



REPUBLIC OF NAMIBIA

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**LAW REFORM AND DEVELOPMENT COMMISSION**

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**URGENT AND TARGETED REPORT  
ON  
FISHERIES**

**LRDC 21  
November 2012  
Windhoek, Namibia  
ISSN 1026-8405  
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(ii)

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**\*Number of publication, ISSN and ISBN numbers not printed on all copies.**

(iii)

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The Namibian Law Reform and Development Commission (the LRDC) is a creature of statute established by **Section 2** of the **Law Reform and Development Commission Act, 1991 (Act No. 29 of 1991)**.

The core mandate of the Commission is to undertake research in connection with all branches of law and to make recommendations for the reform and development thereof.

The members of the LRDC are–

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Ms D Hubbard, Deputy Chairperson  
Adv J Walters, Ombudsman  
Mr M Frindt  
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Ms D Muruko  
Mr F Nghiiishililwa  
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The Secretary to the Commission is Mr J.T. Namiseb who heads the Directorate of Law Reform, an organizational component in the Ministry of Justice. The Directorate of Law Reform serves as Secretariat to the Commission, assisting the Commission in the exercise of its powers and the performance of its duties and functions under the Act. The Secretariat is housed on the 2<sup>nd</sup> Floor, Mutual Platz Building, Post Street Mall, Windhoek.

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The Law Reform and Development Commission would like to acknowledge and appreciate the immense contribution of its project intern for 2012 Ms. Samantha McTigue who dedicated and volunteered throughout 2012 and was able to set up the paperwork and the consultative process under the direction of the Chairman, Mr. Sacky Shanghala. Further acknowledgement and appreciation is due to the UNAM Law Faculty interns who have assisted in compiling this Report. They are Ms. Tangi Shikongo, Ms. Fenni Nashilundo, Ms. Lucia Nandjembo, Ms. Loide Shaparara, Mr. Festus Weyulu, Mr. Ndjodi Ndeunyema, and Mr. Nambili Mhata. Lastly, Ms. Roswitha Gomachas (LRDC), Dr. F. Zenda and Ms. Felicity Owoses of the Ministry of Justice, as well as Mr. Filimon Shiimi of the Ministry of Fisheries and Marine Resources and the Fishery Inspectors who have assisted the LRDC immensely in the process of this Project.

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## Abbreviations

BCC	Benguela Current Commission
BCLME	Benguela Current Large Marine Ecosystem
CCRF	FAO Code of Conduct for Responsible Fisheries COMHAFAT Regional Convention on Fisheries Cooperation among African States bordering the Atlantic Ocean
EEZ	Exclusive Economic Zone
EPL	Exclusive Prospecting License
FAO	Food and Agriculture Organisation
GDS	Geographically Disadvantaged States
GRN	Government of the Republic Of Namibia
H&G	Headed and Gutted
ICCAT	International Convention for the Conservation of Atlantic Tunas
IMO	International Maritime Organisation
ITQ	Individual Transferrable Quota
IUU	Illegal, Unreported and Unregulated Fishing
LID	Federation of Icelandic Fishing Vessels Owners
LLS	Land Locked States
LME	Large Marine Ecosystem
LRDC	Law Reform and Development Commission
MFMR	Ministry of Fisheries and Marine Resources
MoU	Memorandum of Understanding
MRAC	Marine Resources Advisory Council
NaCC	Namibia Competition Commission
NAMPORT	Namibia Ports Authority
NSI	Namibia Standards Institution

**(vi)**

QMS	Quota Management System
SADC	Southern Africa Development Commission
SAP	Strategic Action Plan
SEAFO	Southeast Atlantic Fisheries Organisation Convention
TAC	Total Allowable Catch
TACC	Total Allowable Commercial Catch
TANC	Total Allowable Non-Commercial Catch
TCB	Training and Capacity Building
UN	United Nations
UNCLOS	United Nations Convention on the Law of The Sea
UNFSA	United Nations Fish Stock Agreement

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## 1. Background

1.1. It is widely accepted that fishing nations must implement appropriate and sustainable fisheries management systems. Each coastal state needs to take into consideration its own set of unique circumstances, in terms of its fish stock profile, its socio-economic priorities and the importance it would attach to each of the parameters that feed into the equation on how, and at what level, its resources should be harvested<sup>1</sup>.

1.2. On the 11<sup>th</sup> September 2012, the Ministry of Fisheries and Marine Resources (MFMR) contacted the Law Reform and Development Commission (LRDC) to assist the Ministry to craft targeted regulations, aimed at ensuring that the *“marine resources sector is sufficiently competitive and encourages investment in labour absorptive exploitation and value addition initiatives”*.

1.3. The Ministry highlighted the following issues that called for urgent attention:

1.3.1. To bring into law targeted regulations for the Catch Limitation Measures, so as to arrive at a more equitable participation of holders of rights to commercially harvest marine resources in the fisheries and marine resources sector of the Namibian economy. In particular, it was requested that the LRDC clarify if the Minister was entitled to impose conditions, post the granting of a right to harvest marine resources.

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<sup>1</sup>Oelofsen, B. W. (1999) *Fisheries Management: The Namibian Experience*.p.1000 ICES Journal of Marine Science, p.56.

<sup>2</sup>Article 144 provides that the general rules of public international law and international agreements form part of the law of Namibia, unless otherwise provided in the Namibian

- 1.32. The Ministry requested that regulations be crafted that would effectively prescribe conditions and restrictions upon rights, quotas, licenses and authorizations. Questions of whether right holders are *entitled* to a quota or whether it is, rather, a question of possessing a *legitimate expectation* to receive a quota. As it stands, the Minister may only set conditions at the time in which rights or quotas are granted, and can only vary a right or quota under section 41 (4) – if it is in the interest of the promotion, protection or utilization of marine resources.
- 1.33. The Ministry requested that the LRDC reviews the General Policy of the Marine Resources Act, 2000 (Act No. 27 of 2000) with regard to the conservation and utilization of marine resources.
- 1.34. In particular, it was put to the LRDC: Does the Minister have the power to issue regulations to rights holders limiting ownership in entities harvesting particular fisheries?
- 1.35. Further, would it be possible to introduce a system of Individual Transferrable Quotas (ITQs)? There exists a current problem of a derivative market emerging between Joint Ventures and incumbents/vessel owners, as well as the instability in pricing due to quota rental/roaming/shopping. There is no system of incentive to inform the Minister of transference of quota under the prevalent quota rental roaming/shopping.
- 1.36. The issue of the absence of criteria makes the introduction of a review process too vague to stand muster. A *legitimate expectation* must be based on a case-by-case basis, rather than as a general expectation. Should the Act stipulate in explicit words that there

should be no entitlement to automatic renewal? There needs to be a system which deals with the entities which do not pay levies, corporate tax *ad nauseam*, and yet still receive quotas every year.

- 1.3.7. These general questions were posed and placed before the LRDC to revert to the Minister on an urgent basis. Yet before those queries may be answered, it is important that a proper context is established.

## **2. International and Regional Instruments to Conserve and Preserve Marine Resources**

### **2.1. Introduction**

- 2.1.1. General principles of public international law and international agreements form part of Namibian law in terms of Article 144<sup>2</sup> of the Namibian Constitution. Therefore, in the conservation and preservation of marine resources, there are certain international rights afforded to and obligations/responsibilities binding Namibia as a coastal state.

- 2.1.2. The foremost international and regional instruments, such as the United Nations Convention on the Law of Sea (UNCLOS), United Nations Fish Stock Agreement (UNFSA), Food and Agriculture Organisation's (FAO) Code of Conduct, Southeast Atlantic Fisheries Organisation Convention (SEAFO), Benguela Current Commission (BCC), International Convention for the Conservation

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<sup>2</sup>Article 144 provides that the general rules of public international law and international agreements form part of the law of Namibia, unless otherwise provided in the Namibian Constitution or an Act of Parliament.

of Atlantic Tunas (ICCAT) and the SADC Protocol on Fisheries, provide relevant provisions on *inter alia* the conservation and preservation of marine resources in Namibia.

- 2.1.3. Below, the significant provisions applicable to the rights and responsibilities of Namibia to conserve and preserve marine resources in terms of these international and regional instruments are canvassed.

## **2.2. International Instruments**

### **221. United Nations Convention of the Law of the Sea (UNCLOS)**

- 221.1. The United Nations Convention on the Law of Sea of 1982 entered into force in 1994. As of 4 May 2009, 158 Independent States and the European Union are parties thereto.
- 221.2. Namibia became signatory to the UNCLOS on 18 April 1983, when the United Nations Council for Namibia signed and ratified the UNCLOS on behalf of Namibia.<sup>3</sup>
- 221.3. The UNCLOS forms part of Namibian law in terms of Article 140(1)<sup>4</sup> read with Article 144.
- 221.4. The UNCLOS is the supreme international law of the sea, setting the basic principles that guide State Parties in the

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<sup>3</sup>Ekongo, J (March 2010) *Fisheries Sector Made Great Strides in 20 Years*; Government of the Republic of Namibia. Government Information Bulletin; p. 18.

<sup>4</sup>Article 140(1) provides that, subject to the provisions of the Namibian Constitution, all laws which were in force prior to independence shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court.

development of legislation of marine related activities.<sup>5</sup> It provides an international legal framework that enhances the peaceful use of the seas and oceans, the sustainable utilisation of their resources, the conservation and management of living marine resources, the protection and preservation of the marine environment, and the minimisation of maritime conflicts.<sup>6</sup>

2215. Together with the Fisheries Policy adopted by the Namibian Government in 1992, the UNCLOS became the pillar of regulation of fisheries and marine related activities in Namibia.<sup>7</sup>

2216. The basic principles enunciated in the UNCLOS were also relied on in various national legislation such as the Territorial Sea and Exclusive Economic Zone Act, 1990 (Act No. 3 of 1990), the Marine Resources Act, 2000 (Act No. 27 of 2000) and the Regulations to the Marine Resources Act of 2001, and national policy documents such as the Marine Resource Policy of 2004.<sup>8</sup>

2217. Summations of the relevant provisions of the UNCLOS are canvassed in the table below:

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<sup>5</sup> Ekongo, J. (March 2010: 18).

<sup>6</sup> *Ibid.*

<sup>7</sup> Ekongo, J. (March 2010: 18).

<sup>8</sup> *Ibid.*

<b>UNCLOS</b>	
<b>Relevant Provisions</b>	<b>Relevant Issues, Rights and Responsibilities</b>
<b>(a) Territorial Sea Part II (Articles 2 - 33)</b>	
<b>Article 2</b> Legal status of the Territorial Sea	<ul style="list-style-type: none"> <li>- Right:               <ul style="list-style-type: none"> <li>• A coastal state has dominion over the territorial sea (which extends beyond its land territory to an adjacent belt of the sea), air space over the territorial sea as well as to its bed and subsoil.</li> </ul> </li> <li>- Responsibility:               <ul style="list-style-type: none"> <li>• However, the exercise of such dominion is subject to the UNCLOS and other rules of international law.</li> </ul> </li> </ul>
<b>Article 3</b> Breadth of the Territorial Sea	<ul style="list-style-type: none"> <li>- The territorial sea area is measured 12 nautical miles from the baseline.</li> </ul>
<b>(b) Exclusive Economic Zone (EEZ) Part IV (Articles 55-75)</b>	
<b>Article 55</b> Specific legal regime of the EEZ  <b>Article 57</b> Breadth of the EEZ	<ul style="list-style-type: none"> <li>- The EEZ is an area beyond and adjacent to the territorial sea.</li> <li>- The EEZ shall not extend beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.</li> <li>- The EEZ is an intermediate area and is not part of the high seas.<sup>9</sup></li> </ul>

<sup>9</sup>Bhanu Krishna Kiran, R. (2009) *Rights and Responsibilities of Parties under UNCLOS in the Exclusive Economic Zone (EEZ) and Continental Shelf*; p.5. Available at <http://www.rsis.edu.sg/research/PDF/Bhanu%20Krishna%20Kiran.pdf> last accessed on December 6, 2012.

<p><b>Article 56</b> Rights, jurisdiction and duties of the coastal state in the EEZ</p>	<ul style="list-style-type: none"> <li>- Rights: <ul style="list-style-type: none"> <li>• Economic: coastal states have sovereign right to explore, exploit, conserve and manage living and non-living resources of water column, seabed and subsea strata.</li> </ul> </li> <li>- Responsibilities: <ul style="list-style-type: none"> <li>• In the exercise of their rights and performing their duties under the UNCLOS in the EEZ, coastal states must observe the rights and duties of other states; and</li> <li>• have a duty to act in a manner compatible with the provisions of the UNCLOS.</li> <li>• Furthermore, this Article requires coastal states to conserve and manage the natural resources in the EEZ.<sup>10</sup></li> </ul> </li> </ul>
<p><b>Article 61</b> Conservation of living resources</p>	<ul style="list-style-type: none"> <li>- Coastal States have the right to and must determine the total allowable catch of living resources in the EEZ (this provision depicts both a right and a responsibility on the coastal state in the EEZ).</li> <li>- Responsibilities: <ul style="list-style-type: none"> <li>• Coastal states must ensure – <ul style="list-style-type: none"> <li>(a) that living resources in the EEZ are not endangered through over-exploitation;<sup>11</sup></li> <li>(b) Sustainable harvesting of species;<sup>12</sup> and</li> <li>(c) The conservation of dependent and associated species.<sup>13</sup></li> </ul> </li> <li>• Coastal States have the obligation to exchange available scientific information on catch and fishing effort with competent international organisation.</li> </ul> </li> </ul>

<sup>10</sup>Article 56(1)(a) of the UNCLOS.

<sup>11</sup>Kiran (2009:19). *Vide* Article 61(2) of the UNCLOS.

<sup>12</sup>*Ibid.* *Vide* Article 61(3) of the UNCLOS.

<sup>13</sup>*Ibid.* *Vide* Article 61(4) of the UNCLOS.

<p><b>Article 62</b> Utilisation of living resources</p>	<ul style="list-style-type: none"> <li>- The Coastal state is entitled to determine its harvesting capacity (to determine what portion of the allowable catch it will take).<sup>14</sup></li> <li>- Where the coastal state does not have the capacity to harvest the entire allowable catch it, it <b>may</b><sup>15</sup> give other states access to the surplus of the allowable catch (having regard to Articles 69 and 70 discussed below).</li> <li>- In giving access to other states to its EEZ, coastal states must take into consideration all relevant factors including – <ul style="list-style-type: none"> <li>• significance of living resources to its economy; and</li> <li>• its other national interest;</li> </ul> </li> <li>- Rights: <ul style="list-style-type: none"> <li>• Right to establish regulations for nationals of other states fishing in their EEZ; and</li> <li>• Right to establish regulations on type of fishery for harvesting, equipment, areas and seasons for fishing.</li> </ul> </li> <li>- Responsibility: <ul style="list-style-type: none"> <li>• Coastal State must- <ul style="list-style-type: none"> <li>(a) promote the objective of optimum utilisation of living resources;<sup>16</sup></li> </ul> </li> </ul> </li> </ul>
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<sup>14</sup> Dahmani, M. (1987). *The Fisheries Regime of the Exclusive Economic Zone*; Martin Nijhoff Publishers; p 52. The entitlement of coastal states to determine harvesting capacity stems from the sovereign rights enjoyed by the Coastal State in its EEZ. This in turn means that, where the coastal state's harvesting capacity is greater or equal to the allowable catch, only the coastal state will be able to fish in its EEZ. However, a coastal state may choose to grant other states access to the resources of its EEZ even if it does have the capacity to harvest the entire allowable catch.

<sup>15</sup> *Dahmani (1987:53)*. The determination by a coastal state of its harvesting capacity amounts to a determination of whether or not it will grant access to the fisheries resources of its EEZ. The only obligation on the coastal state in this regard is to set a harvesting capacity whose dimensions are solely within its discretion to determine. This is because the UNCLOS does not lay down any criteria or guidelines as to how the harvesting capacity should be determined. As a result, it leaves a number of questions unanswered. For instance, how far will the coastal state determine its actual capacity at some future time and limit the surplus that will be available to other states? Should the coastal state's capacity be viewed as excluding any joint fisheries venture?

<sup>16</sup> Article 62(1) of the UNCLOS.



	<p>(b) determine its capacity to harvest the living resources in the EEZ; and</p> <p>(c) cooperate with coastal states whose EEZ's overlap with its EEZ to coordinate management measures in respect of the shared stocks.</p>
<p><b>Article 64</b> Highly migratory species</p>	<ul style="list-style-type: none"> <li>- Right to institute cooperative measures regarding straddling stocks and highly migratory species.<sup>17</sup></li> </ul>
<p><b>Articles 69</b> Right of land-locked States (LLS)</p> <p><b>Article 70</b> Right of geographically disadvantaged States (GDS)</p> <p><b>Article 71</b> Non-applicability of articles 69 and 70</p> <p><b>Article 72</b> Restriction on transfer of rights</p>	<ul style="list-style-type: none"> <li>- LLS and GDS have the right to participate in the exploitation of an appropriate part of the surplus of the living resources of the EEZ of coastal States of the same sub-region or region;</li> <li>- In the exercise of this right, LLS and GDS must consider the relevant economic and geographical circumstances of the State concerned and in conformity of the provisions of Articles 61 and 62.</li> <li>- The terms and modalities of such participation shall be established by the States concerned through bilateral, sub-regional or regional agreements.</li> <li>- Developed LLS and GDS shall only be allowed to exercise this right in the EEZ's of other developed States, unless they have already entered into arrangements with developing states.</li> <li>- The provisions of Articles 69 and 70 do not apply if the coastal State's economy is overwhelmingly dependant on the exploitation of living resources in its EEZ.<sup>18</sup></li> <li>- Rights provided under Articles 69 and 70 are not transferrable to a third State or its nationals.<sup>19</sup></li> </ul>
<p><b>Article 73</b></p>	<ul style="list-style-type: none"> <li>- Coastal States have the right to pass and enforce</li> </ul>

<sup>17</sup>Kiran (2009:16).

<sup>18</sup>Vide Article 71 of the UNCLOS.

<sup>19</sup>Vide Article 72 of the UNCLOS.

Enforcement of law and regulations of the coastal State	their laws for the purpose of conserving and managing living resources through measures such as boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with laws and regulations adopted by it in conformity with the UNCLOS.
<b>(d) Protection and Preservation of Marine environment Part XVII (Articles 192-237)</b>	
<b>Article 192</b> General Obligation	- States have the obligation to protect and preserve the marine environment.
<b>Article 193</b> Sovereign right of States to exploit their natural resources	- States have the sovereign right to exploit their natural resources, subject to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

## **222 United Nations Fish Stock Agreement (UNFSA)**

2221. The 1995 United Nations Fish Stock Agreement (UNFSA) was signed on 4 December 1995 and took effect on 11 December 2001.

2222. The full name of the agreement is: *The United Nations Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.*

2223. Namibia ratified the UNFSA on 8 April 1998 and is thus subject to the provisions of the UNFSA. Seventy-Eight (78) States and entities have ratified the UNFSA.

223. It was initiated as a response to a fisheries management crisis involving a class of trans-boundary fishery resources. These fish stocks were found both within the coastal State's EEZ and the adjacent high seas. While most of the threat resulted from overfishing and the prevalence of "illegal, unreported and unregulated" (IUU) fishing in the high seas with migratory fish species and straddling stock - the root cause of the crisis, UNCLOS failed to specify operational qualifications and the migratory habits of species, and these shortcomings gave rise to the UNFSA.<sup>20</sup>

224. The UNFSA is based on the basic principles set out in the UNCLOS, which declares that the States should cooperate to ensure conservation and promote the best utilization of fisheries resources both within and beyond the EEZs.<sup>21</sup> Article 1(1)(d) of the 1995 UN Straddling Fish Stocks Convention specifies that arrangements in the form of "cooperative mechanisms" need to be established on a "regional or sub-regional basis", with the purpose to "formulate conservation and management measures [...] for one or more straddling fish stocks or highly migratory fish stocks".<sup>22</sup>

224.1. The primary objectives of the agreement are:<sup>23</sup>

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<sup>20</sup> *Vide*: Ensuring the Sustainability of Pacific Tuna: The United Nations Fish Stocks Agreement (UNFSA); Available at [www.wwfpacific.org.fj](http://www.wwfpacific.org.fj) last accessed on 06 December 2012.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Vide* Article 1 (1995) The United Nation Fish Stock Agreement, A/CONF.164/37 at p. 3.

<sup>23</sup> *Ibid.*

- (a) To ensure the long-term and sustainable straddling and highly migratory fish stocks beyond areas of national jurisdiction; and
- (b) to greatly improve the international management of fishing on the high seas based on the precautionary approach and the best available scientific information.

225. In its effort to advance the objectives of sustainable use of straddling and highly migratory fish stocks, the UNFSA further crystallises an ecosystem-based approach<sup>24</sup> to fisheries management, emphasising concepts such as:<sup>25</sup>

- (a) Unity of stocks and the need for management of stocks over their entire range;<sup>26</sup>
- (b) the imperative for compatibility of EEZ and high-seas fisheries regimes;<sup>27</sup>
- (c) a concern with the catch of non-targeted species and the interdependence of stocks;<sup>28</sup>
- (d) the need for a precautionary approach to fisheries management,<sup>29</sup> and
- (e) transparency in the decision making and activities of the regional fisheries management organisations and arrangements.<sup>30</sup>

<sup>24</sup>An ecosystem based approach to fisheries management does not only target an individual depleted species but also dependent and associated species; identifying the effect fishing has on the stock and the ecosystem it is part of. *Vide* Phillips, A. () *A review on Innovation and Impotence in Fisheries*; Available at <http://www.anta.canterbury.ac.nz/documents/GCAS%20electronic%20projects/GCAS%2010%20Reveiw/Andrew%20Phillips%20Review.pdf>; p.5. Last accessed on December 6, 2012.

<sup>25</sup>Juda, J. (2001), *The United Nations Fish Stocks Agreement*, in Olav SchramStokke and Øystein B. Thommessen (eds.), (2001/2002) *Yearbook of International Co-operation on Environment and Development*; London: Earthscan Publications, p. 54.

<sup>26</sup>*Vide* Articles 5 and 7 of the UNFSA.

<sup>27</sup>*Vide* Article 7 of the UNFSA.

<sup>28</sup>*Vide* Articles 5(b) and (e) and 6(3)(c) of the UNFSA.

<sup>29</sup>*Vide* Articles 5(c) and 6 of the UNFSA.

226. The UNFSA also provides means with which to give effect to this new conceptualisation of fisheries management, stressing the role and responsibility of regional fisheries bodies to ensure protection of stocks in areas beyond the jurisdiction of coastal states.<sup>31</sup>
227. These two international instruments (UNCLOS and the UNFSA), while pivotal in their own right, do not provide a uniform design for the application of international or regional cooperation; thereby it necessitates and requires the implementation of regional mechanisms for fisheries management. This creates a mutually reinforcing relationship in which the regionally based mechanisms give effect to, and implement the provisions of, the two international conventions at a more detailed level, tailored to suit the unique requirements of different environmental regions around the world, while the two conventions give international legal legitimacy and provide a solid framework from which these mechanisms may develop.

### **3. Regional Agreements**

Since the late 1960s and early 1970s, fisheries in the South East Atlantic reached their maximum production levels, to the extent that outputs since then indicate a general downward trend in total catches.<sup>32</sup> Trans-boundary monitoring, assessment and management of fishery has been regionally and internationally recognised as a principal factor in management and policy considerations. Innovative regional strategies are necessary as a means to recover depleted and

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<sup>30</sup> *Vide* Article 12 of the UNFSA.

<sup>31</sup> Juda (2001:54), *Vide* further Articles 20-22 of the UNFSA.

<sup>32</sup> FAO Fisheries and Aquaculture Technical Paper 569, *Review of the State of World Marine Fishery Resources*. 2011. Rome .p. 108. Available at <http://www.fao.org/docrep/015/i2389e/i2389e.pdf> last accessed on 06 December 2012.

declining fish stocks, as well as to halt any further degradation of the ecosystem in the medium to long terms.

### **3.1. South East Atlantic Fisheries Organization (SEAFO)**

- 3.1.1. The South East Atlantic Fisheries Organisation (SEAFO) was established in line with the provisions of Article 118 of the 1982 UNCLOS, and Article 1 (1) (d) of the 1995 UNFSA.
- 3.1.2. The Convention was ratified in Windhoek in April 2001. Signatories to the Convention include: Angola, the European Community, Iceland, Namibia, Norway, Republic of Korea, South Africa, United Kingdom (on behalf of St. Helena and its dependencies of Tristan da Cunha and Ascension Islands) and the United States of America.<sup>33</sup>
- 3.1.3. It was made operative in April 2003, once the necessary “deposit of instruments of ratification,”<sup>34</sup> as required under Article 27 of the Convention, was acceded by Namibia and Norway and once the European Community granted approval. States that have participated in the negotiations, but have not yet signed the Convention are the Russian Federation and the Ukraine.
- 3.1.4. While UNCLOS and UNFSA provide the background and legal framework on which SEAFO was established, it is the SEAFO Convention that gives effect to both UN Agreements. Article 63(2) of the 1982 UNCLOS provides that:

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<sup>33</sup> *Vide* Available at [www.seafo.org](http://www.seafo.org) last accessed on 04 December 2012. .

<sup>34</sup> Article 27 of the SEAFO Convention available at <http://www.seafo.org/AUConventionText.html> last accessed on 06 December 2012.

*“where the same stocks or stocks of associated species occur both within the EEZ and in an area beyond and adjacent to the zone, the coastal State and other States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate sub-regional or regional organizations, agree upon the measure necessary for the conservation of these stocks in the adjacent area.”*

- 3.1.5. Furthermore, Section 37(1) of the Marine Resources Act, 2000 (Act No. 27 of 2000) gives effect to fisheries and international agreements, in the sense that:

*“(1) The Minister may, for the purpose of any fisheries agreement entered into under section 35 or any international agreement to which Namibia is a party, make such regulations as the Minister may consider necessary or expedient for the carrying out and for giving effect to the provisions of any such agreement or any amendment of such agreement.*

*(2) The Minister shall publish in the Gazette the texts of all conservation and management measures adopted under any international agreement to which Namibia is a party and any measure so published shall be deemed to be a regulation prescribed under section 61.”*

### **3.2. International Convention for the Conservation of Atlantic Tuna (ICCAT)**

- 3.2.1. The Convention was prepared and adopted at a Conference of

Plenipotentiaries in Rio de Janeiro and entered into force on 21 March 1969. Namibia ratified the Convention on 10 November 1999.

322. The main objective of the Convention is to co-operate in maintaining the population of tuna and tuna-like species found in the Atlantic Ocean and the adjacent seas at levels that will permit the maximum sustainable catch for food and other purposes.<sup>35</sup> This is prescribed in the Preamble of the Convention.<sup>36</sup>
323. The Convention relates only to tuna and other fishes exploited in the course of tuna fishing and which are not subject to control by other fishing organisations.<sup>37</sup>
324. The Convention establishes the International Commission for the Conservation of Atlantic Tunas (ICCAT), which is an inter-governmental fishery organisation responsible for the conservation of tuna and tuna-like species in the Convention area through the study of the populations of these species, including research on the abundance, biometry and ecology of the fish; the oceanography of their environment; and the effects of natural and human factors upon their abundance.<sup>38</sup>

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<sup>35</sup> Amador, T. (2006) *International and Regional Fisheries Agreement and Organization in the SADC Region: Legal Assessment and Review*; Working Paper No. 49; EU SADC MCS Programme; p. 30.

<sup>36</sup> The Preamble of the Convention states: "The Governments whose duly representatives have subscribed hereto, considering their mutual interest in the population of tuna and tuna-like fish in the Atlantic Ocean and desiring to co-operate in maintaining the populations of these fishes at levels which will permit the maximum sustainable catch for food and other purposes, resolve to conclude a Convention for the conservation of the resources of tuna and tuna-like fishes of the Atlantic Ocean."

<sup>37</sup> Amador (2006:30).

<sup>38</sup> *Ibid.*



325. The ICCAT provides a platform to the Contracting Parties to collect and study available statistical information relating to current conditions and trends of the tuna and to deliberate on the measures and methods necessary to conserve tuna and tuna-like fishery.

### **3.3. Regional Convention on Fisheries Cooperation among African States bordering the Atlantic Ocean (COMHAFAT)**

331. The COMHAFAT was signed in Dakar on 5 July 1991 and entered into force on 12 July 1995 and, although certain sources<sup>39</sup> indicate that Namibia has ratified the Convention, no further information in this regard is available.

332. The COMHAFAT aims to promote an active and organised cooperation in the area of fisheries management and development in the Region and to take up the challenge of food self-sufficiency through the rational utilisation of fishery resources. It promotes coordinated and harmonised regional efforts and capabilities for the purpose of conserving, exploiting, up grading and marketing fishery resources.<sup>40</sup>

333. The COMHAFAT calls on Contracting Parties to combine efforts to ensure the conservation and rational management of their fishery resources and take concerted action for the assessment of fish stocks occurring within the waters under their sovereignty or jurisdiction of more than one party.<sup>41</sup> It further urges parties to endeavour to adopt harmonised policies concerning the conservation, management and exploitation of fishery resources, in particular with regard to the determination of catch quotas and, as

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<sup>39</sup>Amador (2006:30).

<sup>40</sup>*Ibid.*

<sup>41</sup>*Vide* Article 3(1) of COMHAFAT.

appropriate, the adoption of joint regulation of fishing seasons.<sup>42</sup>

### **3.4. SADC Protocol on Fisheries (the Protocol)**

34.1. The Protocol was adopted by the SADC Member States on 14 August 2001 and entered into force in 08 August 2003. Namibia ratified the Protocol on 21 June 2002.

34.2. The main objectives of the Protocol is to promote responsible sustainable use of the living aquatic resources and aquatic ecosystems of interest to State Parties in order to<sup>43</sup> –

- (a) promote and enhance food security and human health;
- (b) safeguard the livelihood of fishing communities;
- (c) generate economic opportunities for nationals in the Region;
- (d) ensure that future generations benefit from these renewable resources; and
- (e) alleviate poverty with the ultimate objective of its eradication.

34.3. The Protocol is based on modern paradigms of precautionary principle, the ecosystem approach and the principles of the International Code of Conduct for Responsible Fisheries and those of other International Agreements.<sup>44</sup>

### **3.5. The Benguela Current Commission (BCC)**

35.1. One of the programmes developed to support the initiatives of the Protocol is the Benguela Current Large Marine Ecosystem (BCLME) Programme.

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<sup>42</sup> *Idem*, at Article 3(4).

<sup>43</sup> Article 3 of the SADC Protocol on Fisheries.

<sup>44</sup> *Vide* Article 14 (Protection of the Aquatic Environment) of the SADC Protocol on Fisheries.

352. The BCLME is a multinational cross-sectoral initiative by Angola, Namibia and South Africa to manage the common living marine resources of the BBCLME in an integrated and sustainable manner and to protect the marine environment.<sup>45</sup> It focuses on a number of key areas, including fisheries, environmental variability, seabed mining, oil and gas exploration and production, coastal zone management, ecosystem health, socio-economics and governance.<sup>46</sup>
353. The BCLME establishes the Benguela Current Commission (BCC) which is responsible for the production of annual stock assessment, annual ecosystem reports, the provision of advice on harvesting resource levels and other matters related to sustainable resources, particularly fisheries and the management of the BCLME as a whole.<sup>47</sup>
354. The Benguela Current Large Marine Ecosystem (BCLME) is one of the most productive“ eastern boundary upwelling systems that support a high abundance and variety of economically exploited fisheries and marine resources” in the world.<sup>48</sup>
355. The purpose of the BCLME Programme is to “restore depleted fisheries and to halt the degradation of degraded ecosystems in the Benguela Current Large Marine Ecosystem (BCLME) Region.”<sup>49</sup>

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<sup>45</sup>Amador (2006:22).

<sup>46</sup>*Ibid.*

<sup>47</sup>Amador (2006:22).

<sup>48</sup>Report by the UNDP -GEF/ UNOPS (2010) *Implementation of the Benguela Current Large Marine Ecosystem Strategic Action Programme for Restoring Depleted Fisheries and Reducing Coastal Resources Degradation*. p. 5.

<sup>49</sup>Report by theUNDP -GEF/ UNOPS (2010:5).

This is to be executed through the establishment of the Benguela Current Commission (BCC) and through the effective and successful implementation of the BCC Strategic Action Programme (SAP).

35.6. The BCC was established in 2006, when Namibia and South Africa signed the Interim Agreement, and was later joined by Angola who ratified the Agreement in 2007. It is the first Commission in the world to be based on the Large Marine Ecosystem (LME) approach to ocean governance. The Interim Agreement forms the operational and policy framework of the Commission, and has the objective to give effect to the Strategic Action Programme (SAP).

35.7. The BCLME Programme has thus far secured a number of strategic partnerships that foster the continued development and maintenance of scientific research and analysis. This includes:

35.7.1. Support from Norway to establish the BCC Science Programme; and

35.7.2. Support from Iceland for the implementation of the BCC Training and Capacity Building (TCB) Strategy.

#### **4. Other Non-Binding Agreements**

##### **4.1. FAO Code of Conduct For Responsible Fisheries (CCRF)**

4.1.1. The CCRF was brought into effect in 1995. The CCRF is a voluntary code however certain parts of it is based on relevant rules of international law, including those of UNCLOS, and contains provisions that have a binding effect by means of other obligatory

legal instruments amongst the parties.<sup>50</sup>

- 4.12. The CCRF is global in its scope, and is directed towards members and non-members of the FAO, and provides principles and standards applicable to the conservation, management and development of all fisheries.<sup>51</sup> It also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.<sup>52</sup>
- 4.13. The CCRF calls upon States and users of living aquatic resources to conserve aquatic ecosystems, for the right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living aquatic resources.<sup>53</sup>

## **5. How International and Regional Fisheries Instruments Impact Namibia's Marine Conservation Laws**

- 5.1. The abovementioned international and regional instruments award Namibia right of sovereignty over its EEZ and corresponding duties, not only in its EEZ but also further extending into the high seas.
- 5.2. It is clear from these instruments that in order to ensure optimum utilisation of marine resources, certain measure and mechanisms must be in place for the conservation, protection and exploitation of marine resources.

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<sup>50</sup> Article 1 of the FAO Code of Conduct for Responsible Fisheries.

<sup>51</sup> Ibid.

<sup>52</sup> Article 1 of the FAO Code of Conduct for Responsible Fisheries.

<sup>53</sup> Report by the UNDP -GEF/ UNOPS (2010:5).

5.3. Namibia is praised to have developed policies and laws on the protection of fisheries resources that have worked well and that are in conformity with international law and the organisations to which it is a member.<sup>54</sup> In this regard reference is made to, amongst others, –

- (a) The Fisheries Policy Paper entitled “Towards Responsible Development of Fisheries Sector revised in 2004;
- (b) The Marine Resources Act, 2000 (Act No. 27 of 2000); and
- (c) The Marine Resources Regulations of 2001.

5.4. However, Namibian fisheries policy and legislation are said not to reflect specifically the SADC Protocol on Fisheries, nor the ICCAT and the SEAFO Conventions.<sup>55</sup>

## 6. The Marine Resources Act, 2000

6.1. The Long Title of the Marine Resources Act, 2000 (Act No. 27 of 2000) states that its purpose is “*to provide for the conservation of the marine ecosystem and the responsible utilization, conservation, protection and promotion of marine resources on a sustainable basis; for that purpose to provide for the exercise of control over marine resources.*”

6.2. Marine resources are defined as “*all marine organisms, including, but not limited, to, plants, vertebrate and invertebrate animals, monerams, protists (including seaweeds), fungi and viruses, and also includes guano and anything naturally derived from or produced by such organisms.*”<sup>56</sup> With regard to the conservation and utilization of marine resources, with a view to realize the greatest benefit for Namibians today and tomorrow, the

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<sup>54</sup> Amador (2006: pp. 9 -10).

<sup>55</sup> Amador (2006:11).

<sup>56</sup> Vide section 1 of the Marine Resources Act, 2000 (Act No. 27 of 2000).

Minister of Fisheries and Marine Resources may determine general policy.

<sup>57</sup> The management, protection and utilization of the marine resources found in Namibia's exclusive economic zone (EEZ) as may be determined by the President in terms of section 5 of the Territorial Sea and Exclusive Economic Zone Act, 1990 (Act No. 3 of 1990) is subject to the Marine Resources Act, 2000.

6.3. No one may harvest marine resources for commercial purposes without a right to harvest marine resources granted under section 33, an exploratory right to harvest marine resources or unless such person is a nominated person under section 35 under an international agreement whereby Namibia grants a member of the Southern African Development Community (SADC) access to the marine resources.

6.4. Further to the right to harvest/exploratory right to harvest or an international agreement, the Minister may, as he has, subject the harvesting of marine resources to quotas under section 39, which quotas are a portion of the total allowable catch (TAC) determined after a scientific assessment of the biomass has been conducted. From the TAC, the Minister then distributes portions of it to rights holders to fish only that quantity apportioned to them.

6.5. Section 38 (2) determines the Minister's role in determining the TAC:

*"Where, under subsection (1), the Minister decides to determine a total allowable catch, he or she shall, on the basis of the best scientific evidence available, and having requested the advice of the advisory council, determine the total allowable catch by notice in the Gazette."*

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<sup>57</sup> *Vide* section 2 of the Marine Resources Act, 2000 (Act No. 27 of 2000).

6.6. Section 39 of the Act sets out the conditions for the attainment of quotas:

*“(2) At any time that quotas are available for allocation, the Minister may, by written notice to the holder of a right for which quotas are allocated, determine the date by which applications for the allocations of such quotas may be received and the conditions to which such quotas shall be subject.*

...

*(6) The Aggregate of quotas allocated under subsection (3) in respect of any marine resource shall not exceed the total allowable catch.”<sup>58</sup>*

6.7. Vessels utilized for the harvesting of marine resources require being registered with the Permanent Secretary: Ministry of Fisheries and Marine Resources under section 40. A right may be issued, as has occurred, to persons without vessels, however, the transfer of any right, quota or license can only be done with the consent of the Minister. Therefore, Namibia does not have a system of freely transferrable individual quotas (abbreviated as ITQ).

6.8. Fees and levies may be imposed, as has been done, with respect to those monies payable to the Marine Resources Fund established under section 45 which monies are utilized to conduct research, development,

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<sup>58</sup>An example of the conditions to which quotas can be subjected are input (also known as effort management) and output (also known as catch management) controls. For the former, restrictions as to gear, number and size of vessels, duration of fishing voyages, amount of fuel, number of individual vessels are restricted upon. For the latter, the amount of fish out of a fishery is important, such as, limits upon tonnage (total allowable landings), by-catch limitation, discard limitations all form part of this output control measures. *Vide* FAO Fisheries Department. (2002) *A Fishery Manager's Guidebook: Management Measures and their Application*. Rome. Fisheries Technical Paper 424 at pp.76 – 77.



training and education relating to marine resources; monies payable to the Fisheries Observer Fund established under section 46, which monies are utilized to defray the costs of the Observer Agency; and for any other purpose the Minister may, after consultation with the Marine Resources Advisory Council (MRAC)<sup>59</sup> and with the approval of the Minister of Finance, determine.

6.9 The Minister in the performance of his duties is assisted primarily by the Permanent Secretary, yet their roles may seem to overlap. The following table contains a summary simplification of their roles and tasks for comparison:

<b>No.</b>	<b>The Minister's Role</b>	<b>The Permanent Secretary's Role</b>
1.	Determining general policy (conservation, utilization of marine resources) per s2	-
2.	Designating Fisheries Inspectors per s4	-
3.	Appointing Honorary Fisheries Inspectors per s6	-
4.	Imposing obligations upon Right's Holders/Licensees in respect of Observers per s7	-
5.	Making Determinations in re Fisheries Observer Agency per s10	-
6.	Entering into Agreements with Fisheries Observer Agency per s11	-
7.	Appointing the Fisheries Observer Agency Board & Management per s13	-
8.	Appointing Members of the Marine Resources Advisory Council (MRAC) per s25	Chairing the MRAC per s25

<sup>59</sup>Created under section 24 to advise the Minister of Fisheries and Marine Resources.

9.	Granting Rights to Harvest Marine Resources/Exploratory Rights and varying the former per s33 and 34	-
10.	Determining & setting the TAC per s38	-
11.	Imposing & Allocating Quotas per s39	-
12.	Issues Licenses for Fishing Vessels per s40(3)	Receiving Applications for Licensing of Vessels to Harvest per s40(1)
13.	Suspends/cancels/reduces/amends rights, quotas & licenses per s41(3)	Suspends rights, quotas & licenses where holder fails to respond to PS invitation to show cause per s41(1)
14.	Approves Transfer of Rights, Quotas or Licenses per s42	Keeps a register of Rights, Quotas & Licenses per s43
15.	Determines Fees & Levies per s44	-
16.	Utilizes Marine Resources Fund per s45(2)	Administers Marine Resources Fund per s45(4)
17.	Utilizes Fisheries Observer Fund per s46(2)	Administers Fisheries Observer Fund per s46(3)
18.	Prescribes Conservation Measures per s47	-
19.	Designation of Marine Reserves	-
20.	Custody of seized items/approval of guarantee amounts for seized items per s55(3) and (5)	Determine where seized items to be kept per s55(1)
21.	Making Regulations per s61	-
22.	Granting Exemptions per s62	-

6.10 Fisheries Inspectors are under the Marine Resources Act, 2000 empowered, without a warrant and at any time, to board vessels, enter upon premises and inspect, seize items and even order the master of a vessel to transit at a specified port.

6.11 Whilst Fisheries Inspectors perform a *quasi* police function, Fisheries Observers on the other hand observe and record data as to how marine resources are harvested, handled and processed;

collect biological data and samples; and thereafter report to the Fisheries Observer Agency.

- 6.12 The difficulty for Fisheries Inspectors however, is that they are not designated as Peace Officers under section 334(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- 6.13 For both the Fisheries Inspectors as well as the Fisheries Observers, none of them are designated as Commissioners of Oath under the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963) so that they may certify documents including ship manifests and the like. The above incapacities impact the work of these officials under the Marine Resources Act, 2000.
- 6.14 Notwithstanding that the management, protection and utilization of the marine resources found in Namibia's exclusive economic zone (EEZ) is subject to the Marine Resources Act, 2000, there is need to ensure that other sector statutes and functionaries, such as the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) and the Minister of Mines and Energy, exercise a consultative approach before granting Exclusive Prospecting Licenses (EPL's) or Mining Licenses for mineral resources within the EEZ.
- 6.15 Without any *gazetted* baseline coordinates, it is difficult to determine the extent of the EEZ as there is no point from which the 200 nautical miles will be recorded. The determination of the extent of the EEZ is relevant for the purposes of prosecuting any offence under the Marine Resources Act, 2000.<sup>60</sup>

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<sup>60</sup> *Vide* judgment of Frank, J in the matter of *S v Carracelas & Others* 1992 NR 336 (HC).

- 6.16 While it is true that the Marine Resources Act, 2000 prohibits the transfer of rights and quotas without the consent of the Minister, effectively, through Catch (Aggregate) Agreements/Quota Leases, Holders of Rights to Harvest Marine Resources are capable of assigning rights to those entities owning vessels who will catch their quota against an agreed sum of money per ton over a given period of time.
- 6.17 There is no in-built grievance procedure for Right's Holders in the event they are aggrieved by a decision of the Minister of Fisheries and Marine Resources or the Permanent Secretary, other than seeking a review of such decision or conduct under Article 18 of the Namibian Constitution, which may be a drawn out process due to the situation prevailing with the High Court Roll in Windhoek.

## **7. Case Studies**

### **7.1. Iceland**

- 7.1.1. In 1983, as part of the Fisheries Management Act, the decision was made to introduce a vessel quota system as a response to the devastated Cod stock in Iceland's territorial waters. According to the Act, two options were provided:
- 7.1.1.1. Firstly a "catch quota" in which the allocation of vessel quotas was to be based on the catch history of each vessel for the three previous years.
- 7.1.1.2. Second, an "effort quota" was provided, based on a limited number of days at sea. The effort quota was introduced as a

way to compensate boat owners, who, for some reason or the other, had been idle during the previous years and thus would be disadvantaged by the “catch quota” system. However, this quota system produced an unintended loophole and came to be used more predominantly by fishermen who felt they could take better advantage of their share of the TAC, as opposed to what could be achieved via the “catch quota” system, consequently causing the total catch capacity to continue increasing.<sup>61</sup>

7.12. The quota system varied several times during the period from 1984 to 1990, but in essence it worked, in a limited sense, as a system of individual transferable quotas (ITQs).

7.13. By 1990 a new Fisheries Management Act was enacted, which established a full ITQ-system in Iceland's fisheries management industry. The Act was not as widely supported as the 1983 Act, as many people expressed fears towards the permanent allocation of quota shares to boat owners, which they felt would effectively create a de-facto privatisation of the resources” and therefore would increase economic insecurity for fishery-dependent communities.<sup>62</sup>

7.14. Support for the ITQ resource management model is based on the notion of economic efficiency in the fisheries industry:

*“It was argued that while permanent allocation of quotas would provide conditions for long term planning and*

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<sup>61</sup>Eythorsson, E. (2000) A decade of ITQ-Management in Icelandic Fisheries: Consolidation Without Consensus. *Marine Policy Vol. 24, p. 485.*

<sup>62</sup>Eythorsson (2000:486).

*sound investment behaviour, free transferability would provide flexibility and efficient use of capital. Inefficient vessels would be bought out, while efficient ones would be able to optimise their operations. Some economists also argued that the efficiency generated by ITQs could produce a basis for management by resource rentals. Resource rentals (annual payments from quota holders to the state in return for the privilege of harvesting the fish resources) could subsequently become an important source of revenue for society at large. The ITQ-system was partly justified by practical reasoning on behalf of The Federation of Icelandic Fishing Vessel Owners (LID), such as the need for predictability and flexibility, and partly by theoretical reasoning by fisheries economists focused on efficiency and the potential benefits of the resource rent upon the national economy.”<sup>63</sup>*

- 7.1.5. Another important aspect of the new Fisheries Management Act was the liberalization of quota transfers. Although all fish resources were recognized as national property, and thus the rights allocated to quota holders were not considered as private property, under the new Act, the TAC shares became divisible. This effectively entitled quotas to be transferred as a separate commodity, as opposed to simply being a part of the market value of a fishing vessel. Quota transfers could only be exchanged between owners of Icelandic fishing vessels.<sup>64</sup> Moreover, the exchange and leasing of annual quota for particular species was also liberalized, and could take

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<sup>63</sup>Eythorsson (2000:487).

<sup>64</sup>*Ibid.*

place without consulting the Ministry of Fisheries or the involved communities and unions.<sup>65</sup>

7.1.6. In a sense, the 1990 Fisheries Management Act can be understood as a “market-based fisheries management system.”<sup>66</sup> It essentially created a “quota stock market,” which provided a basis from which the fishing rights could continually be redistributed between vessel owners, communities and regions.

### **7.1.7. Challenges for the Icelandic Fisheries Legislative Framework**

7.1.7.1. Fishery dependent communities have been marginalized by the ITQ management system as a result of a loss of quota that was subsequently sold off by the owners.

7.1.7.2. The legal status of quota as “semi-privatised” has stimulated challenging debate over the issues of taxation, depreciation and the use of quota shares as collateral for loans.

7.1.7.3. The Fisheries Industry tends to view resource rentals as another form of taxation, which, in their view acts as an unfair burden of the fisheries industry as well as effectively reducing the competitiveness of Icelandic fisheries compared to foreign competitors.

## **7.2. New Zealand**

7.2.1. In 1986 a Quota Management System (QMS), based on transferable harvesting rights, was implemented. It is a rights-based

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<sup>65</sup>Eythorsson (2000:487).

<sup>66</sup>*Ibid.*

management system, structured on two components; first the total allowable catch (TAC) and second the set of individual transferable quota (ITQ) rights.

722. The QMS, like the Icelandic ITQ management system, was based on an economic-efficiency model. Its support reined on the notion that total quota will be caught by the most efficient firms, and that the market value of quota would provide indicators of the biological and economic conditions of stock, both current and future. This is premised on the fact that:

*“Full economic efficiency holds if the TAC is set at  $Q^*$ . In practice, a fisheries management agency sets the harvest — say at  $Q_+$  — and claims about the economic efficiency of rights-based fishing hinge on whether  $Q_+ = Q^*$ . Nonetheless, given  $Q_+$ , we can rely on the market to allocate rights to relatively more profitable firms”.*<sup>67</sup>

723. When the QMS was first introduced, ITQs were defined in terms of a given tonnage of fish.<sup>68</sup> At that stage the adjustment mechanism had government enter the market as a seller of rights to tonnage quota if stock assessments warranted an increase to the TACC, and as a buyer of excessive quota rights if the TACC exceeded sustainable harvest levels.<sup>69</sup>

724. However by 1989 this adjustment process was considered

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<sup>67</sup> Batstone, C.J & Sharp, B. M. H. 1998 New Zealand’s Quota Management System: The First Ten Years. Marine Policy, Vol. 23 (2) p. 177.

<sup>68</sup> *Ibid.*

<sup>69</sup> Batstone & Sharp (1998:179).



unmanageable, as the cost of effecting reductions to the TACC was cumbersome. Further, a review of the fisheries legislation by the Fisheries Task Force <sup>70</sup> (1992) revealed that the adjustment mechanism created incentives in the industry to fully harvest the TACC because government would provide compensation, via its buying activities in the quota market, for any reductions. For this reason, by 1990 new legislation was introduced to redefine the quota rights as a percentage of the TACC. What this meant was that a change to the TACC was pro-rated across the ITQ owners. Therefore, in the instance of a TACC increase, the existing ITQ owners enjoy the benefit of extra harvest at no additional cost, an 'Accord' had been negotiated between government and the fishing industry to counterbalance the instance of a TACC decrease, and was negotiated to enable compensation payments over a transition period to 1994.<sup>71</sup>

725. Quota rights in the QMS have the following features:

- 725.1. Quota rights are held in perpetuity.
- 725.2. They are transferable, and can be transformed into derivative rights such as a lease.
- 725.3. In law, quota rights are considered as property and may be used as a form of security.
- 725.4. A permit is necessary to commercially harvest fish controlled by the QMS.
- 725.5. Foreign ownership of rights is prohibited.
- 725.6. To be eligible for a permit, commercial fishers must hold quota, either owned or leased.

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<sup>70</sup>Fisheries Task Force 1992 *Sustainable Fisheries/ Tiakinanga Taonga a Tangaroa, Report of the Fisheries task Force to the Minister of Fisheries on the Review of Fisheries legislation*, Ministry of Agriculture and Fisheries, Government of New Zealand, Wellington.

<sup>71</sup>*Ibid.*

- 725.7. Minimum quota holdings apply.
- 725.8. The Minister may set quota on any fishery outside the QMS and allocate the TACC as quota to specified commercial fishers, usually on the basis of previous catch history.
- 72.6. During the early years of the QMS, resource rentals were one of the most contentious elements of the fisheries policy. From the outset, government was committed to resource rentals as they intended to increase rentals until the value of annual traded quota approached zero. Payment of rentals was based on the ITQ holdings, regardless of whether fish were harvested, it varied across species and was not paid on government held quota.<sup>72</sup> The Minister had the right to fluctuate the value (up to 20% increase) of resource rentals per annum.
- 72.7. The resource rentals were vigorously opposed to by the fisheries industry, as they felt they were being unfairly singled out for taxation and that it contributed to commercial uncertainty in the fishery industry.<sup>73</sup> Ergo, by 1994 the Fisheries Act was amended to allow for resource rentals to be abolished, and introduced a system of cost recovery, which applies to commercial fishery only, to enable government to recover the costs of management.<sup>74</sup>
- 72.8. Traditional fishing interests of Maori have been an important aspect of the fisheries industry for decades, and have invariably affected the character of the QMS. Maori fishing rights have been protected under the Treaty of Waitangi of 1840 and have been acknowledged

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<sup>72</sup>McClurg T. (2000) *Return to the Nation: Resource Rentals and Cost Recovery*. International Institute for Fisheries, Economics and Trade 2000 Proceedings at p. 2.

<sup>73</sup>*Ibid.*

<sup>74</sup>Batstone & Sharp (1998: 182).

in fisheries legislation since 1877<sup>75</sup>. While the Maori support the QMS for its conservation functions, overall it was contested as it was claimed that the allocation of quota was inconsistent with the Treaty. The matter was taken to the High Court, where it was concluded that the QMS had been developed without taking into account Maori rights in fisheries. This led to the development of the Deed of Settlement in 1992, which formed the basis for the Treaty of Waitangi (Fishery Claims) Settlement Act, 1992. The Act stipulated a comprehensive settlement of all Maori commercial fishing claims.<sup>76</sup>

72.9. The 1996 Fisheries Act makes it clear that the Minister must set both a TAC and a TACC for each stock. However, the Act does not give explicit priority in allocation to recreational and customary interests (TANC). The Treaty of Waitangi Fisheries Commission is allocated the first 20% of the TACC. The Deed did not eliminate the right of Maori to have customary non-commercial claims considered. Customary Maori fishing rights are recognized and traditional institutional structures are evolving to govern the exercise of customary rights. The right of amateurs to harvest fish is provided through regulations that specify daily bag limits; there is no upper bound on the total recreational harvest.

## **72.10. Challenges to the QMS**

72.10.1. As previously indicated, in 1994 a system of cost recovery, applied exclusively to commercial fishery, was introduced to help balance the removal of resource rentals. Cost recovery is

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<sup>75</sup>*Ibid.*

<sup>76</sup>Batstone & Sharp (1998: 182).

premised on the notion of avoidable cost, a principle incongruent with the economist's model of efficient pricing.<sup>77</sup> In effect, this produces two major significant draw-backs. First, as a monopoly provider, the Ministry does not face competition over the cost of service supply. Second, there is little, if any, scope for industry funders to balance the benefits of management against the costs.<sup>78</sup>

72102. One of the most indignant issues facing policymakers involves the issue of incorporating recreational fishing within the ambit of the quota system. Non-commercial catch (TANC) is regulated in terms of bag limits, minimum fish length and mesh size, closed areas and other gear restrictions. Any move to limit catches, with the long-run view of rebuilding stocks toward the biomass maximum stock yield ( $B_{MSY}$ ), must take into consideration issues of efficiency and equity with respect to the variance in allocation between interest groups. The foremost concern is that government agencies are ill equipped to manage the difficult counterbalance between the non-commercial industry's need for an equitable allocation of quota, whilst bringing about the maximum net-benefit necessary to fit in with efficiency criterion. For this reason it has been suggested that TANC quota allocation should be decentralised, thereby opening the QMS to a broader market of recreationalists to assist in decision making within the quota markets.<sup>79</sup>

72103. An important, and continually growing, challenge to fisheries

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<sup>77</sup>Batstone & Sharp (1998:188).

<sup>78</sup>*Ibid.*

<sup>79</sup>Batstone & Sharp (1998:188).

policy involves the relatively new structures of property rights that have been introduced in recent years, in the form of coastal policy, marine reserves, taiapure, and maitaitai fisheries.<sup>80</sup> This invariably creates competition with respect to rights, as spatial exclusion can impose costs and reduce profits, especially for the commercial fisheries. Currently, most information is based on commercial opportunity versus cost, and less so on the benefits of customary rights, marine reserves, and local fisheries. As such it is difficult to assess or predict the impact these emerging industries will have on the QMS.

## **8. A Synopsis of the Namibian Fishing Industry**

8.1 Namibian fisheries form part of the Benguela Current Large Marine Ecosystem and can be divided into Small Pelagic (purse seine catches such as Pilchards or Sardines, Round Sardinella, Juvenile Cape and Cunene Horse Mackerel and Round Herring/Red Eye), Large Pelagic/Pole and Long-Line (Yellowfin Tuna, Bigeye Tuna, Albacore Tuna, Swordfish), Mid-water Trawl (Cape and Cunene Horse mackerel, John Dory, Alfonsino, Reds), Bottom Trawl and Long Line (Deepwater Cape Hake, Shallow-Water Cape Hake and Dentex, Jacopever, Monkfish, Snoek, Sole, Kingklip, Angelfish), Trap (Deep Sea Red-Crab, Rock Lobster) and Line Fish (Silver Cob/Kabeljou, Steenbras, Galjoen).

8.2 Not all of the above fisheries are subjected to quotas and measures under section 39 of the Marine Resource Act, 2000. Some of them are by-catches off the harvesting of species subjected to quotas and measures. An example of by-catches is Snoek, Alfonsino, John Dory and Reds, which are by-catches off the harvesting of Horse Mackerel species. Another example

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<sup>80</sup>Batstone & Sharp (1998:188).

is the by-catch of Jacopever off the harvesting of Hake.

8.3 Some species are subjected directly to measures under the Marine Resource Act, 2000 whilst some others are subject to international instruments such as the ICCAT. An example is with the Albacore Tuna, Patagonian Toothfish and Swordfish.

8.4 Over 13 000 jobs have been created under the Namibian fishing sector, whereby over 9 000 of these jobs resort in the Hake fishery.

<b>Fishery</b>	<b>Number of Employees as at 2010</b>
Hake	8956
Monk	350
Red Crab	81
Rock Lobster	455
Pilchards	1361
Horse Mackerel	1029
Line Fish	395
Large Pelagic (Tuna and Swordfish)	593
Seaweed	80
Seals	81
<b>TOTAL</b>	<b>13 380</b>

Source: Ministry of Fisheries and Marine Resources, 2010

8.5 As at 2010 there were 199 licensed vessels harvesting marine resources, with the largest number being Demersal Trawlers (harvesting Hake). There are 10 Hake, 2 Pilchard and 1 Monk factories at Walvis Bay; 7 Hake factories at Luderitz; 1 Hake factory at Swakopmund; and, 2 Line Fish factories and 1 Seals factory at Henties Bay. There are 216 rights to harvest

marine resources.<sup>81</sup> The largest volume of species of fishery available is Horse Mackerel, followed by Hake with a TAC being set at 360 '000 metric tonnes and 170 '000 metric tonnes respectively.

8.6 Recreational fishing is minimal and focuses on species such as Steenbras, Snoek, Cob, Galjoen and utilize angling rods to harvest these species at shore or with very small boats less than 5 nautical miles from the shore.

## **9. Methodology Preceding the Urgent and Targeted Report on Fisheries**

9.1. As a response to the Ministry of Fisheries and Marine Resources' (MFMR) request, the LRDC began the process of researching and inviting industry representatives to participate in consultations as primary stakeholders, with a view to obtaining their inputs and guidance accordingly.

9.2. The LRDC dispatched an invitation letter, a consultation note, a questionnaire and an activity sheet to the respective guests and requested written submissions from the right holders to assist us in gaining preliminary perspectives so as to guide the Workshop discussions.

9.3. Below is a submission of a few of the most predominant issues expressed in the written submissions made by the industry:

### **9.3.1. Competiveness across fisheries:**

- a) Hake: Not competitive due to the production cost inequality created for the non-regulated and unfair split between Wet and Freezer

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<sup>81</sup> Please note that one individual right holder may have rights in various fisheries.

quota allocations. Such unequal split between the different right holders in this sector is affecting fair competition and reducing the market price of Frozen Hake in the main markets. Furthermore, the split is disadvantaging the Land Based Factories, which are the main employment creators in the Fishing Industry.

- b) Horse Mackerel: Very competitive due to the efficiency of the catching methods currently utilized which minimize the cost incurred. However, this sector is not creating enough employment compared to its biomass size, revenue and high profitability.
- c) Small Pelagic: Competitive industry although subject to a very limited resource and seasonal operations.
- d) Monk: Competitive sector although it is a small sector compared to the previously discussed ones. Due to its high market price, this species is best appreciated, valued and consumed as sea frozen H&G (Headed & Gutted).
- e) Large Pelagic, Tuna & Sole, Rock Lobster: These are all minor sectors and fisheries which are operated by smaller companies and individuals sometimes supported or coordinated by a larger company of the main sectors above. Competitiveness is largely dependent on the efficiency of the operator and the situation in the international markets where the local companies do not have much relevance due to reduced size of the TAC's.

9.3.2. The issuance of rights to newcomers has disadvantaged the incumbent companies who have lost out on quota. There exists a strong perception that the quota allocation system is being exploited



by persons who apply for fishing rights as a *'paper right'*. It is felt that these individuals are able to manipulate the market, by creating derivative markets for the sale of their quotas to the *'highest bidder'* and who do not contribute to the fisheries sector through investment in vessels or production facilities. There is no legal framework that can prevent this behaviour or force these new right holders to comply with the conditions. They operate *below the radar* as it were.

9.3.3. There is a lack of critical mass to compete with rights holders of larger quotas. The reduction of quota's of right holders who have proved to be efficient, resulting in the lowering of returns on invested capital and the economic efficiency for capital expenditure in the industry over any specific period of time is causing problems for operations.

9.3.4. In 2012, various foreign vessel operators have been allowed access to the fisheries, which has resulted in excess capacity relative to the allocated quota which has resulted in higher catches over a short period and resulting in an oversupply of product, particularly Horse Mackerel, in the African market for part of the year.

9.3.5. The absence of any incentives from Government to stimulate exports, the absence of any assurance that quotas will be available on an on-going basis at any given level to operating right holders and with cost increasing at a higher rate than income; it stands to reason that Namibian companies will not be competitive in the international market.

9.3.6. In general, it was felt that the legal framework for the fishing industry is robust and internationally praised. However, its execution

and implementation by the MFMR may at times be discretionary, unequal and erratic. The Namibian model needs further elaboration in order to address the particularities of each sub-sector. Instead of a change of our theoretical model, it is rather suggested that there be a development of directives and management plans for the different sub-sectors creating a better and more structured legal framework addressing the individual needs of the various fisheries.

9.3.7. A suggestion was made for the establishment of an independent, impartial and competent tribunal to assess and grant application for exploitation and quota rights who will be required to act fairly and reasonably by way of public hearings. It was suggested that there should be more involvement of the Marine Resources Advisory Council (MRAC).

9.3.8. A suggestion was made for the implementation of periodic performance assessments which could evaluate right holders who assist the industry with the following:

- a) Skills transfer and development;
- b) Advancement in productivity and efficiency;
- c) Value adding to products in Namibia;
- d) Coordinated and efficient capital expenditure and creation of Namibian production capacity in the fishing industry and also for ancillary products;
- e) Active participation in the industry;
- f) Promotion and execution of social responsibility;
- g) Economic empowerment on a broad base and not only to the enrichment of a few individuals;
- h) Reinvestment of profits in other sectors of the Namibian economy.

9.3.9. The quota allocation system needs to be clearly explained to stakeholders and the public in general. The process followed by MFMR and how each of those guidelines (employment, investment, Namibianization, social responsibility and so on) are taken into consideration needs to be clearly elucidated to the right holders and interested parties, so as to ensure transparency. Industry, Unions, Employees, Financial Institutions *et cetera* have not been effectively engaged or consulted on this matter which creates uncertainty over the fishing industry and complicates long term planning and financing of the operations. Particularly, the annual quota allocation should be a more comprehensive, reliable and fair process.

9.3.10. In the hake industry, the 70% (landed wet) - 30% (sea frozen) quota allocation to right holders needs to be re-examined. Currently quota is not evenly distributed among operators in terms of receiving rights for one or the other, or receiving quota for both. It is felt that the current allocation is not equitable, predictable or transparent. Wet-fish factories are becoming less competitive because they have to procure quotas at an increased price. The profitability of sea frozen operations is much higher than the land based operations, which require far more investment and employment.

9.3.11. Suggestion was made for the introduction of a weighted criteria system for the allocation of rights and quotas. In terms of this suggestion, Right Holders would receive higher scores for their investment in land-based processing facilities or vessels and right holders who have created employment for Namibians.

- 93.12. With a view to improve the capacity-planning environment for all right holders, it was suggested that changes of quota allocations from year to year should have certain limitations. This will ensure that quota holders have enough time to adjust their catching capacity in line with the trend in quota allocation.
- 93.13. It was suggested that from the MRAC, certain members be assigned to form part of the allocation committee of the MFMR, or the suggestions for allocations be reviewed by the MRAC before the Minister allocates quota.
- 93.14. The current system of quota allocation brings with it a certain level of insecurity as the companies in the industry do not know what their share of the TAC will be until they receive the notification by letter from the MFMR of their allotment for the coming season. In many instances notification is received by the industry a few days ahead of the start of the new season which makes long term planning of operations very challenging. In the past, verbal conditions have been imposed upon right's holders before notification of quota allocation, which was very prejudicial. The introduction of a more stable and transparent model of quota allocation would allow right holders to use their right as collateral with financial institutions, increasing the investing capacity of the industry. Furthermore, there would still be enough motivation to perform well, as well as reasonable capacity, vested in the MFMR, to reward or punish individual performances. Needless to say, if a right holder engages in illegal activities, then they should be

prosecuted which may result in severe reductions of their allocation or even losing their right.

- 93.15. Opinions were polarized on the question of introducing an ITQ system. What was unanimous was the opinion that the current system is such, that the rights issued are already given on individual basis (usually to a company rather than an individual person) and it is already transferrable, however, with consent by the MFMR (for the recently issued rights) or by re-informing the MFMR (for the previously issued rights).
- 93.16. A suggestion was given for examining the New Zealand or Canadian model, however, on the basis that an ITQ system will have to be implemented with certain terms and conditions tailored for the Namibian business environment. At present, quota is being traded between companies without interference from the Ministry. Implementing an ITQ system will certainly formalize their process and will have benefits in terms of financing, companies will be able to obtain predictable and cheaper funding based on quota acquired for longer periods through a formal ITQ system.
- 93.17. Opponents to an ITQ system, where rights and quotas are fixed for a long term (in some countries for 15 years or more) and can be freely traded, are cautious that this may be a risk, due to the high probability that the rights and quotas may be controlled by a few economically powerful operators, thus, threatening the desired Namibianization of the fishing sector, and the potential loss of control over the exploitation of the resource. The fear is that the new *paper rights holders* may

trade their rights and quotas in pursuit of a quick path to riches.

- 93.18. It is understood that generally, the consortia of fishing companies or fishing group of companies at the holding level are not right holders themselves, therefore it would not make much sense to introduce measures limiting them (not operating companies) to hold something that they do not normally own. The quota share is currently distributed amongst the right holders which in most cases are not operators or fishing companies *per se*, rather they hire, sell or partner their quotas to the fishing companies which operate such quotas. The cited problem currently is that some quotas are so small (in quantity) that do not allow for individual exploitation and need to be grouped in order to make economic sense to utilize them. It is either a problem or an opportunity, either way, the fishing industry needs high investments in terms of assets and working capital.
- 93.19. In the event of ITQ allocation, it would require that the term of the right be reviewed. Currently the minimum term of a right is too short for the right holder to establish himself in the industry and make the required investment in high cost assets. Investments in certain sub-sectors, are long term investments and therefore require that the rights are of sufficient duration to allow the right holder to amortize his/her investment which, in the case of a fishing vessel, can be up to 20 -30 years. This is of course debatable.

- 9.3.20. The ITQ would be of great benefit to newcomers to the industry who could from the start of the period of their right raise the required funds to operate independently if they so wished.
- 9.3.21. The concept of catch limitations was not clearly understood by the stakeholders. Currently, the MFMR already imposes catch limitations by requiring the registration of vessels (and may reject the rejection of vessels), the type of gear, and by-catch levies *et cetera*. The envisaged catch limitation regulation would introduce a limitation in the sense of a '*spread-over*'. What this means is that regulations would prevent right holders from delaying catching a certain percentage of their quota within a given period, unless the sub-sector is based on seasonal catch in which case they would be exempted from the regulations. There is of course the possibility that operators may acquire more effective harvesting technologies upon vessels, which would result in higher catch yields per voyage, in which case it may be beneficial for the Minister to consider such regulation.
- 9.3.22. The Draft Regulations limit the ability of an individual person/company or entity or a group of associated persons, companies or entities from owning/harvesting a nominated threshold *per centum* of the TAC of a given fishery, whether that quota was allocated to that individual person, company or entity, or whether that individual person, company or entity acquired access to or control over an individual person, company or entity owning or controlling quota other than that allocated to owning/harvesting individual person, company to

whom the restriction is applicable. This restriction is permitted under section 39 of the Marine Resources Act, 2000 and may be made at the time the Minister invites applications for quotas, it is permitted under the same section at the time the Minister issues quotas, and under section 61 of the Marine Resources Act, 2000 generally and it is intended that such regulations be made applicable in the 2014 fishing season. The industry may be advised to do a dry run of the regulations before their commencement date, by submitting reports prior to quota applications in terms of the criteria submitted. This will prepare both the Ministry and industry.

- 9.3.23. There is a need to align the regulation of the marine biodiversity comprehensively. The Minister of Mines and Energy, the Minister of Environment and the Namibian Competition Commission should be required to relate with the Minister of Fisheries and Marine Resources, who in turn ought to relate to the Minister of Finance, so that the fishing sector can be regulated comprehensively. For instance, before issuing mineral licenses and EPL's, the Minister of Mines and Energy ought to afford the Minister of Fisheries and Marine Resources, the opportunity to consult the fishing industry and make submissions to determine whether the Minister of Mines and Energy should grant the license or statutory authorization sought and which may negatively impact marine resources.<sup>82</sup>

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<sup>82</sup>Vide 'Fishing Industry's View on the Need for Good Ecosystem Research Regarding Marine Mining Impacts.' A presentation by the Chairman of the Confederation of the Namibian Fishing Association, Mr. Matti Amukwa dated October 17, 2012 presented at the Annual Science Forum of the Benguela Current Commission, Windhoek in which he discusses the need for environmental research before mining activities may be sanctioned. Similar sentiments were expressed by the Founding Father, Dr. Sam Nujoma on November 30, 2012 in his intervention at



9.4. Following the above submissions, a two-day workshop was conducted at Swakopmund with the fishing industry. The Workshop was opened and closed by the Minister of Fisheries and Marine Resources (MFMR) and attended by the representatives of various fishing enterprises. 82 people represented 46 fishing companies from Walvis Bay and Luderitz. The Benguela Current Commission (BCC), the Namibia Competition Competition (NaCC), the Ministry of Works and Transport's Maritime Affairs Directorate, MFMR Operations, Policy, Planning and Economics Directorates were also in attendance.

9.5. Both incumbents and new entrants into the fishing industry participated with great enthusiasm, exhibiting a mature sector with varying interests and realities. All were united in the conviction that the best for Namibia ought be adopted and that the resource must be harvested sustainably.

9.6. Please be referred to **Annexure A**, which summarizes the discussed concerns and proposals from the industry and participants.

9.7. As a result of the consultative process discussed above, the LRDC has seen it fit to make recommendations as stipulated below.

## **10. Recommendations**

10.1 The LRDC, taking into account the urgent need for intervention pending the overall reform of the Marine Resources Act, 2000, considering the input made by the industry, further considering the concerns of the sector

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the SWAPO Party's 5<sup>th</sup> Congress, Windhoek. In a nutshell he expressed the view that – mining is finite, fishing is everlasting.

Minister as articulated in his statement at the Workshop, herewith responds to his queries and recommends as contained below:

**102 Question 1:**

10.2.1 Can the Minister of Fisheries and Marine Resources, acting in terms of section 33(3) of the Marine Resources Act, 2000 issue conditions post the granting of rights to harvest marine resources for commercial purposes?

**10.2.2 Answer to Question 1:**

10.2.3 The Minister of Fisheries and Marine Resources, when acting under section 33 (granting of rights to harvest marine resources) or under section 39 (issuing quotas and conditions), and even when acting under section 61 (stipulating regulations) is subject to Article 18 of the Namibian Constitution and the Marine Resources Act, 2000.

10.2.4 The Minister can therefore not act arbitrarily. This is trite. The Minister must be prepared to advance reasons to justify that any conduct on his part, by the issuance of regulations, quotas, granting of rights or any other action under the Marine Resources Act, 2000 complies with the constitutional requirements of reasonableness and fairness.

10.2.5 When inviting applications for rights to harvest marine resources, the Minister may stipulate the conditions that shall apply to the rights for which applications are invited. Similarly, when the Minister grants such rights, the Minister may also stipulate to each and every particular right, the conditions applicable thereto.

10.2.6 Once the Minister has exercised his office in respect of the granting of rights, the Minister is not empowered to revisit his determination and must wait until the said right's granted to a right holder lapse. He is *functus officio* as it were. There are exceptions. Section 41 contains instances under which the Minister may suspend, cancel or reduce the right to harvest marine resources, a quota and a license. Such instances include when a holder of a right, exploratory right, quota or licensee furnishes untrue information, fails to comply with conditions imposed under the Act, is convicted under the Act, or simply for the purposes promoting, protecting or the sustainable utilization of a particular marine resource. Another exception exists under section 33(6) whereby the Minister may vary the period of validity of a right to harvest marine resources and in so doing vary the conditions or impose further conditions upon such right.

10.2.7 Nonetheless, the Minister may at the allocation of quota, subject such quota to conditions as the Minister may determine. This is so, on account of the legal fact that a right holder is not automatically entitled to a quota and for that matter, a specified amount of quota. A right holder must apply for quota and the discretion remains with the Minister. However, the Minister must invite every right holder to apply for quotas. The Minister may allocate quotas to individual right holders or to a group of right holders. It goes without saying, that because the quotas are allocated post the granting of rights, and during the period of validity of a right, the Minister is empowered to make regulations or attach conditions to the harvesting of marine resources by right holders. Quotas are allocated under section 39 of the Marine Resources Act, 2000.

10.2.8 Section 61 of the Marine Resources Act, 2000 empowers the Minister to make regulations, in conformity with the Act, and such regulations may indeed further impact the rights to harvest marine resources.

**103 Question 2:**

10.3.1 Once the Minister of Fisheries and Marine Resources has in terms of section 61(1) prescribed conditions and restrictions in relation to any rights, exploratory rights, quotas, licenses or authorizations issued or given under the Act, can the Minister revoke licenses or do so without the prosecution of such holders of rights, quotas, licenses or authorizations?

**10.3.2 Answer to Question 2:**

10.3.3 For the purposes of the Marine Resources Act, 2000 any payment of fines or penalties occurs upon the conviction of any person for contravening the provisions of the Act. Both right holders and non-right holders can be convicted under the Act.

10.3.4 The Minister may however suspend the validity of a license to harvest marine resources outside Namibian waters for a finite period. This license is not to be confused with a right.

10.3.5 In the interest of the promotion, protection or utilization on a sustainable basis of a particular marine resource, the Minister may suspend, cancel or reduce the duration or the amount of, or amend the conditions of a right, exploratory right, quota or licence. This is in terms of section 41(4) of the Act.

10.3.6 Further, the Minister may vary the period of a right, at any time before the expiry of such right, if the holder of that right no longer fulfils the prescribed criteria for the term of the right when it was granted. The extent to the which the Minister may vary is not statutorily prescribed, and one may contend that the Minister has full discretion so long as he acts

reasonably and fairly. What is reasonable and fair is dictated by the peculiar facts of every situation.

**104 Question 3:**

10.4.1 Can the Minister of Fisheries and Marine Resources impose regulations relating to catch limitation measures per sub-sector, per holder of a right to exploit marine resources for commercial purposes as well as per vessel?

**10.4.2 Answer to Question 3:**

10.4.3 Under section 61 of the Act, regulations may prescribe conditions as well as restrictions in relation to any right, exploratory right, quota or licence.

10.4.4 For the purposes of vessels, section 61 provides ample authority for the Minister to prescribe catch limitations. As a matter of fact, a TAC and quotas are catch management measures.

**105 Question 4:**

10.5.1 Is the Minister's powers under section 2 of the Marine Resources Act, 2000 specific enough to empower the Minister to direct by regulation certain conduct similar to the powers conferred upon the Minister of Mines and Energy under section 100 of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992)?

**10.5.2 Answer to Question 4:**

10.5.3 Section 2 of the Marine Resources Act, 2000 provides the Minister of Fisheries and Marine Resources, the scope to which the Minister may

make policy. That scope is defined as the conservation or marine resources with a view to realize the greatest benefit for Namibians, today and tomorrow. This overall objective is forms the parameters in terms of which the Minister may conceive policy for the sector.

10.5.4 The Marine Resources Act, 2000 taken as a whole, adequately provides a legal basis for the Minister of Fisheries and Marine Resources to determine general policy with regard to conservation and utilization of marine resources. Through the various sections, the Minister is empowered to take various actions, decision and make determinations in the furtherance of the object of the sustainable utilization of the marine resources.

10.5.5 Section 100 of the Minerals (Prospecting and Mining) Act, 1992 relates specifically to minerals not won or being mined, or if being mined, are being mined at suboptimal rates, empowering the Minister to direct the holder of a license to increase mining activities, take certain steps or abandon mining activities. It seems that the drafters of the Minerals (Prospecting and Mining) Act, 1992 bundled these powers in one provision whereas the drafters of the Marine Resources Act, 2000 placed the powers of the Minister in various provisions.

10.5.6 However, should the Minister deem it fit to have certain powers bundled in specific provisions to address various conditions as may be peculiar to the fishing industry, then such may be catered for under the reform of the Marine Resources Act, 2000 during 2013.

106 In addition to the above responses, the following specific recommendations can be made:

- 10.6.1 The Minister of fisheries and Marine Resources should, in consultation with the Minister of Justice (Legal Drafters) and the LRDC, conduct bench mark studies with the Republics of Iceland and New Zealand with respect to the marine resource management legal framework to better the Namibian legal framework;
- 10.6.2 After such bench mark studies, the Minister should reform the Marine Resource Act 2000 (Act No. 27 of 2000) in consultation with the Ministry of Justice;
- 10.6.3 The Minister of Justice should on an urgent basis consider giving effect to the attached Draft Designation instruments for peace officers and justices of the peace as suggested;
- 10.6.4 The Minister of Environment and Tourism should on an urgent basis consider giving effect to the attached Draft Granting of Access Notice for Fisheries Inspectors/Fisheries Observers to access game parks and nature reserves;
- 10.6.5 The Minister of Fisheries and Marine Resources should consider appointing persons of relevant expertise onto the Marine Resources Advisory Council (MAC):
- 10.6.5.1 An economist designated by the Director General of the National Planning Commission (NPC);
  - 10.6.5.2 A tax official nominated by the Minister of Finance; and
  - 10.6.5.3 A relevant lawyer/economist designated by the Namibia Competition Commission (NaCC).

10.6.6 The above recommendation should be done in terms of section 25(1) (b) of the Marine Resources Act 2000 (Act No. 27 of 2000);

10.6.7 Under section 24, of the Marine Resources Act 2000 (Act No. 27 of 2000), and by notification in the Gazette, the Minister of Fisheries and Marine Resources should refer the allocation of quota in respect of any fishery to the MRAC in addition to what is already within the purview of the work of the MRAC, and to test the criterion contained in the draft regulations during 2013;

10.6.8 In determining the TAC, the Minister should consider the formalization of a TACC for every fishery to which industry will be confined to, whilst the Minister retains tonnage unallocated out of the TAC for Statutory and Policy Quotas [SPQ] such as those tonnages for international agreements under UNCLOS or for fish consumption promotion etc. Such can be depicted as follows:

If in a given year, the TAC for a fishery is X metric tonnes

The Minister extracts the SPQ and announces the TACC

The TACC would be Y metric tonnes

The SPQ would be X - Y

From the TACC, the Minister allocates individual Quotas (iQ) to right holders

TACC plus SPQ = TAC

10.6.9 The Minister of Fisheries and Marine and Resources should consider the implementation of the attached Draft Regulation for the calendar/fishing year 2014. The attached draft regulations frame the thresholds agreed upon during the Workshop, as well as the criteria for the allocation of quota. The draft regulations also require



rights holders to submit any quota lease agreements within a given period to the authorities. Also contained in the draft regulations are criteria for consideration of the duration of rights to harvest marine resources;

- 10.6.10 The Ministry of Finance, the National Planning Commission and the Ministry of Fisheries and Marine Resources should work together and conceptualize a formula to introduce cost recovery fees and levies for the research and management costs of the marine biodiversity within the Namibian EEZ;
- 10.6.11 The Ministry of Finance, the National Planning Commission and the Ministry of Marine Resources should work together to conceptualize the introduction of measures and legislation to ensure that taxes are paid by all participants in the fishing sector, and that *transfer pricing* is eliminated; and
- 10.6.12 The Ministry of Finance, the National Planning Commission and the Ministry of Marine Resources should work together to conceptualize the introduction of a formula ought to worked out to compensate participants in the fishing sector who operate from Luderitz as the costs of operation from Luderitz are higher than at Walvis Bay, Henties Bay or Swakopmund.

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### **Summation of Workshop Discussions**

1. The Workshop deliberated upon the following main themes relating to the Namibian catch/quota management system:

1.1. Thresholds for ownership and control over entities participating in the commercial harvesting of a fishery. This theme distinguishes between the ownership of participating entities and the control over the actual harvesting within a fishery;

1.2. Catch limitations and, in particular, restrictions relating to daily catch tonnages and the impact this might have over the business of a fishing company;

1.3. Related to the discussion surmised in paragraph 5.1 above is the matter relating to the imposition of ownership limitation thresholds over entities granted rights to harvest marine resources with a view to enhance competition within the fishing sector. These limitations are quite distinct from the threshold discussed under the theme referred to above as such limitations may only be imposed at the granting of such right which right can only be varied under defined circumstances and detailed under the Marine Resources Act, 2000 (Act No. 27 of 2000);

1.4. Individual Transferable Quota (ITQ) were interrogated due to the fact that, notwithstanding the statutory position, the quota's are transferrable only upon Ministerial approval, the contrary is reality, in that '*paper entrepreneurs*' (referring to recent entrants and fishing companies without access to equipment in the fishing industry) lease out their actual quota

and anticipated quota allocations for the duration of their rights to incumbents, and in so doing potentially undermine the policy considerations with which the Minister granted them rights into the fishing sector;

1.5. The ITQ discussion generated a further discussion on criteria for the allocation of quota (which is similar to the criteria for the granting of rights under the Act) to be applicable to all participants in the fishing industry with the Minister exercising the discretion to weigh the criteria given the obvious differences existing between incumbents and new entrants into the fishing industry. The criteria are seen as a required tool to the predictability of the quota allocations under the Act, however, the criteria should be linked to value per tonnage allocated as far as possible;

1.6. Shortcomings were identified in the internal processes of allocating quota (such as rewarding non-performers as admitted to) and it was interrogated as to why the Minister does not involve the Marine Resources Advisory Council (MRAC) to which the Minister is entitled to seek advice from, including in the process of allocation of quota, which would instil more confidence and transparency in the process, notwithstanding that the Minister's discretion is not vitiated by any consultation process;

1.7. It was discussed whether or not there are entitlements to quota with reference to previous allocations to right holders. The treatment of performers and non-performers, with relation to the statutory considerations, was discussed as well as the need to differentiate between the two;

- 1.8. There are no administrative review and appeal provisions built into the legal framework, save for access to the High Court through Article 18 of the Namibian Constitution, and as such, the industry feels unable to seek redress to decisions taken by the Ministry;
- 1.9. The question posed and central to competition was as follows: Does the fishing industry benefit from consolidation or rather from the fragmentation of industry, with specific reference to examples in the beef industry (where Meatco was singled out for reference with market negotiations led by the Government of the Republic of Namibia (GRN) );
- 1.10. The nature of the various fisheries requires that the policies and their implementation need to differentiate between the various fisheries (small fisheries such as crab can not be treated similarly with large pelagic fishes such as swordfish);
- 1.11. The hake industry tabled differences over the quota allocation for Wet Landed and Sea Frozen Hake, currently based on the premise of a ratio of 70:30. The complaint tabled relates to the relative profitability experienced in the Sea Frozen Hake market vis-à-vis the capital intensive Wet Landed Hake;
- 1.12. The Directorate of Maritime Affairs of the Ministry of Works and Transport confirmed what industry participants pointed out, that Namibian vessels are up to standard and meet the International Maritime Organization's (IMO) minimal standards. There is no *choppichoppi*.<sup>83</sup> However, it was stressed that there needs to be an

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<sup>83</sup>Term adopted at the Fisheries Workshop to refer to the acoustic outcome when the boots of crew hit the water on the floor of vessels in need of repair, and generally to refer to vessels which just about meet the requisite conditions for licensing.

on going effort to improve standards, particularly with regard to Health and Safety of charter vessels from other jurisdictions currently licensed under the Act to harvest resources. Perhaps an inter-ministerial arrangement should be developed to further regulate licensing of vessels;

- 1.13. The fishing industry being regulated by the Minister of Fisheries and Marine Resources whilst other governmental Offices/Ministries/Agencies also have a role to play, such as the Ministry of Mines and Energy, Ministry of Environment and Tourism, Ministry of Works and Transport, Namibian Ports Authority (NamPort), Namibia Standards Institution (NSI) and the Namibia Competition Commission (NaCC) requires some consolidation of regulation; and
- 1.14. There were certain issues raised, relating to the capacity of certain categories of staff members within the Ministry of Fisheries and Marine Resource Departments to fully exercise their functions fully, which issues are not insurmountable.

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**GOVERNMENT NOTICE**

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**MINISTRY OF FISHERIES AND MARINE RESOURCES**

No. XXX

2012

**REGULATIONS RELATING TO THE DURATION OF RIGHTS  
AND QUOTA HARVEST LIMITS OF  
THE TOTAL ALLOWABLE CATCH (TAC)**

The Minister of Fisheries and Marine Resources has under section 33(3) and (5), 39(3), read with section 61(1) of the Marine Resources Act, 2000 (Act No. 27 of 2000), made the regulations set out in the Schedule.

**Definitions**

1. In these regulations, any expression to which a meaning has been assigned in the Act and the regulations previously published in the *Gazette* bears that meaning and, unless the context otherwise indicates -

“first generation right” means a right to harvest marine resources granted to a holder who has never held such a right before and the duration of such right has yet to elapse;

“fishery” means a marine resource, the harvesting of which is subject to a total allowable catch in terms of the Act;

“incumbent” means a holder of a right to harvest marine resources whose right was granted before the year 2011;

“new entrant” means the holder of a first generation right to harvest marine resources;

“processing” means the treatment of harvested marine resources from the time of harvest to dispatch to market, and includes activities such as the handling (sorting and grading, gutting, bleeding and washing, unloading and/or landing), preservation, heading and gutting (H&G), filleting and freezing, chilling, freezing, canning and the manufacture of fish products to increase the economic value of such harvested marine resources. These activities can occur on land in fish processing plants/factories and at sea upon factory ships or fish processing vessels (e.g. freezers);

“quota lease” means any contractual arrangement through which a right holder to whom a quota has been allocated, or a person nominated under section 35 (2); arranges with any person, whether or not such person is a right holder of a right for any fishery or not, for the purposes of having that person or through that person, that such right holder’s quota, or the quota of a person nominated under section 35 (2), is harvested with or without any aggregation with quota of other right holders or quotas of other persons nominated under section 35 (2). Catch agreement shall have the same meaning and purport;

### **Criteria for the Duration of Rights**

2. The granting of rights shall be subject to the criteria set out in Schedule 1 hereto.

### **Criteria for the Allocation of Quotas**

3. The allocation of quotas to rights holders shall be subject to the criteria set out in Schedule 2 hereto.



### **Ownership and Harvest Limits per Fishery**

4. (1) The combined quota allocated to a holder of a right or a group of holders of a right associated to one another, and any other quota to which access is acquired by way of commercial control or otherwise of entities to whom a quota has been allocated in the particular fishery, may not exceed the set percentage thresholds of the total allowable catch determined for the particular commercially harvested fishery.  
  
(2) No individual holder of a right or group of holders of a right associated to one another may harvest more than the set percentage thresholds set and relating to the total allowable catch determined for every commercially harvested fishery.  
  
(3) The consent of the Minister shall be obtained before any of the thresholds set in terms of sub-regulation (1) and (2) above may be exceeded, which consent the Minister may not unreasonably withhold.  
  
(4) The thresholds set in terms of sub-regulation (1) and (2) shall only be applicable to the fisheries listed in the Schedule 2 to these Regulations.  
  
(5) The thresholds set in sub-regulation (1) and (2) shall not apply to any processing of marine resources, subject to a TAC.

### **Duty to Submit Quota Lease Documentation**

5. (1) Every right holder or person nominated under section 35 (2), to whom a quota has been allocated for a given season shall be obliged to

submit with the Permanent Secretary within 3 (three) months of the date of receipt of notification of quota allocation, such documentation evidencing any quota lease arrangement in terms of which the right holder demonstrates sufficient capacity to be capable of harvesting the quota allocated.

(2) For the purposes of calculating the period under sub-regulation (1), the provisions of the Interpretation of Laws Proclamation, 1920 (Proc. No. 37 of 1920) shall apply.

## **SCHEDULE 1**

### **Criteria for the Allocation of Quota**

The criteria contained in this Schedule relates to the duration to which a right to harvest marine resources may be granted under section 33(3) and (5) of the Act.

<b>Duration of a right to harvest marine resources (years)</b>	<b>Criteria</b>
7	<ul style="list-style-type: none"> <li>• New entrants with Namibian ownership of at least 51% in the applicant entity; and</li> <li>• Quota lease agreements which have options for the holder to acquire ownership in the vessel(s) thereof.</li> </ul>
10	<ul style="list-style-type: none"> <li>• More than 51% of Namibian ownership or foreign minority in the applicant entity which owns vessel(s) or an operational onshore processing facility;</li> </ul>

15	<ul style="list-style-type: none"> <li>• More than 75% of Namibian ownership of applicant; and</li> <li>• Ownership of vessels and employing more than 150 seagoing employees (including those supporting such sea based activities); or</li> <li>• Ownership of onshore processing facility in the fishery employing more than 500 employees</li> </ul>
20	<ul style="list-style-type: none"> <li>• More than 75% of Namibian ownership of applicant;</li> <li>• Ownership of vessels and employing more than 300 seagoing employees (including those supporting such sea based activities); or</li> <li>• Ownership of onshore processing facility in the fishery employing more than 2000 employees</li> </ul>

## SCHEDULE 2

### Criteria for the Allocation of Quota

Quotas are allocated under section 39(3) of the Act, with reference to criteria referred to under section 33(4) of the Act, which the Minister may consider in the allocation of quotas. All criteria shall be evaluated in accordance with calculations the Minister may determine to examine as far as possible the value derived per tonnage of quota per fishery.

<b>1. Namibianization</b>
1.1 Namibian Citizenship
1.2 Beneficial Control / Ownership
1.3 Beneficial Vessel Ownership
1.4 Investments
1.5 Transformation
<b>2. Performance</b>
2.1 Ability to harvest
2.2 Investments
<b>3 Conservation</b>
3.1 Harvesting within quota
3.2 By-catch compliance
<b>4 Social responsibility</b>
4.1 Socio economic concerns
4.2 Food security
4.3 Regional Development
4.4 Regional and SADC Cooperation
<b>5 Employment</b>
5.1 Capacity Building
5.2 Transfer of skills
<b>6 Compliance with Laws &amp; Regulations</b>
6.1 Taxes
6.2 Fees and levies
6.3 Regulatory compliance
6.4 Health & Safety Standards/vessel conditions
<b>7 Industrialisation</b>
7.1 Value Addition
7.2 Local Procurement
<b>8 (Exploratory Right Performance) *</b>

\*Shall only apply to section 34 exploratory rights to harvest marine resources.

### **Explanation of Criteria and Discussion**

The above listed criteria embody wider considerations beyond the summated meaning, which may be easily discernible from the phraseology employed in the table above. Some elucidation has been provided below to expand upon the

phrases and assist the rights holders in attaining the desired compliance to the criteria.

## **1. Namibianization**

1.1 It is inquired if the applicant is a Namibian citizen or not.

1.2 Where the applicant is a company, the applicant needs to demonstrate the extent to which the beneficial control of the company vests in Namibian citizens. However, it must be disclosed, the extent to which the Namibian citizens do not control the company, and whether or not the equity has vested in the Namibians or not, and to what extent.

1.3 The applicant must disclose if there is any beneficial ownership of any vessel, which will be used by the applicant.

1.4 The applicant must also indicate if there has been any investment made by it into the fishing sector, with a view to capacitate the applicant in the use of its right to harvest and/or market marine resources. Alternatively, what business plan is the applicant pursuing, and to what extent have previously submitted business plans been accomplished. Perpetual inability to move closer to the vertical integration of the fish product chain is not desired, as the existence of right holders without access to harvesting equipment, processing, marketing and distribution of marine products negate from the objectives of Namibianization.

1.5 If the applicant for a quota is an incumbent then such applicant must demonstrate how it has within its corporate structure, advanced the object of Namibianization by issuing equity to new rights holders or other previously disadvantaged persons. Such advancement should be genuine

in terms of access to profits on the part of the introduced shareholders. Such genuine transformational efforts are quite distinct from corporate arrangements of equity participation whereby the introduced shareholders have no decision-making, equity does not vest and their participation amounts to a mere political public exercise.

## **2. Performance**

2.1 The applicant is required to exhibit the ability to exercise the right to harvest marine resources in a satisfactory manner. If the applicant does not own harvesting equipment, then the applicant must show that it has access to such through quota lease or catch arrangements/agreements. Was applicant able to demonstrate activity of its quota in the past season?

2.2 What has applicant been able to do with the proceeds of the quota previously allocated? Has applicant invested into the industry? Considerations under paragraph 1.4 above bear relevance here as well.

## **3. Conservation**

3.1 Has any over harvesting (catching beyond the quota) occurred under the quota of applicant in the last season or previous seasons? If such has occurred, has applicant taken measures to avoid a reoccurrence of this negative conduct of over the past periods when a quota was allocated to it?

3.2 Has the applicant reported and landed by-catch truthfully and paid the fees accordingly? Has the applicant complied with any by-catch restrictions applicable?

#### **4. Social Responsibility**

4.1 An applicant who does not demonstrate how Namibians will be bettered by the allocation of a quota, may find difficulty in its application being successful for the purposes of quota allocation or increase in quota allocation. The high-income disparity prevailing in Namibia is well documented. Namibians will be bettered by investments in the natural resources being ploughed back into the economy by those who are granted the exclusive opportunity to harvest marine resources and generate profits. Unemployment levels and developmental constraints across the country cannot be left to government alone to tackle, whilst those granted the privilege of entering into the fishing sector invest their profits derived from these resources elsewhere. As such, every applicant is encouraged to utilize their local knowledge to advance the objects of improving the socio-economic conditions of Namibia.

4.2 The applicant must indicate the extent to which it is intended that the harvested marine resources would contribute to food security in Namibia.

4.3 Similarly, the applicant must indicate how the allocation of quota will contribute to regional development within Namibia.

4.4 Regional and SADC Cooperation refers to the requirement for the applicant to indicate in what way the allocation of quota would contribute to the creation or furtherance of cooperation within the region and within SADC. As an example, such can be demonstrated by the supply of harvested product into a market within the region or within SADC.

## **5. Employment**

5.1 It is expected that the applicant will indicate not only how many employment opportunities the allocation of the quota will sustain or generate, however, it is incumbent upon applicant to demonstrate how it is intended to build the capacity of such employed persons, particularly with a view to multi-skilling them, given the reliance of the industry upon the availability of resource and the potentiality of a variable quota allocation.

5.2 In addition to the above, the transfer of key skills sets to Namibians is relevant to the long-term viability of the Namibian fishery sector. Applicant should motivate how this objective will be advanced by it being allocated a quota as applied.

## **6. Compliance with Laws and Regulations**

6.1 It is important that rights holders pay their taxes to the fiscus as this generates revenue for the State to provide public services, a natural consequence for a coastal State exploiting the natural resources within its EEZ. Where entities are holders of rights, receive quotas and are perpetually scheming against the payment of taxes at the set rates whilst others are paying their taxes evinces a bad practice.

6.2 It is imperative that the relevant fees and levies are paid up before a right holder applies for a quota for the next season, and in so doing, the onus of proving payment is upon the applicant. No application will be considered without these fees and levies having been paid.

6.3 Applicant must not have a bad record at complying with the overall regulatory requirements relating to the harvesting of marine resources.



6.4 Applicants must provide proof that the Health and Safety Standards as well as the condition of any vessel they intend to utilize conform with the minimum standards and requirements. It is important that the health of the sea going personnel is not compromised by the usage of unlicensed and non-compliant vessels. On land factory conditions should also be compliant to the set standards. It is the duty of each applicant to provide the Ministry with the relevant documentation proving such.

## **7. Industrialisation**

7.1 That an applicant will do more than merely catching and freezing any marine resource and intends to or already does process marine resources and adds value shall be favourably considered as such contributes to the industrialization of Namibia and to employment creation.

7.2 Applicants must detail how the allocation of quota to them will result in the development of local businesses from which they will procure. Where Namibian products are available, for the purposes of harvesting then rights holders should procure those products preferentially. By so doing, the impact of the fishing sector upon the economy spreads beyond the primary activity *per se*. Local Procurement shall be a necessary consideration under this criterion.

## **8. Exploratory Right Performance**

8.1 An exploratory right to harvest marine resources is issued under section 34 of the Act, with a purpose to explore the commercial viability and biological sustainability of that marine resource, and to allow that person to whom an exploratory right has been granted to research the commercial

viability of a method of harvesting not ordinarily used for the harvesting of that particular marine resource in Namibian Waters.

8.2 This factor may be ignored in cases where the applicant has not been granted such an exploratory right to harvest in the previous season.

8.3 The consideration of how accurately the applicant submitted data and how applicant has facilitated the determination of management of the particular fishery will be considered before applicant can be issued with a quota for the fishery in question.

### **SCHEDULE 3**

In terms of Regulation 1(1) and (2) of these Regulations, the following fisheries shall be subjected to the thresholds contained in these Regulations in accordance with the following percentages:

<b>Fishery</b>	<b>Threshold Percentage</b>
Pilchard	0%
Orange Roughy	0%
Crab	0%
Rock Lobster	0%
Horse Mackerel	33%
Hake	20%
Monk	0%
Large Pelagics	0%
Line Fish	0%
Seals	0%
Seaweed	0%

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**Government Notice**

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**MINISTRY OF JUSTICE**

No. XX

2012

**NOTICE OF APPOINTMENT OF FISHERIES INSPECTORS OR FISHERIES  
OBSERVERS UNDER THE MARINE RESOURCES ACT, 2000 (ACT No. 27 OF  
2000) AS COMMISSIONERS OF OATHS IN TERMS OF THE JUSTICES OF  
PEACE AND COMMISSIONERS OF OATHS ACT, 1963  
(ACT No. 16 OF 1963)**

Under section 13 of the Interpretation of Laws Proclamation (Proclamation No. 37 of 1920), I hereby give notice that I have, under section 5 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), appointed every person –

- (a) appointed as a Fisheries Inspector under section 4 of the Marine Resources Act, 2000 (Act No. 27 of 2000); or
- (b) appointed as a Fisheries Observer under section 7 of the Marine Resources Act, 2000 (Act No. 27 of 2000); or
- (c) to be appointed as a Fisheries Inspector under section 4 of the Marine Resources Act, 2000 (Act No. 27 of 2000); or
- (d) to be appointed as a Fisheries Observers under section 7 of the Marine Resources Act, 2000 (Act No. 27 of 2000)
- (e) to be appointed as a Fisheries Inspector under section 23 of the Inland Fisheries Resources Act, 2003 (Act No.1 of 2003)

as a Commissioner of Oaths for all magisterial districts and for as long as the person remains a Fisheries Inspector/Fisheries Observer, with effect from (Day, Month, Year) for the existing Fisheries Inspectors/Fisheries Observers or with effect from such date of appointment of any new Fisheries Inspectors/Fisheries Observers.

**U. D. Nujoma**  
**Minister of Justice**

Windhoek (Day, Month, Year)

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**Government Notice**

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**MINISTRY OF ENVIRONMENT AND TOURISM**

No. XX

2012

GRANTING OF ACCESS TO FISHERIES INSPECTORS AND FISHERIES  
OBSERVERS APPOINTED UNDER THE MARINE RESOURCES ACT, 2000  
(ACT No. 27 OF 2000) INTO AREAS PROCLAIMED AS GAME PARKS AND  
NATURE RESERVES UNDER  
THE NATURE CONSERVATION ORDINANCE, 1975  
(ORDINANCE No. 4 OF 1975)

Under section 13 of the Interpretation of Laws Proclamation, (Proclamation No.37 of 1920), read with sections 17 (b) and 78 (b) of the Nature Conservation Ordinance 1975, (Ordinance No. 4 of 1975), I give notice that Fisheries Inspectors and Fisheries Observers appointed under section 4 and section 7 of the Marine Resources Act, 2000 (Act No. 27 of 2000) and Fisheries Inspectors appointed under section 23 of the Inland Fisheries Act, 2003 (Act No. 1 of 2003), are hereby granted access to areas proclaimed as game parks and nature reserves under the Nature Conservation Ordinance, 1975 ( Ordinance No. 4 of 1975) to perform those functions designated to them under the Marine Resources Act, 2000 (Act No. 27 of 2000).

**U.Herunga**  
**Minister of Environment and Tourism**

Windhoek (Day, Month, Year)

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**Government Notice**


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**MINISTRY OF JUSTICE**

No. XX

2012

NOTICE OF APPOINTMENT OF FISHERIES INSPECTORS OR FISHERIES  
OBSERVERS UNDER THE MARINE RESOURCES ACT, 2000 (ACT No. 27 OF  
2000) AS PEACE OFFICERS UNDER THE CRIMINAL PROCEDURE ACT,  
1977  
(ACT No. 51 OF 1977)

I hereby give notice that I have, under 334 (1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), appointed every person –

- (k) appointed as a Fisheries Inspector under section 4 of the Marine Resources Act, 2000 (Act No. 27 of 2000); or
- (l) appointed as a Fisheries Observer under section 7 of the Marine Resources Act, 2000 (Act No. 27 of 2000); or
- (m) to be appointed as a Fisheries Inspector under section 4 of the Marine Resources Act, 2000 (Act No. 27 of 2000); or
- (n) to be appointed as a Fisheries Observers under section 7 of the Marine Resources Act, 2000 (Act No. 27 of 2000); or
- (o) to be appointed as a Fisheries Inspector under section 23 of the Inland Fisheries Resources Act, 2003 (Act No.1 of 2003)

as a Peace Officer and for as long as the person remains a Fisheries Inspector/Fisheries Observer, with effect from (Day, Month, Year) for the existing Fisheries Inspectors/Fisheries Observers or with effect from such date of appointment of any new Fisheries Inspectors/Fisheries Observers.

**U. D. Nujoma**  
**Minister of Justice**

Windhoek (Day, Month, Year)