



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 231

2002

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 18 of 2002: Aquaculture Act, 2002.

ACT

To regulate and control aquaculture activities; to provide for the sustainable development of aquaculture resources; and to provide for related matters.

(Signed by the President on 23 December 2002)

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BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

**PART I
INTERPRETATION**

Definitions

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

“advisory council” means the Aquaculture Advisory Council established by section 3;

“aquaculture” means the farming and ranching of aquatic organisms;

“aquaculture development zone” means any zone or area in Namibia, including water and land, created under Part VI for the primary purpose of aquaculture and in which specific measures are taken to encourage the development of aquaculture;

“aquaculture facility” includes any equipment, construction or site in which aquaculture is conducted;

“aquaculture product” means the aquatic organisms or part thereof, whether alive or dead, which are being, or have been farmed in an aquaculture facility in Namibia, or which are being, or have been ranched, in Namibian waters;

“aquatic organisms” include live forms of fauna and flora that exist in water, excluding mammals, birds, amphibians and reptiles, except for those amphibians and reptiles declared to be aquatic organisms by the regulations;

“inspector” means an aquaculture inspector designated under section 36;

“licence” means a licence issued under section 13;

“licensee” means the holder of a licence;

“local authority” means a local authority council established by the Local Authorities Act, 1992 (Act No. 23 of 1992);

“Minister” means the Minister responsible for fisheries;

“Ministry” means the Ministry headed by the Minister;

“Namibian waters” means the inland waters of Namibia as well as the internal waters and territorial sea, as defined in the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990) and includes the seabed up to the high water mark and further includes private water as defined under section 1 of the Water Act, 1956 (Act No. 54 of 1956);

“natural phenomenon” includes harmful algal blooms;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“person” includes a natural person, a corporate entity, a traditional community and a conservancy;

“pollution” means the direct or indirect introduction of pollutants into the air, water or land which have, or may have, a harmful or detrimental effect on human health or well being or on the environment;

“prescribed” means prescribed by regulation;

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“sea ranching” means the type of aquaculture in which aquaculture products are intentionally released, without restriction, into the marine environment for the purpose of harvesting them when they mature;

“site” means an area of land or water, including the seabed, in respect of which a person has applied for a licence;

“this Act” includes any regulation or notice made under this Act;

“traditional authority” means a traditional authority established in terms of section 2 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000);

“vehicle” means any conveyance capable of transporting goods or persons.

PART II AQUACULTURE POLICY

Minister determines policy

2. (1) The Minister must from time to time, taking into account relevant economic, social and environmental factors and on the basis of the best scientific information available and in consultation with the advisory council, formulate the general policy with regard to aquaculture in Namibia with a view to -

- (a) the promotion of sustainable aquaculture;
- (b) the management, protection and conservation of marine and inland aquatic ecosystems;
- (c) the promotion and operation of aquaculture projects.

(2) In determining the general policy to be applied in a particular area, the Minister must consult with the regional council and any local authority council or traditional authority in that area.

Establishment of the Aquaculture Advisory Council

3. There is established a council, known as the Aquaculture Advisory Council, to advise the Minister in relation to any matter on which the Minister is required to consult the advisory council under this Act, any matter which the Minister refers to the advisory council for investigation and advice and on matters relating to aquaculture policy.

Constitution of the advisory council

4. (1) The advisory council consists of the Permanent Secretary and such other persons as the Minister may appoint, including -

- (a) two staff members of the Ministry;
- (b) one person nominated by the Association of Regional Councils;
- (c) one person nominated by the Association of Local Authorities;
- (d) one person nominated by the Council of Traditional Leaders;
- (e) four persons who, in the opinion of the Minister, have knowledge in matters relating to aquaculture, fisheries and eco-systems or any other expertise relevant to the issues on which the Minister is required to consult the advisory council under this Act.

(2) The Minister may from time to time and for such period and on such terms and conditions as the Minister may determine, appoint any person to assist the advisory council in an advisory capacity.

(3) The Minister must appoint one member of the advisory council to act as chairperson and one other member of the advisory council to act as vice-chairperson.

Disqualification for membership of advisory council

5. A person does not qualify for membership of the advisory council if he or she -

- (a) has been declared mentally ill under any law; or
- (b) has, during the period of ten years immediately preceding the date of the commencement of this Act or at any time after that date, been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

Term of Office of members of advisory council

6. A member of the advisory council, other than the Permanent Secretary, holds office for a period of three years and is at the expiry of that period eligible for re-appointment.

Vacation of office and filling of vacancies

7. (1) A member of the advisory council, other than the Permanent Secretary, ceases to hold office if he or she -

- (a) becomes subject to a disqualification referred to in section 5;
- (b) resigns that office by written notice to the Minister;
- (c) is absent from three consecutive meetings of the advisory council without its leave;
- (d) is convicted of an offence under this Act; or
- (e) is removed from office under subsection (2).

(2) The Minister may, by notice in writing, remove a member of the advisory council from office if the Minister, after giving the member a reasonable opportunity to be heard, is satisfied that such member -

- (a) is incapacitated by physical or mental illness; or
- (b) for any other good reason is unfit or unable to discharge the functions of a member or to represent the interests which he or she is required to represent.

(3) If a member of the advisory council dies, or a member's office becomes vacant in accordance with subsection (1), the Minister must appoint a person to fill the vacancy for the unexpired portion of that member's term of office.

Meetings of advisory council

8. (1) The first meeting of the advisory council must be held at such time and place as the Minister may determine and thereafter, meetings of the advisory council are held at least once every calendar year at such times and places as the advisory council may determine.

(2) Meetings of the advisory council may be held by telephone conference and any member may participate in a meeting of the advisory council by means of telephone or other communication facilities that permit all persons participating in the meeting to communicate with each other.

(3) The chairperson must convene a special meeting of the advisory council upon the written request of -

- (a) the Minister or
- (b) at least four members of the advisory council.

(4) The chairperson, or, in his or her absence, the vice-chairperson or, in the absence of both the chairperson and the vice-chairperson, such member as the members present may elect, must preside at meetings of the advisory council.

(5) Two-thirds of the membership of the council forms a quorum at a meeting of the advisory council.

(6) A decision of the majority of the members present at the meeting or participating in the meeting by telephone or other means of communication constitutes the decision of the advisory council and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

(7) A decision of the advisory council or an act performed under the authority of such a decision is not rendered invalid by reason only of a vacancy on the advisory council or the fact that a person who is not entitled to sit as a member of the advisory council did so sit when the decision was taken, if such decision was taken by the requisite majority of members of the advisory council who were present at the time and entitled to vote or participated in the meeting by telephone or other communication facilities.

(8) The advisory council may permit any person, other than a member of the advisory council, who has an interest in any matter to be considered at any meeting, or any representative of that person, to attend and to take part in such discussions of the advisory council as in the opinion of the advisory council relate to such matter, but such person or representative is not entitled to vote.

(9) The chairperson of the advisory council must cause a record to be kept of the proceedings of its meetings and must cause that record to be submitted to the Minister as soon as possible after a meeting of the advisory council.

(10) The advisory council may make rules relating to procedure at its meetings and at meetings of committees established under section 9.

Committees of advisory council

9. (1) The advisory council may from time to time establish committees to perform, subject to the directions of the advisory council, such of its functions as the advisory council may determine.

(2) The advisory council may appoint as a member of a committee any person who is not a member of the advisory council, but at least one member of the committee must be a member of the advisory council.

(3) The chairperson of the committee must be appointed by the advisory council from amongst the members of the advisory council.

Performance of administrative work and financing

10. (1) The administrative work pertaining to the functions of the advisory council or a committee of the advisory council shall be performed by staff members in the Ministry made available for that purpose by the Permanent Secretary.

(2) Expenditure incurred in relation to the performance of the functions of the advisory council, including the remuneration, allowances and expenses payable to a member of the advisory council, to a member of a committee established under section 9 and to a person appointed as an advisor under section 4(2), who is not in the full-time employment of the State, shall be defrayed out of money appropriated by Parliament for such purposes.

(3) Different allowances under subsection (2) may be determined according to the different offices held by the persons concerned or the work performed by them.

PART III AQUACULTURE LICENCES

Aquaculture to be conducted only with a licence

11. A person may not engage in aquaculture -
- (a) without a licence issued by the Minister in terms of section 13; or
 - (b) contrary to any condition which may be imposed by the Minister in terms of section 14(4).

Application for aquaculture licence

12. (1) An application for a licence must be made to the Minister in the prescribed manner and form and be accompanied by such documents and information as the Minister may require.

(2) After receipt of an application under subsection (1), the Minister must, with the concurrence of the Minister responsible for environment and in accordance with such legislation or policy dealing with environmental assessments determine whether the applicant is required to submit an environmental assessment of the proposed aquaculture project.

(3) When considering an application submitted under subsection (1) the Minister may have regard to -

- (a) the technical and financial ability of the applicant to exercise the rights sought in the application in a satisfactory manner;
- (b) the species of aquatic organisms that the applicant proposes to farm and the method of aquaculture that the applicant proposes to employ;
- (c) any other matters applicable to the licence that, in the opinion of the Minister, are relevant.

(4) The applicant shall give notice of the application, at the applicant's expense, in such prescribed manner and to such person or persons, including the public in general, as the Minister may determine, and such notice shall invite all those to whom it is addressed to submit in writing to the Permanent Secretary, within thirty days from the date of the notice, any objections to or representations in connection with the application.

(5) If, before a licence is issued, there is any change in the particulars submitted under subsection (1) or, where an environmental assessment is required, any change in the information on which the environmental assessment is based, the applicant shall immediately communicate such change or changes in writing to the Minister.

(6) If more than one person applies for a licence covering all or part of the same site, preference in relation to that site shall be given to the applicant who, in the Minister's opinion, is the best overall applicant based on the information contained in the applications.

Issue of licences

13. (1) The Minister may not issue a licence unless the Minister is satisfied that -

- (a) all the information required under section 12 is complete;
- (b) the applicant has obtained any authorization, permit or approval which may be required under the laws relating to land or water use;
- (c) where an environmental assessment is required under section 12(2), an environmental clearance for the project has been issued in accordance with the relevant laws;
- (d) where the applicant is not the owner of the site, the application is accompanied by the written consent of the owner of the site authorising the applicant to use the site.

(2) Before making a decision on any application, the Minister may consider -

- (a) any representations or objections received under section 12(4);
- (b) whether the grant of a licence will create a significant risk of pollution or otherwise adversely affect the environment;
- (c) whether the site in respect of which a licence is sought is unsuited for aquaculture or for the type of aquaculture planned, having regard to its general characteristics, traffic requirements, or the risk of conflict with other activities being undertaken or proposed in the vicinity of the proposed site;
- (d) any other matters applicable to the licence that, in the opinion of the Minister, are relevant.

(3) Subject to subsections (1) and (2) the Minister may -

- (a) issue the licence;
- (b) issue the licence subject to any conditions the Minister considers appropriate;
- (c) reject the application.

Content of Licences

14. (1) A licence must be issued for the site defined in the licence and must specify the species of aquatic organisms that may be farmed and harvested at the site.

(2) A licence confers upon the licensee an exclusive right to farm and harvest aquaculture products within the site defined in the licence.

(3) Where a licence is issued for sea ranching purposes, it confers upon the licensee an exclusive right to release and harvest aquaculture products within the site defined in the licence.

(4) The Minister may issue a licence subject to any conditions the Minister considers appropriate, including without limitation conditions related to -

- (a) the quantities of aquatic organisms which may be introduced and retained at the site;
- (b) the structures and equipment which may be used and the maintenance practices to be followed at the site ;
- (c) water quality;
- (d) the composition of the feed which may be used;
- (e) the types of manures or fertilizers which may be used;
- (f) the use of hormones for controlling reproduction or promoting growth;
- (g) the use of any drugs, antibiotics or other chemicals;
- (h) the disposal of dead or diseased aquaculture products, material or waste resulting from aquaculture;
- (i) the keeping of records;
- (j) the duration of the licence; and
- (l) such other conditions as the Minister may consider appropriate.

Fees

15. The Minister may, after consulting the advisory council, by notice in the *Gazette* determine any fees which are payable in respect of licences.

Change in structure, equipment and maintenance practices

16. Where a licence contains a condition or conditions in respect of the structure, equipment and maintenance practices that may be employed in the aquaculture facility, the licensee shall not alter the structure, equipment or maintenance practices therein without the prior written approval of the Minister.

Records and reports

17. (1) Any licensee shall, in relation to the aquaculture activity authorized in the licence, keep such records and furnish the Permanent Secretary with such information and in such form as may be prescribed.

(2) All licensees shall maintain the records referred to in subsection (1) at their usual place of business for a period of five years.

(3) Any inspector or any staff member of the Ministry authorized in writing by the Minister may demand the production of such records or information for inspection from any person who is required to keep and maintain any record or information under subsection (1), and may take extracts from, or make copies of, any such records or information.

(4) Any inspector or any staff member authorized under subsection (3) may at all reasonable times, and on production of the Minister's written authority, enter any aquaculture facility or site and any premises, other than a dwelling house, for the purpose of exercising any power conferred by that subsection.

Renewal of licence

18. (1) A licensee may apply for the renewal of a licence in the form and manner prescribed by the Minister, and accompanied by such documents and information as the Minister may require, at any time prior to the expiry date of the licence.

(2) If an application for renewal is received by the Minister prior to the expiry date of the licence, the Minister may extend the expiry date of the licence for a period not exceeding six months to permit an evaluation of the application, and the Minister may –

- (a) renew the licence;
- (b) renew the licence subject to any conditions the Minister considers appropriate; or
- (c) refuse to renew the licence in accordance with subsection (3),

before the expiry date or the extended expiry date of the licence.

- (3) The Minister may refuse to renew a licence if -
 - (a) the licensee has failed to comply with any condition of the licence and has failed to remedy such non-compliance within a reasonable period;
 - (b) the licensee contravenes or fails to comply with any provision of this Act;
 - (c) the Minister is of the opinion that non-renewal is warranted for the purposes of aquaculture management;
 - (d) the Minister is of the opinion that non-renewal is warranted to ensure the protection and conservation of the environment;
 - (e) the licensee has ceased to conduct aquaculture operations.

(4) If the Minister fails to renew the licence or fails to renew the licence under subsection (2) before the expiry date or before the extended expiry date of the licence, the licence is deemed not to have expired and the licence is automatically renewed on its existing terms and conditions for a period of one year.

Suspension or cancellation of licence

19. (1) The Minister may suspend or cancel a licence at any time if -
- (a) the licensee has failed to comply with any condition of the licence and has failed to remedy such non-compliance within a reasonable period;
 - (b) the licensee has ceased to conduct aquaculture operations;
 - (c) the licensee has not commenced aquaculture activities within twelve months of the issue of the licence or within such longer period as may be stipulated in the licence;
 - (d) the Minister is of the opinion that suspension or cancellation is required to ensure protection and conservation of the environment;
 - (e) the licensee has failed to report the presence of any disease or harmful organism as required under section 25(1) or the licensee has failed to take all possible measures to prevent the spread of disease or of any harmful organism as required under section 25(3); or

- (f) the licensee has failed to treat or destroy any aquatic organism that is or may be diseased or that contains or may contain parasites as required under section 25;
 - (g) the licensee contravenes or fails to comply with any provision of this Act.
- (2) The Minister, instead of suspending or cancelling a licence under subsection (1), may issue in writing a variation of the licence allowing the continuation of aquaculture under such conditions as the Minister may determine.

Notification of decisions

20. Where the Minister refuses to grant a licence to an applicant under section 13 or refuses to renew a licence under section 18 or suspends or cancels a licence under section 19, the Minister must in writing notify the licensee of the decision and the reasons for the decision.

Takeover of aquaculture facility by the Minister

- 21.** (1) The Minister may take over and operate an aquaculture facility if -
- (a) the aquaculture facility is abandoned;
 - (b) it is necessary for public safety;
 - (c) the aquaculture facility is operating without a licence;
 - (d) the licence for the aquaculture facility has been suspended or cancelled under sections 19.
- (2) Where the Minister takes over an aquaculture facility under subsection (1), the Minister has all the powers, duties and privileges of a licensee of that aquaculture facility and may -
- (a) operate the aquaculture facility;
 - (b) deal with or dispose of any aquatic organisms farmed or ranched at the aquaculture facility and any equipment located at the aquaculture facility in such manner as the Minister may direct.
- (3) Any payment received by the State from the disposal of aquatic organisms under subsection (2) shall be applied to the payment or part payment of -
- (a) any costs incurred by the Minister in taking over and operating the aquaculture facility;
 - (b) any costs incurred by the Minister in removing any aquaculture facility or part thereof and restoring the site under section 22.
- (4) Any balance remaining after payment or payments referred to in subsection (3) shall be remitted to the licensee or operator of an aquaculture facility.

Cessation of Aquaculture

22. (1) The Minister may by written notice require a licensee, a former licensee or any other person who ceases to carry on aquaculture to remove any aquaculture facility or part thereof and to restore the site to the standard specified in the notice or, if no standard is specified, to a condition acceptable to the Minister within the period specified in the notice.

(2) If any person to whom a notice is issued under subsection (1) fails to comply with such notice within a reasonable time, the Minister may cause the aquaculture facility, or part thereof, to be removed and the site to be restored.

(3) Any expenses incurred by the Minister under subsection (2) shall be recoverable from the person to whom the notice was issued under subsection (1).

Transfer of licence

23. (1) A licence issued under this Act is not transferable except with the prior written approval of the Minister.

(2) Upon receipt of a request in writing to transfer a licence, the Minister may request from the applicant such information as the Minister considers necessary.

(3) The Minister may approve the request, approve the request with such conditions as the Minister considers appropriate, or refuse the request.

(4) In the event that the Minister approves the request, the Minister must issue a new licence which states the name of the new licensee and any conditions imposed by the Minister under subsection (3).

Register of licences

24. (1) The Permanent Secretary must keep a register showing every licence issued under this Act or transferred under section 23 and such particulars as may be prescribed.

(2) The register is available for inspection by any person at such place, during such times and upon payment of such fees, if any, as may be prescribed.

PART IV MANAGEMENT AND CONTROL MEASURES

Report of disease or harmful organism

25. (1) Any licensee or other person engaged in aquaculture shall immediately report to the Permanent Secretary or an inspector the presence of any disease or harmful organism in an aquaculture facility.

(2) The Permanent Secretary may, upon the advice of the Minister responsible for public health, where there is deemed to be a significant risk to any aquatic organism or to the environment -

- (a) order the isolation, quarantine or treatment of any aquatic organism infected or thought to be infected with a disease or harmful organism;
- (b) destroy or restrict the movement of any aquatic organisms infected or thought to be infected with a disease or harmful organism;
- (c) quarantine any aquaculture facility in which the Permanent Secretary reasonably suspects that a disease or harmful organism is present.

(3) Any licensee or other person engaged in aquaculture must take all possible measures to prevent the spread of disease or of any harmful organism in or from an aquaculture facility, including the destruction of aquatic organisms or aquaculture products and the disinfection of aquaculture facilities, and the licensee shall immediately comply with any measures that the Permanent Secretary may direct for that purpose.

Water quality monitoring

26. (1) The Minister must, for the purpose of aquaculture, cause a water quality monitoring system to be established and maintained to provide timely information to licensees of the occurrence or imminent occurrence of any pollution or natural phenomenon which may have a harmful or detrimental effect on the aquatic environment or any aquaculture product.

(2) Where any area of Namibian waters in which aquaculture is conducted is affected by any pollution or natural phenomenon, the Minister must immediately order the testing of the water of the affected area and of the aquaculture products farmed in or with such water to determine -

- (a) whether aquaculture activities can be undertaken and continued; and
- (b) in consultation with the Minister responsible for public health, whether the aquaculture products farmed therein are fit for human consumption;
- (c) in consultation with the Minister responsible for trade prevent the sale or marketing of aquaculture products that are unfit for human consumption.

(3) If the results of the tests ordered by the Minister under subsection (2) show that -

- (a) the water quality of the affected area is unsuitable for the continuation of aquaculture; or
- (b) the aquaculture products farmed therein are not fit for human consumption,

the Minister must immediately, by notice in at least two newspapers circulating in the country, order the closure of the aquaculture facility and may prohibit the sale or marketing of aquaculture products farmed therein.

(4) As soon as tests demonstrate that the water quality of any area closed under subsection (3) is suitable for aquaculture or that aquaculture products farmed therein are fit for human consumption, the Minister may, by way of notice referred to in subsection (3) -

- (a) order the reopening of a closed area;
- (b) in consultation with the Minister responsible for public health allow the sale or marketing of aquaculture products farmed in or with such water.

Introduction and transfer of aquatic organisms

27. (1) A person may not, without written permission granted by the Minister, introduce or cause to be introduced into Namibia or any Namibian waters any species of aquatic organism or any genetically modified aquatic organism or transfer any species of aquatic organisms from one aquaculture facility in Namibia to another or from any location in Namibia to another.

(2) The permission granted by the Minister under subsection (1) may be subject to such conditions as the Minister may determine.

(3) The Minister must not issue any approval under this section unless the impact of any introduction or transfer of any aquatic species or genetically modified aquatic organism has been assessed, if so required, in accordance with the legislation or policy dealing with environmental assessments.

Import and export of live aquatic organisms

28. (1) A person may not without written permission granted by the Minister import or export aquatic organisms.

(2) The Minister may grant an approval for the import or export of live aquatic organisms subject to such conditions the Minister considers appropriate.

(3) The Minister may inspect any aquatic organisms before or after they are imported and inspect any aquatic organisms that are destined for export.

(4) The Minister may seize, hold, quarantine, disinfect or destroy any live aquatic organisms that have been imported or that are destined for import or export.

Handling and marketing of aquaculture products

29. A licensee or any other person may not, for the purpose of marketing, remove or transport from any site or sell, display or offer for sale, any aquaculture product or aquatic organisms without complying with the regulations.

Aquaculture in conservation areas or other protected areas

30. Where authorized under the management plan of any proclaimed conservation area or any other protected area, aquaculture within that area is subject to the specific law governing such proclaimed conservation or protected areas.

**PART V
OWNERSHIP OF AQUACULTURE PRODUCTS****Ownership of aquaculture products**

31. (1) All aquaculture products of the species specified in a licence are, while contained within the boundaries of the site, the exclusive property of the licensee until sold, traded, transferred or otherwise disposed of by the licensee.

(2) All aquaculture products referred to in subsection (1), which are released or which escape into the natural environment, remain the exclusive property of the licensee as long as the licensee can prove their identity.

**PART VI
AQUACULTURE DEVELOPMENT ZONES****Purposes**

32. The purposes of an aquaculture development zone are -

- (a) to attract, promote or increase the development of aquaculture facilities in areas which are particularly suitable for aquaculture;
- (b) to manage and control aquaculture in those areas;
- (c) to encourage the transfer of technology and the development of responsible aquaculture practices;
- (d) to generate or increase employment in aquaculture;
- (e) to protect aquaculture developments;

- (f) to ensure responsible planning of aquaculture.

Creation

33. (1) The Minister may by notice in the *Gazette* -

- (a) declare any area of Namibia or Namibian water, including sub-aquatic lands, as an aquaculture development zone;
- (b) determine the location and extent, and define the physical boundaries of an aquaculture development zone.

(2) Before declaring a place as an aquaculture development zone, the Minister must consult with the advisory council and any Ministry having jurisdiction in the proposed aquaculture development zone and undertake an environmental impact assessment with regard to the aquaculture development zone and establish the development objectives of the aquaculture development zone.

(3) The Minister may, by notice in the *Gazette*, in order to protect the aquaculture activities undertaken in an aquaculture development zone, specify restrictions and conditions on the conduct of activities and uses in -

- (a) the aquaculture development zone;
- (b) the waters draining into an aquaculture development zone; and
- (c) any land or water area adjacent to an aquaculture development zone.

(4) The Minister may, by notice in the *Gazette*, abolish an aquaculture development zone or alter its boundaries.

Conduct of aquaculture in aquaculture development zones

34. The Minister may, by notice in the *Gazette*, specify restrictions and conditions on the conduct of aquaculture in an aquaculture development zone, or part thereof, as the Minister considers necessary, including -

- (a) the aquatic species which may be farmed;
- (b) the conditions subject to which aquaculture and any related activities may be conducted;
- (c) the number and size of the aquaculture facilities that may be established within an aquaculture development zone, and the carrying capacity of the aquaculture zone concerned.

Other Activities

35. A person may not, unless authorized in writing to do so by the Minister, conduct any business or undertaking other than aquaculture in aquaculture development zones.

PART VII ENFORCEMENT

Inspectors

36. (1) Subject to the Public Service Act, 1995 (Act No. 13 of 1995) the Minister may designate any staff member in the Ministry as an inspector for the purposes of this Act.

(2) The Minister, with the concurrence of the Minister responsible for any other Ministry or a regional council or a local authority council, may designate, by notice in the *Gazette*, a staff member of that Ministry, regional council or local authority council, as the case may be, as an inspector for the purposes of this Act.

(3) The Minister, after consultation with the relevant Minister, regional council or local authority council referred to in subsection (2), may at any time withdraw or alter a designation made under that subsection.

Powers of inspectors

37. (1) An inspector may -

- (a) enter any aquaculture facility and inspect that aquaculture facility, its structure, equipment, tanks and ponds, any aquaculture product therein and any document or record required under this Act;
- (b) stop, enter and search any vehicle, vessel or aircraft which may be transporting aquaculture products;
- (c) question any person who, in the opinion of the inspector, may be capable of furnishing any information which the inspector may require;
- (d) require any person employed or present on any aquaculture facility to assist in the examination of such aquaculture facility or any document in order to ascertain whether this Act has been complied with;
- (e) seize any aquatic organism or aquaculture product or any sample of an aquatic organism or aquaculture product, which the inspector suspects is diseased or infected with parasites or has not been farmed in accordance with a licence issued under this Act or has been removed or transported from any site in contravention of this Act;
- (f) require any licensee or any person responsible for an aquaculture facility to treat or destroy any aquatic organism that is or may be diseased or that contains or may contain parasites.

(2) Where an inspector on reasonable grounds suspects that an offence under this Act has been committed, the inspector may -

- (a) seize any vehicle, vessel or equipment or any other means which the inspector reasonably suspects has been used in the commission of that offence or where such seizure is reasonably necessary to preserve evidence;
 - (b) require any person who may have information concerning a possible offence to furnish his or her name and address.
- (3) If any aquatic organism or aquaculture product seized under subsection (1)(e) -

- (a) is found not to be diseased or infected, the Minister must return it to its owner or, if its return is not practicable, the Minister may dispose of it as the Minister thinks fit; or
- (b) is found to be diseased or infected with parasites, the Minister may disposed of it as the Minister thinks fit.

(4) An inspector shall, before exercising any powers conferred under subsections (1) and (2), produce an official certificate of identity, issued by the Minister for that purpose, to any person in respect of whom the inspector intends to exercise any such power.

Disposal of aquaculture products and other seized articles

38. (1) Where articles are seized under section 37, the provisions of Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) shall apply to such seizure.

(2) Notwithstanding section 37(1)(e) any aquaculture product seized under that section that is likely to perish may be disposed of in such manner as the circumstances may require.

PART VIII OFFENCES AND PENALTIES

Offences

- 39.** A person is guilty of an offence who -
- (a) without lawful authority causes the release of any aquaculture products or aquatic organisms or both from an aquaculture facility;
 - (b) without the written permission of the Permanent Secretary introduces or causes to be introduced into any Namibian waters any species of aquatic organisms or any genetically modified aquatic organism or transfers any species of aquatic organisms from one aquaculture facility to another;
 - (c) without the written permission of the Minister imports or exports any aquatic organism;
 - (d) assaults, obstructs, threatens or intimidates an inspector in the exercise of the powers conferred, or in the performance of the inspector's duties under this Act;
 - (e) engages in aquaculture without a licence;
 - (f) interferes with the operation of an aquaculture facility without the permission of the licensee or of an inspector pursuant to any provision of this Act;
 - (g) harvests aquatic organisms or aquaculture products in an aquaculture facility without the consent of the licensee;
 - (h) knowingly harvests and sells or offers or displays for sale diseased or toxic aquaculture products, or aquaculture products from an aquaculture facility that has been closed by the Minister;
 - (i) fails to keep such records or to provide such information as may be required under this Act;

- (j) fails to report the presence of a disease or harmful organism or to take measures to prevent the spread of disease or any harmful organism or to treat or destroy any aquatic organism that is or may be diseased or that contains or may contain parasites as required under this Act;
- (k) for the purposes of marketing, removes or transports from any site or sells, displays or offers for sale any aquaculture product or aquatic organisms without complying with the provisions of this Act;
- (l) fails to provide to an inspector his or her name and address as required under this Act;
- (m) fails to remove an aquaculture facility, or part thereof, or to restore a site as required under this Act;
- (n) contravenes the terms and conditions of a licence;
- (o) knowingly provides false information in relation to an application for a licence or in relation to aquaculture or to an aquaculture facility.

Penalties

40. (1) A person convicted of an offence -
- (a) under section 39(a), (f), (g), (j), (k), (m) and (n) is on conviction liable to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding twelve months or to both such fine and imprisonment;
 - (b) under section 39(b), (c), (d), (e), (h), (i), (l) and (o) is on conviction liable to a fine not exceeding N\$8 000 or imprisonment not exceeding two years or to both such fine and imprisonment.

(2) A person who commits a subsequent offence under this Act is on conviction liable to a penalty not less than N\$10 000 in addition to any other penalty which may be imposed in respect of that offence.

Indemnity

41. The Minister, the Permanent Secretary or any employee of the State or of a regional council or local authority council is not personally liable for anything done or not done in good faith.

Forfeiture

42. Where any person commits an offence under this Act, the court, in addition to any other penalty it may impose, may -

- (a) order that any vehicle or any other means used in or in connection with the commission of such offence or any aquaculture products harvested in the commission of such offence be forfeited to the State;
- (b) revoke, or suspend any licence issued to such person under this Act for such period as the court considers appropriate.

**PART IX
GENERAL**

Regulations

43. (1) The Minister may, when appropriate, make regulations in relation to any matter permitted or required to be prescribed in terms of this Act or which the Minister considers necessary or expedient to prescribe for achieving the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under subsection (1) may -

- (a) establish a programme for the surveillance and monitoring of diseases of aquatic organisms;
- (b) prescribe the form of any licence or other approval which is issued, granted or given under this Act;
- (c) prescribe the duration of any licence and the conditions which are applicable to the renewal of any such licence;
- (d) prescribe the health certification requirements to be met prior to the import or export of live aquatic organisms or prior to the export of any aquaculture product;
- (e) prescribe measures for the prevention, treatment and eradication of diseases in aquatic organisms;
- (f) prescribe procedures to be followed for isolating, quarantining, gathering, disposing and destroying diseased aquaculture products;
- (g) prohibit the introduction, import or export of defined species of aquatic organisms;
- (h) provide for the establishment of aquaculture development zones;
- (i) regulate or prohibit the removal, transportation, sale, display for sale or disposal of any aquaculture produce or aquatic organism;
- (j) regulate the import and export of aquatic organisms and aquaculture products and impose conditions on the import, export and marketing, of aquatic organisms and aquaculture products;
- (k) regulate or prohibit the discharge in the sea of any pollution from offshore aquaculture facilities;
- (l) regulate or prohibit the collection of wild seeds;
- (m) regulate the farming of aquarium fish and endangered species of aquatic organisms;
- (n) regulate or prohibit the use of drugs, antibiotics or other chemicals to control disease;
- (o) regulate or prohibit the use of hormones for controlling reproduction or as growth promoters;

- (p) relate to the register, records or other documents to be kept for the purposes of this Act, the information to be recorded therein and the inspection thereof;
 - (q) relate to the erection of structures and installations and the maintenance of equipment used in aquaculture facilities;
 - (r) relate to the erection, maintenance, protection of and control over boundary beacons, buoys or other marks used for demarcating aquaculture sites.
- (3) Regulations made under subsection (2) may -
- (a) apply to aquatic organisms, aquaculture products or aquaculture facilities in general or to a particular species of aquatic organisms, aquaculture products or to a specific aquaculture facility or may differentiate between different species of aquatic organisms, aquaculture products or different categories of aquaculture or aquaculture facilities, or in respect of any other matter which the Minister may consider appropriate.
 - (b) prescribe penalties for any contravention of or failure to comply with their provisions not exceeding a fine of N\$1 000 or imprisonment for a period not exceeding three months.

Delegation of powers

44. (1) The Minister may -

- (a) on conditions determined by the Minister, delegate to any staff member of the Ministry any power conferred upon the Minister by or under this Act, except the power to make regulations; and
- (b) by notice in the *Gazette*, and on such conditions as may be specified therein, delegate, in respect of any particular species of aquatic organisms or in respect of a defined area, any power conferred upon the Minister by or under this Act, except the power to make regulations, to any person employed by a regional council or local authority council or to any person appointed by a local authority council.

(2) Any person to whom a power has been delegated under subsection (1) may, with the prior approval of the Minister, delegate that power to any person to whom the Minister could have delegated such power.

(3) The Permanent Secretary may, on conditions determined by the Permanent Secretary, delegate to a staff member of the Ministry or to any person employed by a regional council or local authority council, any power conferred upon the Permanent Secretary under this Act.

Exemptions

45. The Minister may by notice in the *Gazette*, subject to such conditions as the Minister may specify, exempt -

- (a) any person who conducts any scientific investigation, experiment or research; or
- (b) any other person or category of persons whom the Minister considers appropriate on other grounds than those referred to in paragraph (a),

from any or all of the provisions of this Act, and may at any time cancel or amend an exemption so granted.

Use of drugs, antibiotics or chemicals

46. The Minister, in exercising any power or responsibility under this Act in relation to the use of drugs, antibiotics or other chemicals to control diseases in aquaculture products, must act with the concurrence of the Minister responsible for public health.

Transitional

47. Any person who is engaged in aquaculture at the commencement of this Act shall within twelve months of that date apply for a licence in accordance with section 12 of this Act, and any aquaculture operations undertaken thereafter shall comply with the provisions of this Act.

Codes of practice

48. (1) The Minister, after consultation with the advisory council, may by notice in the *Gazette*, issue codes of practice related to aquaculture.

(2) The Minister must ensure that every code of practice issued is available at such places and during such times as may be prescribed.

Short title and commencement

49. This Act is called the Aquaculture Act, 2002 and shall come into force on a date fixed by the Minister by notice in the *Gazette*.
