



Republic of Namibia  
Annotated Statutes

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## Sea-shore Ordinance 37 of 1958

(OG 2153)

came into force on date of publication: 26 June 1958; repealed in respect of  
Walvis Bay by RSA Proclamation 149 of 1982 (RSA GG 8344)

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### ORDINANCE

To provide for the determination of the actual position of the high-water mark and for matters incidental thereto.

*(Assented to 18th June, 1958)*  
*(English text signed by the Administrator)*

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### ARRANGEMENT OF SECTIONS

[The provisions in this Ordinance have no headings.]

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa:-

1. In this Ordinance, unless inconsistent with the context:-

“sea-shore” means the land situated between low-water mark and high-water mark;

“high-water mark” means the highest line reached by the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

“low-water mark” means the lowest line to which the sea recedes during periods of spring tides;

“three miles limit” means the distance of three nautical miles out to sea from low-water mark;

“local authority” means a municipal council or a village management board.

2. (1) The Administrator may in his discretion:-

**Sea-shore Ordinance 37 of 1958**

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- (a) upon the application of an owner of land of which one or more of the boundaries extend to high-water mark, or extend to a stated distance from high-water mark, to have the position of high-water mark relatively to that land or any portion of that land determined and defined by beacons; or
- (b) upon the application of a local authority, within or adjoining whose area of jurisdiction any portion of the sea-shore is situate, to have the position of high-water mark relatively to that area or to any portion of that area determined and defined by beacons; or
- (c) upon his own motion, if he considers that it is in the public interest that the position of high-water mark relatively to any land be determined and defined by beacons,

by notice in the *Official Gazette* appoint a commission to make the required determination: Provided that if any mortgage bond over, or any real right in, the land referred to in paragraph (a) is registered in the deeds registry, the application shall be accompanied by proof that written notice has been given by the owner of his intention to apply for such determination to any person in whose favour any mortgage over a real right in the land is so registered.

(2) The Administrator may before appointing a commission upon any application made under paragraph (a) or (b) of sub-section (1) require the applicant to deposit with him security for the payment of any amount which in terms of sub-section (14) he may be ordered to pay.

- (3) The commission shall consist of:-
  - (a) A magistrate nominated by the Administrator for the purpose, who shall be the chairman;  
  
**[The word "A" in the phrase "A magistrate" should not be capitalised.]**
  - (b) the Surveyor-General, or one of his professional assistants nominated by the Administrator for the purpose; and
  - (c) one other person, who shall be a land-surveyor in independent practice recognised as such for the purposes of the Land Survey Proclamation, 1920 (Proclamation 7 of 1920) or the Land Survey Act, 1927 (Act 9 of 1927) of the Union, and who has practised as such for a period of at least ten years and who shall be nominated by the Administrator after consultation with the owner of the land relatively to which the position of high-water mark is to be determined, and where the position of high-water mark is to be determined relatively to the area of jurisdiction of a local authority or relatively to land situate within the jurisdiction of a local authority, after consultation with that local authority.

**[Land surveyors currently fall under the Land Survey Act 33 of 1993.]**

(4) The notice referred to in sub-section (1) shall state the names of the members of the commission and shall describe the land or area relatively to which it is required to determine the position of high-water mark.

(5) The commission shall keep a record of its proceedings and of the evidence taken by it, and such record shall, after the commission has issued an order in terms of this section, be filed in the office of the Surveyor-General and shall hereafter be available for inspection by any person.

## Sea-shore Ordinance 37 of 1958

(6) The decision of the majority of the members of the commission shall be deemed to be the decision of the commission.

(7) The commission shall for the purpose of the enquiry be entitled to enter upon the land or area relatively to which the position of high-water mark is to be determined and have the powers and jurisdiction conferred upon commissions by sections *three, four, five, six* and *seven* of the Commissions' Powers Ordinance, 1927 (Ordinance 6 of 1927) and these sections shall *mutatis mutandis* apply to the commission and to all witnesses subpoenaed by the commission: Provided that any subpoena mentioned in sub-section (2) of section *three* of that Ordinance shall be signed by the chairman of the commission.

**[The Commissions' Powers Ordinance 6 of 1927 is still technically in force, but it appears to have been superseded by the Commissions Act 8 of 1947 (RSA) which was made applicable to South West Africa as of 29 August 1980 by RSA Proc. R.149/1980 (RSA GG 7199).]**

(8) The commission shall after enquiry determine the position at the date on which the determination is made of the high-water mark relatively to the land or area described in the notice referred to in sub-section (1), shall make an order setting forth that position, and shall state its reasons for its findings.

(9) The commission may, with the consent of the Administrator and of every owner of land situate outside the area of jurisdiction of a local authority, relatively to which land the position of high-water mark is to be determined, and, where the position of high-water mark is to be determined relatively to the area of jurisdiction of a local authority or relatively to land situate within the area of jurisdiction of a local authority with the consent of the Administrator and of that local authority, determine that a give-and-take line which follows closely the actual high-water mark and which is set forth in an order made by the commission shall be high-water mark relatively to that land or that area.

(10) Subject to the provisions of sub-section (11) high-water mark as determined by the commission in terms of sub-section (8) or (9) and set forth in the order made by the commission shall, for the purpose of this Ordinance and for the purposes of determining the boundaries of the land or area described in the notice referred to in sub-section (1), be deemed at all times thereafter to be high-water mark, and those boundaries shall be deemed to have been lawfully amended accordingly: Provided that if after any determination has been made any such boundary is, by reason of encroachment by the sea, regularly submerged at low-water during periods of ordinary spring tides the Administrator may, after affording a reasonable opportunity to the owner concerned to protect his land from such encroachment, exercise the powers conferred on him under paragraph (c) of sub-section (1).

(11) An order made by the Commission shall be final and not subject to appeal or review by any court of law, except on any question of law in which case an appeal or review may be noted or applied for within the period of three months after the date on which the order was made to the High Court of South West Africa. Such appeal or review shall be prosecuted within such period as may be prescribed by rule of the said High Court or fixed by order of that High Court.

(12) The Surveyor-General shall cause the necessary beacons to be erected either on the sea-shore or on the landward side of the high-water mark in accordance with the order of the commission and shall cause the position of those beacons to be determined by actual survey and cause a plan to be prepared showing the position of the beacons so erected in relation to the property affected.

(13) The Surveyor-General shall cause such amendments or endorsements to be made on the relative diagrams as may be necessary to record the determination made by the

**Sea-shore Ordinance 37 of 1958**

commission and any alteration in the boundaries of any land consequent upon that determination, and shall notify the Registrar of Deeds of those amendments; and the Registrar of Deeds shall thereupon amend the relative title-deeds and registers in the deeds registry in his charge.

(14) The commission may, if it thinks it just to do so, order that the whole or a portion of the costs of survey and of the erection of beacons referred to in subsection (12) and the fees and expenses paid to witnesses in terms of sub-section (16) shall be borne by the person upon whose application the commission was appointed or by the owner of any land the boundaries of which are affected by the determination by the commission of high-water mark; and the Administrator may deduct the amount so ordered to be paid by any person from the amount of security deposited by him in terms of subsection (2) or may recover the same, or the balance remaining after any such deduction, from any such person by action in a competent court.

(15) Any person (not being a member of the public service) who is appointed as a member of the commission shall be paid out of moneys appropriated by the Legislative Assembly for the Territory of South West Africa for the purpose, fees and expenses of travelling and subsistence prescribed under section *three*.

(16) Any witness who is summoned to give evidence at any enquiry by the commission shall, subject to any order by the commission, be paid, out of moneys appropriated by the Legislative Assembly for the Territory of South West Africa for the purpose, fees and expenses of travelling and subsistence at such rates as may from time to time be prescribed in terms of the Magistrates' Courts Proclamation, 1935, (Proclamation 31 of 1935), or any amendment thereof for witnesses attending a magistrate's court: Provided that the commission may in its discretion disallow the expenses of any witness whom it has summoned at the request of any person.

**[The Magistrates' Courts Proclamation 31 of 1935 (OG 650), except for the Second Schedule, was repealed by the Magistrates' Courts Ordinance 29 of 1963 (OG 2499), which was repealed in turn by the Magistrates' Courts Amendment Act 53 of 1970 (RSA GG 2826). The Second Schedule contains Rules of Court which have since been superseded.]**

3. (1) The Administrator may make regulations, not inconsistent with this Ordinance:-

- (a) concerning the use of the sea-shore;
- (b) concerning bathing in the sea;
- (c) concerning the removal from the sea-shore or the bed of the sea within the three miles limit of sand, shingle, rock, stone, shells, mussels, redbait or seaweed;
- (d) for the prevention or the regulation of the depositing or the discharging upon the seashore or in the sea within the three miles limit of offal, rubbish or anything liable to be a nuisance or danger to the health of the public;
- (e) concerning the control, generally, of the sea-shore and of the sea and the bed of the sea within the three miles limit;
- (f) concerning the doing of any act upon or in relation to the sea-shore or the bed of the sea or the sea within the three miles limit and for prescribing fees therefor;
- (g) prescribing the fees and expenses referred to in sub-section (15) of section *two*.

**Sea-shore Ordinance 37 of 1958**

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(2) Any regulation may provide a penalty of a fine not exceeding twenty-five pounds or in default of payment, a period of imprisonment not exceeding three months, for any contravention thereof or failure to comply therewith.

**[A fine not exceeding twenty-five pounds is equivalent to a fine not exceeding N\$50.]**

(3) Any regulation may be expressed to apply to the whole or to any defined portion of the sea-shore (whether it has been alienated or not) or the bed of the sea or the sea within the three miles limit; and whenever any regulation applies to any portion of the sea-shore situate within or adjoining the area of any local authority, or to any portion of the bed of the sea or the sea within the three miles limit adjoining such portion of the sea-shore, the Administrator may by that regulation (or by any other regulation made under this section) confer powers and impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers: Provided that before any regulation is made concerning any portion of the sea-shore situate within or adjoining the area of jurisdiction of any local authority, the Administrator shall consult the local authority concerned and submit to it a copy of the proposed regulations.

(4) Nothing contained in this section or in any regulation made under this section, shall affect any by-law lawfully made by a local authority under any law.

4. Nothing contained in this Ordinance shall affect:-

- (a) any rights or powers conferred upon the Railways and Harbours Administration of the Union by or under any law relating to ports and harbours in respect of any portion of the sea-shore or the sea or the bed of the sea within the three miles limit and in the event of any conflict between the provisions of this Ordinance and any such law, the rights and powers of the said Railways and Harbours Administration shall be determined by the provisions of such law, and not by the provisions of this Ordinance;
- (b) any rights of any member of the public to use the sea-shore or the sea or the bed of the sea within the three miles limit, except in so far as such rights are inconsistent with the rights conferred by any title, concession, lease, permit, authority, delegation or regulation lawfully issued, entered into, granted or made by virtue of any law or by virtue of any such title, concession, lease, permit, authority, delegation or regulation.

5. This Ordinance shall be called the Sea-shore Ordinance, 1958.