

MARINE AND FRESHWATER RESOURCES

National Fishing Corporation of Namibia Act 28 of 1991

Summary: This Act ([GG 330](#)) 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.

Regulations: The Act makes no provision for regulations.

Application of law: The application of the Act is affected by the State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Agreements: An agreement between the Minister of Fisheries and Marine Resources and FISHCOR, in terms of section 5(1)(b) of the Act, is published in GN 140/2019 ([GG 6825](#)).

Marine Resources Act 27 of 2000

Summary: This Act ([GG 2458](#)) 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 was brought into force on 1 August 2001 by GN 152/2001 ([GG 2591](#)).

Repeals: The Act repeals the Sea Fisheries Act 29 of 1992 ([GG 492](#)), which in turn replaced the *Sea Fisheries Act 58 of 1973* ([RSA GG 3935](#)). It also repeals the *Sea Birds and Seals Protection Act 46 of 1973* ([RSA GG 3909](#)), and the Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968.

Amendments: The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 13, 16, and 17, and deletes section 15. (That statute has since been replaced by the Public Enterprises Act 1 of 2019.)

Act 9/2015 ([GG 5837](#)) amends sections 1, 3, 32, 38 and 39 and inserts section 39A.

Regulations: Regulations made under previous legislation remain in force, in terms of section 64(2) of the Act.

Regulations made under the repealed *Sea Fisheries Act 58 of 1973*:

The surviving pre-independence regulations made under the repealed *Sea Fisheries Act 58 of 1973* were repealed by the regulations made under this Act.²⁴⁹

²⁴⁹ Previous regulations contained in RSA GN 1912/1973 ([RSA GG 4049](#)), made in terms of the *Sea Fisheries Act 58 of 1973*, were amended after independence by 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) and GN 158/1992 ([GG 527](#)).

These regulations were then repealed and replaced by regulations made under the *Sea Fisheries Act 29 of 1992* in GN 1/1993 ([GG 566](#)), as amended by 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](#)) and GN 9/1998 ([GG 1785](#)).

Regulations made under the repealed *Sea Birds and Seals Protection Act 46 of 1973*:

The *Sea Birds and Seals Protection Act 46 of 1973* was, in the 1970s, administered by the Minister of Economic Affairs, Department of Industries.²⁵⁰ This means that the relevant transfer proclamation was the Executive Powers (Industries) Transfer Proclamation, AG 5 of 1978, which came into force on 30 January 1978. Sealing Regulations made under the this Act prior to the date of transfer are contained in RSA GN R.1933/1976 ([RSA GG 5317](#)). They were amended in South Africa after the date of transfer by RSA GN R.2722/1979 ([RSA GG 6765](#)), which was not made explicitly applicable to SWA.

Additional regulations relating to the conservation and protection of seals were made under the repealed *Sea Birds and Seals Protection Act 46 of 1973* in GN R.1168/1982 ([RSA GG 8257](#)), but these regulations were made after the relevant date of transfer and were not made expressly applicable to Namibia. (They contain no repeals.)

Thus, the only surviving pre-Independence regulations made under the *Sea Birds and Seals Protection Act 46 of 1973* appear to be the Sealing Regulations contained in RSA GN R.1933/1976 ([RSA GG 5317](#)). Even though no repeal of these regulations has been located, they appear to be superseded by the **Regulations relating to the Exploitation of Marine Resources** under the current Act (as detailed below). They have therefore not been included in the database of regulations.

Regulations made under the repealed Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968:

Regulations made under the repealed Fishing Boat and Factory Owners' Committee Ordinance 16 of 1968 are contained in GN 4/1969 ([OG 2951](#)). Although no repeal has been located, these regulations relate only to members and meetings of the committee referred to in sections 5(2) and 5(3) of the repealed Ordinance and would thus have no continued relevance. They have therefore not been included in the database of regulations.

Regulations made under the current Act are as follows:

Regulations relating to the Exploitation of Marine Resources are contained in GN 241/2001 ([GG 2657](#)), as amended by GN 63/2015 ([GG 5721](#)), GN 55/2016 ([GG 5985](#)) and GN 93/2018 ([GG 6601](#)). These regulations repeal the ones on the same topic contained in GN 153/2001 ([GG 2591](#)), which in turn repeal the regulations contained in GN 1/1993 ([GG 566](#)).²⁵¹

GN 92/2018 ([GG 6601](#)) announces a period for applications for rights to harvest certain marine resources in terms of these regulations, along with criteria for granting rights to harvest these resources. Both the time period and the criteria were amended by GN 150/2018 ([GG 6657](#)).

Vessel Monitoring Regulations are contained in GN 65/2005 ([GG 3446](#)), as amended by GN 2/2014 ([GG 5391](#)).

Regulations relating to the licensing of foreign flag vessels for the purpose of harvesting

These regulations appear to have been repealed by regulations issued under this Act, although there is an error in the relevant repealing regulation in GN 153/2001 ([GG 2591](#)). GN 153/2001 ([GG 2591](#)) states that it repeals the "regulations promulgated by Government Notice No. 566 of 4 January 1993". There is no such Government Notice. However, the repeal probably intended to refer to **Government Notice No. 1** of 4 January 1993, which was published in *Government Gazette* 566.

²⁵⁰ See, for example, RSA GN R.1933/1976 ([RSA GG 5317](#)).

²⁵¹ As noted above, GN 153/2001 ([GG 2591](#)) states that it repeals the "regulations promulgated by Government Notice No. 566 of 4 January 1993" – but probably intended to refer to **Government Notice No. 1** of 4 January 1993, which was published in *Government Gazette* 566.

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 ([GG 3688](#)). No *Government Gazette* was published on 30 August 2006. The reference was probably intended to be to the conservation and management measures published by Government Notice 148 of 8 September 2006 ([GG 3696](#)).

Regulations relating to Namibian Islands' Marine Protected Area are contained in GN 316/2012 ([GG 5111](#)).

Regulations relating to Inspection of Register are contained in GN 238/2015 ([GG 5853](#)).

Regulations to Reduce Incidental By-catch of Seabirds in the Hake Demersal Trawl Vessels are contained in GN 269/2015 ([GG 5877](#)).

Regulations to Reduce Incidental By-catch of Seabirds in the Hake Demersal Longline Vessels (07) are contained in GN 270/2015 ([GG 5877](#)), as amended by GN 68/2016 ([GG 5990](#)).

Notices: In terms of section 37(2) of the Act, conservation and management measures adopted under Article VIII of the International Convention for the Conservation of Atlantic Tunas are published in GN 148/2006 ([GG 3696](#)).

These measures 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. A copy of the International Convention for the Conservation of Atlantic Tunas appears in Annexure D to 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](#)).

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

GN 2/2013 ([GG 5119](#)) requires persons harvesting marine resources under a right, an exploratory right or a fisheries agreement to carry aboard a fishing vessel a specified number of fisheries observers, depending on the type and size of vessel.

A Designation Agreement between the Ministry of Fisheries and Marine Resources and the National Fishing Corporation of Namibia Limited is published in GN 74/2016 ([GG 5996](#)). A Co-operation Agreement and a Designation Agreement between the Ministry of Fisheries and Marine Resources and the National Fishing Corporation of Namibia Limited are published in GN 99/2016 ([GG 6017](#)), which withdraws GN 74/2016, and is amended by GN 113/2017 ([GG 6307](#)) (by the addition of Addendum No. 1 to the Co-operation Agreement as set out in the Schedule).

GN 92/2018 ([GG 6601](#)) announces a period for applications for rights to harvest certain marine resources, along with criteria for granting rights to harvest these resources. Both the time period and the criteria were amended by GN 150/2018 ([GG 6657](#)). The time period for harvesting by listed persons and entities was extended by GN 9/2020 ([GG 7102](#)).

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

Fees and levies: Fees and levies on certain marine resources have been issued in terms of this Act, each of which replaces its predecessor – with the most recent one in this series contained in GN 158/2017 ([GG 6342](#)).

Fees and levies on other marine resources have been issued in another series of notices, each of which

replaces its predecessor – with the most recent one in this series contained in GN 159/2017 ([GG 6342](#)).

Levies for the benefit of the Fisheries Observer Fund are imposed in another series of notices, each of which replaces its predecessor – with the most recent one in this series contained in GN 146/2014 ([GG 5559](#)).

Agreements: An agreement between the Minister of Fisheries and Marine Resources and FISHCOR which refers to compensation to FISHCOR in terms of sections 39(3A) and 45(3) of the Act, is published in GN 140/2019 ([GG 6825](#)).

Cases: The following case concerns the current Act –

Ehika Fishing (Pty) Ltd v Minister of Fisheries and Marine Resources & Others 2021 (1) NR 142 (HC) (sections 1 (definition of “reserve”), 38 and 41).

The following are post-independence cases relevant to the 1973 *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).

Commentary: Law Reform and Development Commission, *Urgent and Targetted Report on Fisheries*, LRDC 21, 2012, available [here](#).

Related international agreements: 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 Proc. 2/2003 ([GG 2910](#)).

An agreement providing for the implementation of a 1990 General Agreement on Economic, Scientific, Technical and Cultural Co-operation between Namibia and Mozambique in respect of fisheries and aquaculture is announced in Proc. 21/2015 ([GG 5784](#)).

An agreement between Namibia and Angola on co-operation in fisheries and aquaculture is published in Proc. 22/2015 ([GG 5785](#)).

Aquaculture Act 18 of 2002

Summary: This Act ([GG 2888](#)) regulates and controls aquaculture activities and provides for the sustainable development of aquaculture resources. It was brought into force on 3 December 2003 by 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](#)).

Notices: Under section 45 of the Act, GN 182/2020 ([GG 7298](#)) exempts certain persons from applying for an aquaculture licence subject to the conditions set out in the Schedule to the notice. This applies to persons who conduct any scientific investigation, experiment or research for aquaculture or related purposes on local species; aquaculture facility belonging to the Ministry of Fisheries and Marine Resources; and persons or small scale fish farmers who produce less than 10 tons of local fish species per year.

Inland Fisheries Resources Act 1 of 2003

Summary: This Act ([GG 2962](#)) provides for the conservation and protection of aquatic ecosystems and the sustainable development of inland fisheries resources. It was brought into force on 6 June 2003 by 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](#)).

Notices: Fisheries reserves are declared in GN 276/2015 ([GG 5883](#)), GN 298/2015 ([GG 5903](#)), GN 270/2016 ([GG 6172](#)), GN 297/2016 ([GG 6197](#)), GN 298/2016 ([GG 6197](#)), GN 65/2020 ([GG 7138](#)), GN 66/2020 ([GG 7138](#)), GN 67/2020 ([GG 7138](#)), GN 68/2020 ([GG 7138](#)) and GN 206/2021 ([GG 7641](#)).

GN 296/2016 ([GG 6197](#)), issued under section 22(3) of the Act, prohibits the use of monofilament nets in inland waters of Namibia and the issue of licences for the use of such nets as regulated fishing gear.

Designations: 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

Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009

Benguela Current Convention, 2013

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Protocol (Abidjan Convention), 1981

Additional Protocol to the Abidjan Convention concerning Cooperation in the Protection and Development of Marine and Coastal Environment from Land-based Sources and Activities in the Western, Central and Southern African Region, 2012

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

Convention on the Conservation of Antarctic Marine Living Resources, 1980

International Convention for the Conservation of Atlantic Tunas (ICCAT), 1966

Paris Protocol, 1984

Madrid Protocol, 1992

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

SADC Protocol on Fisheries, 2001

†United Nations Convention on the Law of the Sea (UNCLOS), 1982

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

United Nations 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 (Fish Stocks Agreement), 1995

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

See also **ENVIRONMENT**.

See also **SEA AND SEASHORE**.