch for Commercial Harvesting, Non-Commercial Harvesting and Reserve.
- 4.3 The Ministry will use its best endeavours to avail sufficient Commercial, Non-Commercial Harvesting and Reserve Quota, upon application by the Corporation, to the Corporation and/or its subsidiaries in order to allow the Corporation to fulfil the objectives of the Fishcor Act in particular to undertake the Investment Activities.

- 4.4 The Board will apply for such Quota in the manner prescribed by the Marine Resources Act.

## 5. FINANCING

- 5.1 Unless otherwise agreed between the Parties in writing, any costs incurred by any Party for the implementation of the Agreement shall be financed by such Party.
- 5.2 For subsequent joint projects and co-operation activities, the incurrence of expenditures and the compensation of Fishcor shall be discussed and agreed to by both Parties on a case-to-case basis in terms of section 5(1)(b) of the Fischor Act.

## 6. CONFIDENTIALITY

- 6.1 The Parties shall treat information furnished by the other Party for purposes of the execution of this Agreement as confidential.
- 6.2 Subject to this Clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take all reasonable steps to ensure that such information is not disclosed to any other person.

## 7. ENTRY INTO FORCE, DURATION AND TERMINATION

- 7.1 This Agreement shall come into force and effect on the Effective Date, being the date of signature of this Agreement by the Party signing same last in time.
- 7.2 This Agreement shall remain in force for an initial period of 15 (fifteen) years and may be renewed for subsequent five year periods, subject to Clause 8 hereof.
- 7.3 Upon termination of this Agreement, its provisions and the provisions of any separate contracts, arrangements or agreements made subsequent to this Agreement shall continue to govern any unfinished and existing projects, programmes assumed or commenced hereunder, until such project or programme is completed and obligations therefrom fulfilled.

## 8. REVIEW AND AMENDMENT

- 8.1 This Agreement shall be reviewed annually to determine any adjustments or extensions to the Agreement, which may be necessary.
- 8.2 No amendment or extension to this Agreement shall be of any legal force, unless reduced to writing and agreed upon between the Parties hereto.

## 9. DOMICILIUM AND NOTICES

The Parties choose as their *domicilium* address for all purposes including service of court processes the addresses set out in this Agreement. A Party may change its *domicilium* address on thirty (30) days' written notice to the other Party.

## 10. GENERAL

- 10.1 The Agreement constitutes the whole and entire agreement between the Parties who acknowledge that no warranty, representation, disclosure, expression of opinion, guarantee, term of condition of whatsoever nature, save as contained herein, is relied

upon in entering into this Agreement or has been made or given in regard to any matter affecting this Agreement.

- 10.2 No variation of the terms and conditions of this Agreement or any purported consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the Parties.
- 10.3 The Minister and the Board acknowledge that they have read and understand the contents of this Agreement.
- 10.4 This Agreement shall be governed by and construed in all respects in accordance with the laws applicable in the Republic of Namibia and the parties submit to the exclusive jurisdiction of the courts of the Republic of Namibia in respect of any dispute that arises in connection herewith.

Thus done and signed by the Minister in Windhoek on the 18th day of November 2015 in the presence of the undersigned witness.

**B. ESAU**  
**MINISTER**

**N. SHEYA**  
**WITNESS**

Thus done and signed by the Board of Directors of the National Fishing Corporation of Namibia in Windhoek on the 8th day of December 2015 in the presence of the undersigned witness.

**J.N. HATUIKULIPI**  
**CHAIRPERSON: BOARD**

**M. NGHIPUNYA**  
**WITNESS**

**ANNEXURE B****DESIGNATION AGREEMENT****BETWEEN****MINISTRY OF FISHERIES AND MARINE RESOURCES**

[Hereinafter represented by the Minister of Fisheries and Marine Resources, Bernhard Esau, duly authorized under section 5 (1)(a)(i) and (ii), (b) and (c) of the National Fishing Corporation of Namibia Act, 1991 (Act No. 28 of 1991) to consent to the activities of the National Fishing Corporation of Namibia, read together with section 39(3A) of the Marine Resources Act, 2000 (Act No. 27 of 2000)]

(hereinafter referred to as the Minister)

**AND****THE NATIONAL FISHING CORPORATION OF NAMIBIA LIMITED**

[Hereinafter represented by the Chairperson of the Board of Directors, J.N. Hatuikulipi, duly authorized by resolution of the Board of Directors under to act under section 5 (1)(a)(i) and (ii), (b) and (c) of the National Fishing Corporation of Namibia Act, 1991 (Act No. 28 of 1991) and to further seek the concurrence of the Minister]

[hereinafter referred to as the Corporation]

**RECORDALS**

**WHEREAS** Section 5 of the National Fishing Corporation of Namibia Act, 1991 (Act No. 28 of 1991) (“Fishcor Act”) empowers the National Fishing Corporation of Namibia (“Corporation”):

“undertake research or other projects and to carry out such other activities for the development of the fishing and marine sector, or any related sector, as shall be agreed from time to time with the Minister or with any other person or body, local or foreign, provided that the Corporation shall be compensated for any costs in-curred in undertaking or carrying out any such activities;”

**AND WHEREAS** sections 3 (3) and (4) of the Marine Resources Act, 2000 (Act No. 27 of 2000) entitle the State to utilize or harvest marine resources within Namibia’s Exclusive Economic Zone to advance any social-economic, cultural or other governmental objectives in the public interest,



through an entity or person designated by the Minister, on direction from Cabinet;

**AND WHEREAS** the Minister has sought the direction of Cabinet for the designation of the Corporation for the purposes of advancing stated social-economic, cultural or other governmental objectives;

**AND WHEREAS THE PARTIES HEREBY ENTER** into a Designation Agreement which agreement shall set out the conditions as to the period of harvesting, the type of marine resource to be harvested, conservation and management measures to be observed and such other condition as may be determined with respect to the Corporation's performance for the duration of this Agreement, as prescribed by the Marine Resource Act, read together with the Fishcor Act.

**WHEREFORE IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATION**

1.1 Unless otherwise determined by the context, the following words and phrases shall have the meanings set out below:

- |        |                                |  |
|--------|--------------------------------|--|
| 1.1.1  | <b>“Agreement”</b>             | means the co-operation agreement set out in this document, together with any annexes hereto;   |
| 1.1.2  | <b>“Board”</b>                 | means the Board of the Corporation;  |
| 1.1.3  | <b>“Commercial Harvesting”</b> | has the meaning ascribed thereto in the Marine Resources Act;  |
| 1.1.4  | <b>“Corporation”</b>           | means the National Fishing Corporation of Namibia, a public company with limited liability incorporated according to the laws of the Republic of Namibia with registration number: Reg. No. 93/513, established in terms of section 2(1) of the Fishcor Act; |
| 1.1.5  | <b>“day”</b>                   | means any day of the week, excluding Saturdays, Sundays, and public holidays;  |
| 1.1.6  | <b>“Effective Date”</b>        | means the date on which this contract is signed by both parties;   |
| 1.1.7  | <b>“Fishcor Act”</b>           | means the National Fish Corporation of Namibia, 1991 (Act No. 28 of 1991) (as amended);  |
| 1.1.8  | <b>“Marine Resources Act”</b>  | means the Marine Resources Act, 2000 (Act No. 27 of 2000) (as amended);  |
| 1.1.9  | <b>“Ministry”</b>              | means the Namibian Ministry of Fisheries and Marine Resources and MFMR has a corresponding meaning;  |
| 1.1.10 | <b>“Minister”</b>              | means the Minister of Fisheries and Marine Resources;  |
| 1.1.11 | <b>“month”</b>                 | means a calendar month, and more specifically:   |

- 1.1.12.1 in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and
- 1.1.12.2 in any other context, a month of the calendar, that is, one of the twelve (12) months of the calendar,
- and “**monthly**” has the corresponding meaning;
- 1.1.12 “**Non-Commercial Harvesting**” has the meaning ascribed thereto in the Marine Resources Act;
- 1.1.13 “**Parties**” collectively means the signatories to this Agreement and “**Party**” means any one of them as the context may require;
- 1.1.14 “**Quota**” has the meaning ascribed thereto in the Marine Resources Act;
- 1.1.15 “**Reserve**” has the meaning ascribed thereto in the Marine Resources Act;
- 1.1.16 “**year**” means a period of twelve (12) consecutive months commencing on the date on which this agreement comes into operation or any anniversary of that date.
- 1.1.17 References to notices, statements and other communications by or from the Ministry include notices by or from the Minister.
- 1.1.18 Expressions in the singular also denote the plural, and vice versa.
- 1.1.19 Words and phrases denoting natural persons refer also to juristic persons and trusts, and vice versa.
- 1.1.20 Pronouns of any gender include the corresponding pronouns of the other genders; and
- 1.1.21 Clause headings appear in this agreement for purposes of reference only and shall not influence the proper interpretation of the subject matter.

## 2. SCOPE OF AGREEMENT

This Agreement shall form the basis of the designation anticipated under section 3 of the Marine Resources Act, through which the State shall utilize or harvest marine resources within Namibia’s Exclusive Economic Zone and its territorial waters to advance any social-economic, cultural or other governmental objectives in the public interest.

## 3. DESIGNATION

- 3.1 The Minister hereby designates the Corporation (and its subsidiaries), on the direction of Cabinet of Republic of Namibia, under section 3(3) of Marine Act, to on behalf of the State, harvest for the State and to utilise the harvest marine resources towards social-economic, cultural or other governmental objectives in public interest (“**Designation**”).
- 3.2 The Corporation accepts such Designation and shall fulfil the objectives as directed by the Minister from time to time.

- 3.3 The Parties agree to approach each other and discuss any matter of mutual concern in relation to the execution of the Designation and matters incidental thereto.

#### **4. ALLOCATION OF QUOTA**

- 4.1 In terms of section 38(2) of the Marine Resources Act, the Minister may determine the total allowable catch for Commercial Harvesting, Non-Commercial Harvesting and Reserve.
- 4.2 Once the Minister has determined the total allowable catch as envisaged under clause 4.1 above, the Minister shall then in writing inform the Corporation of the allocation of quota from the Non-Commercial and Reserve portions of the determined total allowable catch, in respect of which fishery, and in respect of which fishing season, such allocated quota shall be availed to the Corporation.
- 4.3 The Corporation shall be entitled, before the Minister makes the allocation, to make representations to the Minister as to the recovery of its costs in the harvesting of the quota related to the designation herein and, the Board will ensure that the conditions of the Minister in respect of every quota allocation made under clause 4.2 above shall be fulfilled.

#### **5. FINANCING**

- 5.1 Unless otherwise agreed between the Parties, the recovery of costs under clause 4.3 shall be done in accordance with section 5(1)(b) of the Fishcor Act, and the designation made herein shall be considered by the Parties to fall within the ambit of the envisaged projects under section (1)(b) of the Fishcor Act.

#### **6. CONFIDENTIALITY**

- 6.1 The Parties shall treat information furnished by the other Party for purposes of the execution of this Agreement as confidential.
- 6.2 Subject to this Clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take all reasonable steps to ensure that such information is not disclosed to another person.

#### **7. ENTRY IN-FOR FORCE, DURATION AND TERMINATION**

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- 7.2 This Agreement shall remain in force for an initial period of 15 (fifteen) years and may be renewed for subsequent five year periods, subject to Clause 8 hereof.
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- 8.1 This Agreement shall be reviewed annually to determine any adjustments or extensions to the Agreement, which may be necessary.

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- 10.2 No variation of the terms and conditions of this Agreement or any purported consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the Parties.
- 10.3 The Minister and the Board acknowledge that they have read and understand the contents of this Agreement.
- 10.4 This Agreement shall be governed by and construed in all respects in accordance with the laws applicable in the Republic of Namibia and the parties submit to the exclusive jurisdiction of the courts of the Republic of Namibia in respect of any dispute that arises in connection herewith.

Thus done and signed by the Minister in Windhoek on the 18th day of November 2015 in the presence of the undersigned witness.

**B. ESAU**  
**MINISTER**

**N. SHEYA**  
**WITNESS**

Thus done and signed by the Board of Directors of the National Fishing Corporation of Namibia in Windhoek on the 8th day of December 2015 in the presence of the undersigned witness.

**J.N. HATUIKULIPI**  
**CHAIRPERSON: BOARD**

**M. NGHIPUNYA**  
**WITNESS**

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