



Republic of Namibia
Annotated Statutes

Marine Traffic Act 2 of 1981 (RSA)

(RSA GG 7408)

made applicable to South West Africa as of 7 June 1985
by RSA Proc. 93/1985 (RSA GG 9774)

APPLICABILITY TO SOUTH WEST AFRICA: *RSA Proc. 93 of 1985* (issued in terms of the *South-West Africa Constitution Act 39 of 1968*) makes the Act "and all amendments thereof" applicable to South West Africa from 7 June 1985. The only amendment to the Act in South Africa prior to Namibian independence was the *Marine Traffic Amendment Act 5 of 1983*, which was applicable to South West Africa by virtue of *RSA Proc. 93 of 1985*.

TRANSFER TO SOUTH WEST AFRICA: There is no indication that the administration of this Act was transferred to South West Africa. In any event, the only amendment to the Act in South Africa prior to Namibian independence was made explicitly applicable to South West Africa, making the issue of transfer irrelevant to the content of the Act.

as amended by

Marine Traffic Amendment Act 5 of 1983 (RSA) (RSA GG 8571)

brought into force in South Africa on 28 December 1984 by RSA Proc. 211 of 1984 (RSA GG 9538)
and applied to South West Africa as of 7 June 1985 by virtue of RSA Proc. 93/1985 (RSA GG 9774)

Marine Traffic Amendment Act 15 of 1991 (GG 312)

came into force on date of publication: 7 December 1991

Namibian Ports Authority Act 2 of 1994 (GG 810)

came into force in relevant part on 1 March 1994
(section 32(1) of Act 2 of 1994)

ACT

To regulate marine traffic in Namibia and to provide for matters connected therewith.

[long title amended by Act 15 of 1991]

(English text signed by the State President)

(Assented to 4 February 1981)

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:-

[Act 15 of 1991 makes the following substitutions throughout the Act:

- (a) "Namibia" for "the Republic"; and
- (b) "territorial sea" for "territorial waters".]

Definitions

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

"authorized person" means -

- (a) any officer as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980);

[The Public Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995; section 38 of Act 13 of 1995 provides that certain expressions relevant to Act 2 of 1980 shall be construed to refer to certain corresponding expressions relevant to Act 13 of 1995, but the term "officer" is not covered.]

- (b) any member of the Namibian Police Force, as defined in section 1 of the Police Act, 1990 (Act 19 of 1990), above the rank of sergeant;
- (c) any member of the Namibian Defence Force, as defined in section 1 of the Defence Act, 1957 (Act 44 of 1957), above the rank of sergeant;

[The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002.]

- (d) any person accompanying any person referred to in paragraph (a), (b) or (c) and acting under his or her instructions;

[definition of "authorized person" amended by Act 5 of 1983 and substituted by Act 15 of 1991]

[definition of "Director-General" inserted by Act 5 of 1983 and deleted by Act 15 of 1991]

“fishing harbour” means a fishing harbour as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973);

**[The definition of “fishing harbour” is inserted by Act 5 of 1983.
The Sea Fisheries Act 58 of 1973 has been replaced by the Marine Resources Act 27 of 2000.]**

“foreign”, in relation to any ship, submarine or other underwater vehicle, means a ship, submarine or other underwater vehicle which is not registered or licensed in Namibia;

[definition of “foreign” amended by Act 5 of 1983]

“harbour” means a port as defined in section 1 of the Namibian Ports Authority Act, 1994;

**[definition of “harbour” inserted by Act 5 of 1983,
and amended by Act 15 of 1991 and by Act 2 of 1994]**

“immobilize” means to render a ship temporarily incapable of sailing or manoeuvring under its own power;

[definition of “immobilize” inserted by Act 5 of 1983]

“innocent passage” means passage which is not prejudicial to the peace, good order or security of Namibia;

“internal waters” means the waters on the landward side of the normal baseline from which the territorial sea is determined, and includes any harbour and any fishing harbour;

[definition of “internal waters” amended by Act 5 of 1983 and substituted by Act 15 of 1991]

“lay-up” means to anchor or moor a ship which is temporarily withdrawn from service;

[definition of “lay-up” inserted by Act 5 of 1983]

“master”, in relation to any ship, means any person (other than a pilot) having charge or command of such ship;

[definition of “master” amended by Act 5 of 1983]

“Minister” means the Minister of Works, Transport and Communication;

[definition of “Minister” amended by Act 15 of 1991]

“offshore installation” means -

- (a) any installation which is situated within the territorial sea or internal waters or in the open sea and which is used for the transfer of oil to or from a ship, and includes any exploration or production platform so situated and used in prospecting for or the mining of oil or other substances;;
- (b) a bunkering vessel in such waters or the open sea; or
- (c) any vessel or appliance used for the purpose of exploiting the seabed in such waters or the open sea;

[definition of “offshore installation” amended by Act 5 of 1983]

Marine Traffic Act 2 of 1981 (RSA)

“passage” means navigation through the territorial sea in a continuous and expeditious manner on a normal and customary route for the purpose of -

- (a) traversing such sea without entering internal waters or calling at a roadstead or offshore installation outside internal waters; or
- (b) proceeding to or from a harbour, whether through internal waters or not, or a call at any such roadstead or offshore installation,

and includes stopping and anchoring, in so far as such stopping or such anchoring is incidental to ordinary navigation or is rendered necessary by *vis major* or distress or is for the purpose of rendering assistance to persons, ships or aircraft in danger or distress;

[definition of “passage” amended by Act 5 of 1983 and by Act 15 of 1991]

“Permanent Secretary” means the Permanent Secretary: Works, Transport and Communication;

[definition of “Permanent Secretary” inserted by Act 15 of 1991]

“regulation” means a regulation made under section 14;

“ship” means a waterborne craft or structure of any type irrespective of the manner of propulsion or movement thereof, including a non-displacement craft and a submarine or other underwater vehicle, but does not include a vessel propelled by oars;

[definition of “ship” substituted by Act 5 of 1983]

“territorial sea” means the territorial sea of Namibia as defined in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990).

[definition of “territorial waters” substituted by definition of “territorial sea” by Act 15 of 1991]

Right of innocent passage

2. Subject to the provisions of this Act, every ship shall enjoy the right of innocent passage through the territorial waters.

[section 2 amended by Act 5 of 1983]

Certain vessels to show flag

3. (1) Save as otherwise authorized by the Minister, the master of any foreign submarine or other foreign underwater vehicle shall not cause it to navigate the territorial sea or internal waters otherwise than on the surface and with its flag being shown.

(2) The master of such submarine or vehicle who contravenes the provisions of subsection (1) shall be guilty of an offence.

[section 3 amended by Act 5 of 1983]

Entry into and departure from internal waters

4. (1) Subject to the provisions of this Act the master of any ship shall not, except as prescribed by regulation, cause it to enter or leave internal waters other than a harbour or a fishing harbour.

(2) The master of a ship who contravenes the provisions of subsection (1) shall be guilty of an offence.

[section 4 amended by Act 5 of 1983]

Immobilizing, laying-up, stopping or anchoring outside harbours or fishing harbours

5. (1) Except with the permission of the Minister and in accordance with any condition prescribed by regulation or imposed by the Minister in a particular case, no person shall within the territorial sea or internal waters immobilize or lay-up a ship outside a harbour or fishing harbour.

(2) The Minister may require the master or owner of a ship immobilized or laid-up or to be immobilized or laid-up to find security to the satisfaction of the Permanent Secretary in an amount determined by the Permanent Secretary for the recovery of any costs incurred by the Minister in enforcing any condition applicable to the immobilizing or laying-up of the ship, or in the exercise of the Minister's powers under this Act.

[subsection (2) amended by Act 15 of 1991]

(3) No person shall stop or anchor a ship for repairs within the territorial sea or internal waters outside a harbour or fishing harbour except with the main engine thereof kept in readiness for immediate use and in accordance with any condition prescribed by regulation or imposed by the Minister in a particular case.

(4) Any person who contravenes the provisions of subsection (1) or (3) shall be guilty of an offence.

[section 5 substituted by Act 5 of 1983 and amended by Act 15 of 1991]

Ships and wreckage not to be sunk or abandoned

6. (1) No person shall within the territorial sea or internal waters intentionally -

- (a) sink, dump or dispose of or cause to be sunk, dumped or disposed of, a ship, a wreck or a hulk except at a place agreed to by the Minister; or
- (b) abandon a ship which is not in distress, a wreck, a hulk or an object which may interfere with navigation.

[subsection (1) amended by Act 5 of 1983]

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

Suspension of passage

7. (1) Notwithstanding the other provisions of this Act, if the Minister after consultation with the Minister of Defence considers it essential for the protection of the security of Namibia, he may for a specified period suspend the passage of ships in specified areas of the territorial sea or prohibit entry into internal waters.

(2) Such suspension or prohibition shall not take effect before it is given notice of as provided in section 15.

(3) The master of a ship who wilfully fails to observe such suspension or prohibition shall be guilty of an offence.

Passage deemed to be not innocent

8. Notwithstanding the provisions of section 16, the passage of a ship which carries or has on board in the territorial sea cargo or any appliance or apparatus the use of which or persons who may constitute a threat against the sovereignty, territorial integrity or political independence of Namibia, shall be deemed to be not innocent, and that ship and cargo and those persons may be dealt with as provided by section 9.

[section 8 amended by Act 5 of 1983]

Suppression of illicit traffic in drugs on board ships in territorial waters

8A. If the Minister on reasonable grounds suspects that the provisions of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), relating to dependence-producing drugs are or have been contravened, any person on board a foreign ship in the territorial sea or in relation to any such drug carried by such ship, such ship and its cargo and such person may for the purpose of applying the said provisions be dealt with *mutatis mutandis* as provided in section 9 (1) and (2) of this Act.

[section 8A inserted by Act 5 of 1983]

Minister's powers relating to ship on non-innocent passage

9. (1) The Minister may require the master of a ship of which the passage is in terms of section 8 deemed to be not innocent or is believed by him to be not innocent -

- (a) to stop or anchor the ship;
- (b) to declare the ship's name, official number, flag, type, gross tonnage, destination and cargo;
- (c) to move the ship to a place specified by the Minister;
- (d) to produce for inspection by an authorized person all papers or documents relative to the ship and its cargo and allow him to make copies thereof;
- (e) to allow authorized persons on board the ship to inspect the ship, its equipment and cargo;
- (f) to deliver any person referred to in section 8 to an authorized person having powers of arrest, in order to be dealt with according to law.

[paragraph (f) amended by Act 5 of 1983]

(2) If the master of the ship fails to perform, within the time specified by the Minister, any act which he has in terms of subsection (1) been required to perform, the Minister may cause such act to be performed, with the employment of such force as may be necessary.

(3) If the Minister is satisfied that the passage of the ship is not innocent, the Minister may cause the ship and its cargo or part thereof, or the ship or its cargo or part thereof, to be detained on such conditions as may be prescribed by regulation, for a period not exceeding seven days or such further period as an order of the High Court may authorize.

[subsection (3) amended by Act 15 of 1991]

(4) The Minister may, in respect of the ship and its cargo or part thereof detained in terms of subsection (3) -

- (a) cause the ship and cargo or part thereof to be released from such detention;
- (b) subject to any order referred to in subsection (3), cause the ship and cargo or part thereof, or the ship or cargo or part thereof, to be seized and dealt with in such manner as may be directed by him.

(5) If the ship and cargo or part thereof, or the ship or cargo or part thereof, is sold by virtue of the provisions of subsection (4)(b), the proceeds of such sale shall be paid into the State Revenue Fund.

(6) Notwithstanding the provisions of subsections (1) and (2) the Minister may require the master of ship referred to in subsection (1), or who fails to comply with any provision of this Act or any other law, to remove his ship from the territorial sea immediately.

[subsection (6) inserted by Act 5 of 1983]

(7) The provisions of this section, save subsection (6), do not apply to a foreign warship or a foreign ship owned or used by a government for non-commercial purposes.

[subsection (7) inserted by Act 5 of 1983]

Notice to be given of proceedings in respect of foreign ships

10. If any action in terms of this Act is contemplated or taken in respect of any foreign ship, or if any proceedings in terms of this Act are contemplated or taken against the master or owner or a member of the crew of or any person on board of any foreign ship, the Minister shall, if the master of the ship so requests, forthwith advise the agents of the ship and the consular representative of the country whose flag the ship flies at the nearest harbour to such ship, of the action or proceedings taken or contemplated and of the grounds therefor.

Penalties

11. Any person shall be liable on conviction of -

- (a) any offence under section 3(2), to a fine not exceeding R5 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment;
- (b) any offence under section 4(2) or 5(4), to a fine not exceeding R10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

[paragraph (b) amended by Act 5 of 1983]

- (c) any offence under section 6(2) or 7(3), to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Delegation of powers

12. The Minister may delegate any power conferred upon him by this Act, other than a power conferred upon him by section 14, to one or more persons in the service of the State, but shall not thereby be divested of any power so delegated and may amend or withdraw any decision of any such person.

Limitation of liability

13. Any person in the service of the State or any other person exercising any power under this Act shall not be liable in respect of any loss or damage resulting from anything done in good faith in terms of the provisions of this Act.

Regulations

14. The Minister may make regulations -

- (a) regulating marine traffic in the territorial sea and internal waters, including the prescribing of sea lanes and traffic separation schemes for ships in general or for any class of ship or for ships carrying nuclear or other dangerous or noxious substances;

[paragraph (a) amended by Act 15 of 1991]

- (b) providing for the protection of navigational aids and facilities and offshore installations;
- (c) exempting any ship or class of ship from any provision of this Act;
- (d) as to any matters which in terms of this Act are required or permitted to be prescribed by regulation,

and, in general, as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

Notification of regulations made or other action under Act

15. The Minister may, instead of causing regulations under section 14, or any suspension or prohibition referred to in section 7(1), or any requirement under section 9(1), to be published in the *Gazette*, give notice thereof to the persons concerned in such manner as he may deem fit.

Craft to which Act does not apply

16. The provisions of this Act do not apply to -

- (a) ships owned and used by the Government of Namibia for non-commercial purposes; or
- (b) any other ship or class of ship exempted by the Minister by regulation from any provision of this Act in so far as it is so exempted.

[section 16 amended by Act 5 of 1983]

Operation of Act in relation to other laws

17. The provisions of this Act are in addition to and not in substitution of any other law which is not in conflict with or inconsistent with this Act.

Agreement with government of certain state or territory

18. If agreed upon between the Government of Namibia and the government of any other state or territory of which the territorial sea are contiguous to the territorial sea of Namibia, the Minister may for and in respect of that state or territory perform any function which he would be capable of performing in Namibia in terms of this Act, as if that state or territory formed part of Namibia.

Short title and commencement

19. This Act shall be called the Marine Traffic Act, 1981, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.