

# **MARINE AND FRESHWATER RESOURCES**

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## **National Fishing Corporation of Namibia Act 28 of 1991.**

**Summary:** This Act provides for the formation of the National Fishing Corporation of Namibia Limited, a company with the object of exploiting fish and other marine resources, and promoting the establishment, development and efficiency of other businesses engaged in the fishing industry.

**Application:** The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006.

## **Marine Resources Act 27 of 2000.**

**Summary:** This Act provides for the conservation of the marine ecosystem; for the responsible utilisation, conservation, protection and promotion of marine resources on a sustainable basis; and for the control of marine resources for these purposes. It replaces the Sea Fisheries Act 29 of 1992, which in turn replaced the *Sea Fisheries Act 58 of 1973*. It also replaces the *Sea Birds and Seals Protection Act 46 of 1973*, and the Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968. The Act came into force on 1 August 2001 (GN 152/2001, GG 2591).

**Amendments:** The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 13, 16, and 17, and deletes section 15.

**Regulations:** Regulations made under previous legislation remain in force, in terms of section 64(2) of the Act. The following regulations were made in terms of the Sea Fisheries Act 29 of 1992 -

- GN 3/1990 (GG 10)
- GN 48/1992 (GG 399)
- GN 63/1992 (GG 417)
- GN 92/1992 (GG 449)
- GN 123/1992 (GN 478)
- GN 158/1992 (GG 527)
- GN 1/1993 (GG 566)
- GN 2/1994 (GG 777)
- GN 204/1994 (GG 962)
- GN 88/1995 (GG 1090)
- GN 153/1995 (GG 1151)
- GN 26/1996 (GG 1255)
- GN 79/1996 (GG 1291)
- GN 14/1997 (GG 1500)
- GN 64/1997 (GG 1537)
- GN 157/1997 (GG 1622)
- GN 9/1997 (GG 1785).

Initial regulations under the new Act were contained in GN 153/2001 (GG 2591). These regulations repealed the regulations in RSA GN 566 of 4 January 1993 (issued in terms of the South African *Sea Fisheries Act 58 of 1973*). A new set of regulations is contained in GN 241/2001 (GG 2657), which repeals GN 153/2001.

Additional Vessel Monitoring Regulations are contained in GN 65/2005 (GG 3446).

Regulations relating to the licensing of foreign flag vessels for the purpose of harvesting Namibia's marine resources are contained in GN 147/2006 (GG 3696).

These regulations refer to "conservation and management measures published by Government Notice No. 126 of 30 August 2006". This appears to be an error. GN 126/2006 is dated 1 September 2006 and contains Otjiwarongo Amendment Scheme No. 8. The reference was probably intended to be to the conservation and management measures published by GN 148/2006 of 8 September 2006 (GG 3696).

Conservation and management measures in terms of section 37(2) are published in GN 148/2006 (GG 3696).

These regulations refer to "Article VIII of the International Convention for the Conservation of Atlantic Tunas, a copy of which is set out in the Regulations promulgated under Government Notice No. 127 of 30 August 2006". This appears to be an error. It should cite GN 147/2006, dated 8 September 2006 (GG 3696).

The northern limit of Namibian waters was determined under the Sea Fisheries Act 29 of 1992 in Proc. 47/1992 (GG 557). A fishing harbour is declared under the Sea Fisheries Act 29 of 1992 in GN 46/1994 (GG 832).

Fees and levies on marine resources in terms of the new Act are contained in GN 80/2002 (GG 2746), GN 134/2004 (GG 3227), GN 175/2003 (GG 3034), GN 9/2007 (GG 3788), GN 274/2008 (GG 4174) and GN 154/2009 (GG 4310).

An agreement between Namibia and Mozambique on co-operation in the fisheries sector, in terms of section 35(1) of the Act, is announced in Proclamation 2/2003 (GG 2910).

The Namibian Islands Marine Reserve was declared in GN 17/2009 (GG 4210).

Total allowable catches for various types of fish are set periodically in terms of the relevant acts and have not been recorded here.

**Cases:** The following are post-independence cases concerning the 1973 South African *Sea Fisheries Act 58 of 1973*-

*S v Curras* 1991 NR 208 (HC)

*Pineiro & Others v Minister of Justice & Others* 1991 NR 283 (HC)

*Slabber v Blanco & Others* 1991 NR 404 (HC)

*S v Pineiro & Others* 1991 NR 424 (HC); 1993 NR 424 (HC) (concurring judgement)

*S v Redondo* 1992 NR 133 (SC)

*S v Carracelas & Others (1)* 1992 NR 322 (HC)

*S v Carracelas & Others (2)* 1992 NR 329 (HC)

*S v Carracelas & Others (3)* 1992 NR 336 (HC)

*Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another* 1996 NR 1 (HC)

*S v Martinez* 1993 NR 1 (HC)

*S v Pineiro & Others (1)* 1993 NR 24 (HC)

*S v Pineiro & Others (2)* 1993 NR 49 (HC)

*Freiremar SA v The Prosecutor-General of Namibia & Another* 1996 NR 18 (HC) (holding that part of the proviso to section 17(1) was unconstitutional)

*S v Pineiro & Others* 1999 NR 13 (HC).

## **Aquaculture Act 18 of 2002.**

**Summary:** This Act regulates and controls aquaculture activities and provides for the sustainable development of aquaculture resources. It came into force on 3 December 2003 (GN 245/2003, GG 3104).

**Regulations:** Regulations related to licensing are contained in GN 246/2003 (GG 3104). Regulations related to the import and export of aquatic organisms and aquaculture products are contained in GN 70/2010 (GG 4453).

## **Inland Fisheries Resources Act 1 of 2003.**

**Summary:** This Act provides for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources. It came into force on 6 June 2003 (GN 117/2003, GG 2992).

**Regulations:** Regulations are contained in GN 118/2003 (GG 2992), as amended by GN 12/2004 (GG 3141) and by GN 80/2006 (GG 3639), which contains regulations about fish size limits.

GN 11/2004 (GG 3141) designates the officer stipulated in column 1 of the Schedule to the Act, of the regional council listed in column 2, to perform functions mentioned in column 3 of that Schedule.

## **COMMISSIONS**

Commission of Inquiry into the Procedures and Practices Applied in the Allocation and Utilisation of Existing Fishing Rights (Proc. 18/1991, GG 258).

See also GN 103/1991 (GG 258).

## **INTERNATIONAL LAW**

### ***United Nations Convention on the Law of the Sea, 1982***

signature: 10 December 1982

ratification: 18 April 1983; effective date: 16 November 1994

(represented by the United Nations Council for Namibia as stipulated in Article 305, paragraph 1 (b), of the Convention) (source: <http://sedac.ciesin.org/>)

### ***Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994***

signature: 29 July 1994

accession by means of the simplified procedure set out in articles 4 (3)(c) and 5: 16 Nov 1994

effective date: 28 July 1996 (source: <http://sedac.ciesin.org/>)

### ***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, 1995*** (came into force internationally on 11 December 2003)

signature: 19 April 1996

ratification: 8 April 1998 (Proc. 10/1998, GG 1862)

**Cases:** *S v Curras* 1991 NR 208 (HC); *Pineiro & Others v Minister of Justice & Others* 1991 NR 283 (HC); *S v Carracelas & Others (2)* 1992 NR 329 (HC); *S v Martinez* 1993 NR 1 (HC); *S v Pineiro & Others (1)* 1993 NR 24 (HC).

***Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977***

(not yet in force internationally)

Namibia reportedly signed in 2007, but no ratification is recorded.

(sources: "Protocol 'given the nod' ", *The Namibian*, 29 October 2007; International Maritime Organisation, [www.imo.org](http://www.imo.org))

***International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995***

(not yet in force internationally)

deposit: 18 December 2008 (source: International Maritime Organization, [www.imo.org](http://www.imo.org))

***Protocol on the Privileges and Immunities of the International Seabed Authority, 1998***

(came into force internationally on 31 May 2003)

signature: 24 September 1999

(not ratified by Namibia as of 20 January 2005 according to the International Seabed Authority)

***Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, 2001***

ratification: 15 November 2001 (source: [www.fao.org](http://www.fao.org))

***Convention on the Conservation of Antarctic Marine Living Resources, 1980***

accession: 29 January 2000

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri/>.)

***SADC Protocol on Fisheries, 2001***

(entered into force within SADC on 8 August 2003) (source: SADC)

signature: 14 August 2001 (source: SADC)

ratification: 21 June 2002 (source: SADC; Ministry of Foreign Affairs)

See also **ENVIRONMENT**.

See also **SEA AND SEASHORE**.