

**REVIEW OF POLICY AND LEGISLATION PERTAINING TO
COASTAL ZONE MANAGEMENT**

**NAMIB COAST BIODIVERSITY CONSERVATION AND MANAGEMENT
(NACOMA) PROJECT: PREPARATION PHASE**

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ACRONYMS

CITES	Convention on International Trade in Endangered Species of Wildlife Fauna and Flora
COP	Conference of Parties
DIP	Decentralisation Implementation Plan
EIA	Environmental Impact Assessment
IDP	Integrated Development Plan
IMO	International Maritime Organisation
IMSCLUP	Inter-Ministerial Committee for Land-Use Planning
MAWRD	Ministry of Agriculture, Water and Rural Development
MET	Ministry of Environment and Tourism
MFMR	Ministry of Fisheries and Marine Resources
MLRR	Ministry of Lands, Resettlement and Rehabilitation
MME	Ministry of Mines and Energy
MRLGH	Ministry of Regional and Local Government and Housing
MWTC	Ministry of Works, Transport and Communication
NACOBTA	Namibian Community Based Tourism Association
NACOMA	Namib Coast Biodiversity Conservation and Management
NAMPAB	Namibia Planning and Advisory Board
NBSAP	National Biodiversity Strategy and Action Plan
NDP	National Development Plan
NGO	Non Governmental Organisation
NPC	National Planning Commission
RC	Regional Council
RDP	Regional Development Plan
SWA	South West Africa
UN	United Nations
UNCLOS	United Nations Convention on Law of the Sea

1. Introduction

The underlying objective of this report¹ is to outline and assess the legal and policy framework to support sustainable development of the coastal zone in Namibia. It provides an overview of the legislation pertaining to coastal area management in Namibia, identifies gaps in its coverage, and surveys its current application. It does so in the context of the constitutional and governance framework in Namibia, the relevant conventions to which it is, or ought to be, a party to, and refers to various policy documents in this regard. The report concludes by summarising the legal context for the development and management planning options. It also includes 5 annexes:

Annex 1: Logical Framework

Annex 2: Relevant International Conventions to which Namibia is a Party, with a brief description of each

Annex 3: Laws Relevant to Coastal Area Management, with a brief description of each

Annex 4: Relevant Policy Documents and Plans

Annex 5: Terms of Reference

2. The Constitutional setting

2.1 Applicable laws

The Republic of Namibia is an independent sovereign state governed by a democratic Constitution having attained independence from South Africa in 1990. The Constitution stipulates that “all laws that were in force immediately before the date of Independence shall remain in force until repealed or amended by an Act of Parliament...” (Art 140). Thus certain old order legislation was extended to the territory by South Africa, but other legislation was not. The applicability of South African legislation to the then South West Africa (now Namibia) depends on various factors including the date on which South Africa passed the legislation and South West Africa’s status at the time. Our research concludes that significantly the South African Sea Shore Act, Act 21 of 1935, which vests ownership of the sea and seashore in the State President of South Africa, was never extended to South West Africa and is not applicable to Namibia today (see 5.3 below).

¹ This report was prepared to provide input into the Project Brief of the “Namib Coast Biodiversity Conservation and Management (NACOMA)” Project. It is not intended to be an exhaustive review but rather to draw attention to legal and policy issues that needs to be addressed during the NACOMA Project implementation phase.

2.2 International Conventions

The Constitution also provides that “...the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.” (Art 144). Thus Namibia succeeded to a number of Conventions when it became independent in 1990 but also adopted a number of further international conventions since independence (Annex 2).

This statement is however rendered complex due to the fact that prior to independence in 1990, South Africa’s jurisdiction over Namibia was questionable at least after 1966 when an Advisory Opinion of the International Court of Justice questioned whether South Africa’s mandate over the territory was still valid. For the purposes of this report it suffices to say that it is questionable whether the Conventions which South Africa adopted between 1966 and 1990 also extended to the then territory of South West Africa. This is a complex legal question which is simply highlighted but not elaborated on here. In short, while there is no doubt that pre-1966 conventions and post-1990 conventions adopted by Namibia are applicable to it, there is some uncertainty as to whether those adopted by South Africa between 1966 and 1990 apply in Namibia.

Among the more important international treaties which Namibia adopted post independence is the UN Convention on the Law of the Sea which recognises a 12 nautical mile territorial sea and 200 nautical mile exclusive economic zone and gives domestic effect to the Territorial Sea and Exclusive Economic Zone of Namibia Act (3 of 1990). This is relevant for a number of reasons including the seaward extent of the coastal area discussed in paragraph 4 below.

Also important is Namibia’s ratification of the Convention on Biodiversity in 1997. The overall objective of the Convention particularly pertinent to coastal area management in Namibia is quoted here:

... the *conservation* of biological diversity, the *sustainable use* of its components and the *fair and equitable sharing of the benefits* arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

(Art 1. Own emphasis)

It is suggested that the three facets referred to in this article, namely:

- 1 the conservation of biological diversity;
- 2 the sustainable use of its components; and
- 3 the fair and equitable sharing of the benefits arising from the use of coastal resources;

should underlie coastal area management of the Namibian coastline. This aspect should be taken up in Namibia’s domestic legislation discussed in Section 5. below.

It can be mentioned here that while Namibia is party to most contemporary international environmental Conventions, it is not a party to the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals. However under the auspices of the Ministry of Fisheries and Marine Resources (MFMR) Namibia did adopt in 1999 the non-binding Memorandum of Understanding concerning Conservation Measures for Marine Turtles of the Atlantic Coast of Africa.

2.3 Environmental considerations and ownership of natural resources

Chapter 11 of the Constitution titled “Principles of State Policy” includes environmental considerations in that it exhorts the government to maintain ecosystems, essential ecological processes and the biological diversity of Namibia as well as to ensure sustainable use of natural resources for the benefit of all Namibians and to desist from allowing the dumping of toxic and nuclear waste in Namibia. Article 100 of the Constitution vests ownership of natural resources, whether in or under the sea or on land, in the State unless these are otherwise lawfully owned.

Conclusion:

A feature of the Namibian legal and policy setting is its close adherence, at least on paper, to a democratic constitution based on human rights and the rule of law. The Constitution also makes clear reference to the State’s responsibility to ensure the maintenance and proper use of ecosystems and natural resources, environmental protection and benefit to all Namibians of such resources and actions.

2.4 Governance

The Constitution is also relevant to governance in that it provides for the following:

- 2.4.1 National Council in Chapter 8. It sets out the National Council's membership, that is, two members from each region (Art 69); the Council's powers and functions (Arts 74 & 75) and related matters some of which are to be elaborated on in an Act of Parliament.
- 2.4.2 Regional and Local Government provided for in chapter 12 of the Constitution. It stipulates that Namibia shall consist of regions and local authorities as defined in an Act of Parliament (art 102) (1).
- 2.4.3 The Regions are governed by Regional Councils (art 103). Their powers are currently limited to: electing members of the National council; the exercise within the respective regions of executive powers which have been assigned to them by Act of Parliament or delegated to them by the President; to raise revenue, or share in revenue raised by national Government; to exercise any other powers as may be determined by an Act of Parliament (Art 108). Regional Councils are run by management committees. These aspects are fleshed out in the Regional Councils Act, Act 22 of 1992 and are elaborated on under legislation 5.6.1 below.
- 2.4.4 The nature and functions of local authorities is similarly fleshed out in the Local Authorities Act, Act (23 of 1992) as elaborated on in 5.3 below.
- 2.4.5 The Constitution also provides for a Council of Traditional Leaders (art 102) (5). This Council is elaborated on in the Traditional Authorities Act, Act 17 of 1995.

However a significant development is a decentralisation initiative which makes provisions to the devolution of powers to Local Authorities and Regional Councils in particular. The legislative basis of this decentralisation initiative is a Decentralisation Enabling Act, Act 33 of 2000, which provides for the regulation and decentralisation to Regional Councils and Local Authority Councils of functions vesting in line Ministries. This would obviously include functions relevant to coastal management. The Decentralisation Policy was approved by Cabinet in 1996 and was subsequently adopted by the National Assembly in 1998. It has been elaborated on by the Ministry of Regional

and Local Government and Housing (MRLGH) in a number of reports². Decentralisation as it pertains to the coastal area is elaborated on in 5.6.2 below.

Conclusion:

The decentralisation process can enable the effective implementation of the various imperatives relating to the environment and natural resources emanating from the Constitution and implied by Namibia's ratification of conventions. Decentralisation also presents the opportunity to put integrated coastal management in place in the Regional Councils structure and boost biodiversity conservation at the local level. However, for this opportunity to translate into reality there has to be legislation that gives Regional Councils clear mandates, powers and mechanisms to manage such processes and related structures, raise funds and obtain clarity as to the respective roles of national departments and regional and local governments regarding community based-natural resource management.

3. Key government agencies involved in the coastal area

The key role players are:

3.1 Arms of Government

- National Council – an ancillary body to Parliament referred to above.
- Regional Councils – constituted by the Constitution as seen above and elaborated on in the Regional Councils Act, Act 22 of 1992. In the coastal area there are four regions: Karas, Hardap, Erongo and Kunene. The first mentioned two regions straddle the width of the country from the Atlantic Ocean to the eastern border.
- Local Government – the main ones in the coastal area are: Swakopmund, Walvis Bay, Henties Bay and Lüderitz. But cognisance must also be taken of various smaller municipalities, “autonomous”, villages, settlements, which fall under the respective Regional Councils.
- National Planning Commission (the NPC), established under the National Planning Commission Act, Act 15 of 1994 as elaborated on under 3.3.1 below.

² “Decentralization in Namibia. The Policy, its Development and Implementation” of March 1998; “Decentralization in Namibia. Situation Analysis” of April 1998; “A Report of the Study Tour to Uganda and Ghana on Decentralization by a Delegation from Namibia” of August 1999; and “Decentralization Performance: Functions – Rules – Procedures” of June 2000.

- Council of Traditional Authorities.
- Community Courts Act, Act 10 of 2003.

3.2 Government Departments

3.2.1 Ministry of Environment and Tourism (MET), responsible for promoting sustainable development, biodiversity conservation, participatory environmental planning; promotion of tourism and tourism management.

- Administers - Sea Shore Ordinance, Ordinance 37 of 1958;
- Nature Conservation Ordinance, Ordinance 4 of 1975 and amendment;
 - Forest Act, Act 12 of 2001.

- Prepared - EIA policy
- draft Environmental Management Act
 - draft Parks and Wildlife Bill
 - report on recommendation of a draft Integrated Waste Management Bill

Gap:

The MET has prepared comprehensive environmental legislation, built on a solid foundation of participative policy initiatives and reports, but these, in particular the draft Environmental Management Bill, have not culminated in actual legislation. Moreover, although many laws would apply to coastal as well as inland areas, there is a deficiency in dedicated coastal area legislation as elaborated on under a separate heading below.

3.2.2 Ministry of Fisheries and Marine Resources (MFMR): responsible for the sustainable utilization of marine resources, and economic and social development through fisheries.

- Administers - Territorial Sea and Exclusive Economic Zone of Namibia Act, Act 3 of 1990; Marine Resources Act, Act 27 of 2000; Aquaculture Act, Act 18 of 2002; draft Inland Fisheries Bill.

3.2.3 Ministry of Mines and Energy (MME): responsible for increasing mineral production and energy supply, encourages national benefits and employment

creation through mineral prospecting. Mining has been responsible for a significant amount of environmental perturbations in the coastal area.

- Administers – Minerals (Prospecting and Mining) Act, Act 33 of 1992, Petroleum (Exploration and Production) Act, Act 3 of 1991; Diamond Act, Act 13 of 1999.

3.2.4 Ministry of Agriculture, Water and Rural Development (MAWRD): responsible for bulk water supply and water distribution, regulation of agricultural development;

- Administers – Water Act, Act 54 of 1956; Namibia Water Corporation Act, Act 12 of 1997.

3.2.5 Ministry of Regional and Local Government and Housing (MRLGH): this is a key department in so far as the NACOMA project is concerned. It is responsible for urban planning and administration, regional land use planning, and the administration of Regional Councils.

- Administers – Regional Councils Act, Act 22 of 1992, Local Authorities Act, Act 23 of 1992; Town Planning Ordinance, Ordinance 18 of 1954; National Housing Development Act, Act 28 of 2000; Decentralisation Enabling Act, Act 33 of 2000; Community Courts Act, Act 10 of 2003. It has also prepared an Urban and Regional Planning Bill (2002). These statutes are elaborated on in Section 5. below.

3.2.6 Ministry of Works, Transport and Communication (MWTC): responsible for providing effective and efficient transport systems, and maintaining transport infrastructure.

- Administers: Namibian Ports Authority Act, Act 2 of 1994

3.2.7 Ministry of Lands, Resettlement and Rehabilitation, responsible for resettling displaced and landless citizens, land administration, and the management and monitoring of resettlement schemes.

- Administers: Communal Land Reform Act, Act 5 of 2002, Agricultural (Commercial) Land Reform Act, Act 6 of 1995;

Traditional Authorities Act, Act 25 of 2000. Has published the *Draft National Land Tenure Policy – Proceedings of Consultative Workshops, 2002* and the *National Land Policy 1998*.

3.3 Key government institutions

3.3.1 National Planning Commission. Established under National Planning Commission Act, Act 15 of 1994. Comprises Ministers of various government departments including the Minister of Regional and Local Government and Housing but not the Minister of Environment and Tourism. However, the Act allows for the appointment by the President of an additional eight persons including one with knowledge of ecological matters (sect 2) (1) (g) so this could conceivably be someone from MET. The Commission’s functions according to the Act are broad-ranging and include the initiation of “regional and development planning design and co-ordination” (sect 3) (1) (c). This is particularly relevant as this power has resulted in the development of Regional Development Plans (RDPs) in the 13 regions (four coastal) by the respective Regional Councils as elaborated on in 5.5 below. Further powers of the NPC include: the design of and participation in institution building and capacity strengthening activities (sect 3) (1) (j). The former includes the formulation of RDPs and potentially includes coastal development plans. It emerges that in practice the NPC compares and evaluates planning policies and activities of the line Ministries, and mainly concentrates on national macro-economic planning.

Observation:

The challenge is to ensure that the various coastal plans which have been or may be prepared in future are integrated and receive statutory status in terms of relevant legislation. A future coastal management policy is a possible instrument by which this can occur while a coastal management policy programme is the vehicle to achieve the latter. The potential role of Regional Councils in this regard is explored in 5.6.1 below.

3.3.2 Town and Regional Planning Board. (“NAMPAB”). This structure was established originally during the South African era as the South West African Planning Advisory Board. It “shall continue to exist as a body corporate under the

name Namibia Planning Advisory Board (NAMPAB) in terms of the Town Planning Ordinance, Ordinance 18 of 1954 as amended by the Town Planning Amendment Act, Act 27 of 1993 (Sect 6). It comprises of a minimum of three and maximum ten members of the board representing: the National Planning Commission (NPC); the Ministry of Lands, Resettlement and Rehabilitation (MLRR); the Ministry of Works, Transport and Communication (MWTC); the Ministry of Regional and Local Government and Housing (MRLGH); the Ministry of Fisheries and Marine Resources (MFMR); the Ministry of Agriculture, Water and Rural Development (MAWRD); the Ministry of Justice; the Ministry of Environment and Tourism (MET).

The Board focuses on the urban environment in that the Ordinance has been amended to stipulate that the Board shall be “entrusted with all matters relating to town planning schemes as are assigned to it in terms of this Ordinance” (sect 12) (1); to advise the Minister in matters relating to the preparation and carrying into effect of town planning schemes (sect 12) (2) (a); the formulation of town planning policies for Namibia (sect 12) (2) (b). However, it also provides that the Board may “undertake any survey within Namibia and to assign plans in connection therewith” (sect 12) (2) (c). This would seemingly include coastal planning although the focus of the Board’s functions is clearly the urban environment.

There is clearly potential for the Board to broaden its mandate to firstly, better coordinate and integrate the various activities of other government departments, but the mechanics thereof need to be investigated. Secondly, the functions, powers and duties of the Board do not comprehensively cover sustainable environmental/coastal development and are by and large confined to urban planning. Mechanisms need to be investigated to see how sustainable coastal development can be included in the Board’s ambit. It is suggested that the regional development plans referred to above are central to this aspect. Moreover the decentralisation process currently underway in Namibia potentially provides an opportunity by giving Regional Council’s greater powers in this regard

provided it has the concomitant capacity as referred to in a separate report³.

3.3.3 Inter-ministerial Committee for Land Use Planning (IMSCLUP)

IMSCLUP was initiated by the Ministry of Lands, Resettlement and Rehabilitation to facilitate the integration of land use planning in rural areas. This body is not constituted under any legislation and our surveys indicate that it is currently dormant. Its potential to coordinate planning in the rural environment including the coastal zone is accordingly doubtful.

Recommendation:

It is recommended that NAMPAB (the statutory Board) initiate the coastal policy planning process as it is a national and not regional policy. Moreover NAMPAB has the potential to play a crucial role in co-ordinating the coastal policy process on the ground as a co-ordinating body of the functions to be devolved to Regional Councils. It would collaborate with the NACOMA program and receive input from NPC, NAMPAB or IMSCLUP (although the latter is currently defunct, as seen above).

4. Extent of the Coastal Area

International experience has shown that there is no ideal way of delineating both the landward and seaward extent of the coastal area for coastal zone management purposes. As regards the landward extent coastal countries adopt either: (1) an ecological approach (e.g. the top of coastal mountain ranges or in Namibia's case the fog belt would be an option), or (2) an administrative approach (an arbitrary line say, 1km landward of, and parallel to, the high-watermark, or the inland extent of the respective administrative region, or the inland extent of the respective protected areas which dominate each of the four coastal regions). There are advantages and disadvantages in both the ecological and administrative approaches – the former makes ecological sense; the latter administrative sense. As regards the seaward extent an arbitrary line is usually adopted, for example, the 12 nm territorial sea or 200 nm exclusive economic zone.

³ “Capacity Building and Institutional Strengthening for Biodiversity Conservation and Management of the Namib Coast”, also prepared to provide input into the NACOMA Project Brief.

Conclusion:

The landward and seaward extent of Namibia's coastal area was vigorously debated at the NACOMA Preparation Workshop held in Swakopmund in August 2003⁴. One recommended option was that Namibia adopts the seaward extent of the coastal area be a 12 nautical mile in conformity with the Namibia's territorial waters under the Territorial Sea and Exclusive Economic Zone of Namibia Act (3 of 1990) and that the landward extent be the existing Park boundaries (Skeleton Coast in the Kunene, Namib Naukluft Park, Sperrgebiet). However, it was decided in the workshop that the coastal area will be defined during a consultative process for the development of the coastal policy.

5. Relevant legislation: brief assessment

5.1 General

As mentioned in 2.1, above Namibia succeeded to certain, but not all, legislation enacted by South Africa while South West Africa was a South African mandated or occupied territory. Some of the legislation which was applicable to South West Africa has been repealed and replaced (e.g. fisheries legislation), but others have not (e.g. the Water Act, 54 of 1956). Since independence Namibia has repealed and replaced some of the old order legislation, but not all of it. A significant feature elaborated on below is the amount of background policy documents and draft legislation which has been developed since independence.

5.2 Environmental and natural resources related laws and policies

Our survey reveals that Namibia has in place a solid body of actual and draft environmental laws. These have been based on a comprehensive public participation process and a set of related policy documents tabulated in Annex 3. The backbone to these policies is the undated draft Namibia's Green Plan (Environment and Development) which was crafted shortly after Namibia attained independence in 1990. The Green Plan is underpinned by the notion of sustainable development and details various environmental sectors such as water, agriculture, wildlife, and mining, the archaeological and historical heritage, land reform and related matters. While it contains a

⁴ Mufeti, T., F. Odendaal, R. Garcia, J. Oranje and I. Kauvee, 2004. *NACOMA Preparation Workshop – Workshop Proceedings*. Swakopmund, 11-13 August 2004.

comprehensive chapter on fisheries (Part 2) (c), it does not contain any dedicated discussion on the coastal area.

Namibia's environmental laws relevant to the coastal area are surveyed under the following sub-headings:

5.2.1 Environmental management laws and draft bills

Draft framework environmental legislation: A draft Environmental Management Bill (dated 2002) has been prepared by the MET and includes Environmental Impact Assessment (EIA) principles. It is centred on a cabinet approved environmental impact assessment policy for Namibia. It could be adapted to meet some specific objectives of coastal area management before it is tabled in parliament. The suggested inputs are: that the Bill includes a principle identifying the coastal area as a particularly vulnerable and delicate ecosystem and requiring that it receive special consideration by applying integrated coastal area management to the area; the trigger for EIA in the draft is based on a set of activities. While not detracting from this list of activities (which does not include harvesting of marine resources) it could be supplemented by an area-based approach by a fall-back provision suggesting that "where the coastal area or its natural or cultural resources could be impacted" an EIA is required. More effective legislation is required in face of ongoing destructive activities in the coastal areas, such as mining, even inside protected areas. Ongoing or proposed tourism and aquaculture developments can also have destructive effects in the coastal areas in the absence of appropriate and enforced legislation. More details on current and planned developments in the coastal areas and associated environmental threats is presented in the report "Rapid Assessment of the Development Plans, Biodiversity Conservation Projects and Socio-Economic Situation in the Namib Coastal Regions".

5.2.2 Resource related laws

These are indirectly relevant to the coastal area and relate to:

- (i) Water: the Water Act, Act 54 of 1956 is a vestige of the South African legislation which should ideally be replaced by a new water Act dedicated to Namibia's peculiar needs and circumstances. It pays no heed to the

hydrological cycle and its ecological and environmental provisions are lacking. South Africa has met these deficiencies by replacing its Water Act, Act 54 of 1956, with a new progressive National Water Act, Act 36 of 1998. However there is a much lauded national water policy for Namibia. The National Water Policy White Paper has been published in August 2000 by the MAWRD.

(ii) Agricultural resources: the Soil Conservation Act, Act 76 of 1969, is similarly a vestige of South African legislation which the latter has replaced by the Conservation of Agricultural Resources Act. It is not directly relevant to the coastal area, not being prime agricultural land.

(iii) Marine Fisheries: the Territorial Sea and Exclusive Economic Zone of Namibia Act, Act 3 of 1990, (amended by Act 30 of 1991) and the Marine Resources Act, Act 27 of 2000 have replaced previous South African legislation and comprehensively meet and cater for Namibia's independent circumstances and philosophy of sustainable development. There has been some debate as to whether principles of sustainable use of marine resources have been adequately incorporated into the Marine Resources Act and implemented in practice. The jurisdiction of the Act comprises the Namibian waters, including internal waters, the territorial sea, the contiguous zone, the exclusive economic zone of Namibia (EEZ) and the seabed up the high water mark. The *White Paper – Towards Responsible Development of the Fisheries Sector, 1991*, set out the main objective of the fisheries sector as the utilization of the country's fisheries resources on a sustainable basis and to develop industries based on them in a manner that ensure their lasting contribution to the country's economy and overall development goals. The Policy also includes certain resource management policies in the fishing sector.

(iv) Inland Fisheries:

The *Inland Fisheries Resources Act, No. 1, 2003*, provides for the conservation and protection of aquatic eco-systems and the sustainable development of inland fisheries resources through appropriate control and regulatory measures. The *White Paper on the Responsible Management of*

Inland Fisheries of Namibia, 1995, sets out the exploitation of inland fish resources in a sustainable manner and optimal level, by conserving and maintaining biodiversity and genetic integrity of indigenous fish fauna and following a holistic multi-stock management strategy. There are not many inland fisheries in the coastal zone, but they Act would apply to the lower Kunene River and the Lower Orange River and likely the associated wetlands.

The *Aquaculture Act, No. 18 of 2002*⁵, regulates and controls aquaculture activities and provides for the sustainable development of aquaculture resources. *Namibia's Aquaculture Policy Towards Responsible Development of Aquaculture, 2001*, has one fundamental objective – the responsible and sustainable development of aquaculture to achieve socio-economic benefits for all Namibians and to secure environmental sustainability. To affect the Policy, the following strategies are to be followed: (a) establish an appropriate legislative and administrative framework for aquaculture – including establishing systems of tenure and rights for commercial aquaculture, (b) establishing appropriate institutional arrangements for aquaculture, (c) maintaining genetic diversity and the integrity of aquatic eco-systems, and (d) ensuring responsible production practices.

5.2.3 Conservation laws

(i) The Nature Conservation Ordinance, Ordinance 4 of 1975. This legislation has also been inherited from South Africa and is based on old order conservation needs and practices. A progressive amendment (Nature Conservation Ordinance Amendment Act, Act 5 of 1996 provides for community based natural resource management (or conservancies).

(ii) Draft Parks and Wildlife Management Bill. A significant development is the anticipated replacement of the Nature Conservation Ordinance and amendment by a draft Parks and Wildlife Management Bill. The version which has been made available to us (dated 2002) is comprehensive,

⁵ MFMR, 2004. Development Opportunities in Namibia's Aquaculture Sector and Why Invest in the Karas Region. Speech presented on behalf of Dr. Ekkehard Klingelhoefter and Dr. Alec Forbes at the Karas Investors Conference, held at Keetmanshoop on 23 March 2004.

comprising sections and ten parts dealing with: Part 1, Introductory provisions; Part 2, *Missing*; Part 3, Administration; Part 4, Protected Areas; Part 5, Conservancies; Part 6, Wildlife Farms and Game Proof Fences; Part 7, Categories of Species Protection; Part 8, Utilisation of Wildlife; Part 9, Trade in Wildlife and Wildlife Products; Part 10, Compliance and Enforcement.

Observation:

Although the draft Parks and Wildlife Management Bill does not refer to the coastal area specifically, clearly most of the above is relevant to the coastal area. A particular gap appears to be a dearth of provisions relating to the conservation and use of biodiversity.

It can also be noted that while the domestic implementation of CITES is given effect to in Part 9 of the draft, no provision is made for transboundary protected areas (such as the | Ai- | Ais -Richtersveld Transfrontier Park which straddles Namibia and South Africa); nor is provision made for the transboundary migration of wild animals as contemplated in the 1979 Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention) which Namibia is not a party to as mentioned in 2.2 above.

5.2.4 Mining:

The *Minerals (Prospecting and Mining) Act, No. 33 of 1992*, sets out the reconnaissance, prospecting and mining for, and disposal of and exercise of control over minerals in Namibia. It provides for the establishment of the Mining Commissioner's position and Minerals Board of Namibia to make recommendations and provide appropriate advice to the Minister. Most notably, the Act establishes liability of license or mining claims holders for pollution of the environment or other damages/ losses. The license holder is expected to inform the Minister of the event and must take appropriate steps to remedy the situation. The *Minerals Policy of Namibia* provides guiding principles and direction while communicating the values of the Namibian people in pursuit of the development of the mining sector. One of the objectives of the Policy is to ensure compliance with national

environmental policy and other relevant policies to develop a sustainable mining industry.

5.2.5 Tourism:

A *Tourism Policy* is in draft form. The purpose of the draft Policy is to present a vision for tourism in Namibia in the next decade and defining the roles of stakeholders. The objective of the draft policy is to seek diversification of the tourism product, emphasising the development of cultural and natural resources to be used in a sustainable manner with maximized benefits, especially for previously disadvantaged groups. *The Policy for the Promotion of Community-based Tourism (1995)* provides a framework intended to ensure that communities have access to opportunities in tourism development, and that they are able to share in the benefits of tourism activities that take place on communal land. There is however some debate in certain circles on whether conservancies and community-based tourism does not in some cases the reverse result from what is stated above as the intention, precisely because an illusion is created that provision has been made for communities when in fact they have been “pigeon-holed” into special cases like conservancies while the existing private sector reap the big income from tourism. *The Namibia Tourism Board Act no 21 of 2000* establishes the Namibian Tourism Board which has to promote the development of the tourism industry, both within Namibia and from abroad. It relates to facilities and standards, registration of accommodation establishments, promote training of people involved in the industry, and promote environmentally sustainable tourism by actively supporting the long-term conservation, maintenance and development of the tourism-related natural resource base of Namibia.

Observation:

The various environmental management and natural resources laws and policies are not consistent in delivering the three facets of sustainable development of the coastal area, namely ecological protection, economic development and social upliftment. But the draft Parks and Wildlife Bill will redress this criticism if enacted. Nevertheless a coastal management policy process is recommended that will result in a participative, comprehensive and coherent policy for the sustainable development of the Namibian coastal areas.

5.3 Planning legislation

The Regional Councils Act, Act 22 of 1992, establishes Regional Councils election of members management committees and related matters; while the Local Authorities Act, Act 23 of 1992 provides for powers, duties and functions of local authority councils, matters relating to supply of water, sewerage and drainage, streets, public places, housing schemes, rates, valuation and related matters.

The Townships and Division of Lands Ordinance, Ordinance 11 of 1963 provides for the establishment of townships and for the regulation and control of the development of the subdivision of land; while the Town Planning Ordinance, Ordinance 18 of 1954 provides for the preparation and carrying out of town planning schemes and for matters incidental thereto and to provide a framework for planners within which such schemes are to be prepared.

An Urban and Regional Planning Bill has been prepared which will repeal and replace the Townships and Town Planning Ordinances referred to above. It comprises a number of chapters the most important being chapters on a Town and Regional Planning Board (the 'Board'), Structure Plans, Zoning Schemes, Subdivision and Consolidation of Land. The Board will replace the Townships Board constituted by the Townships and Division of Land Ordinance, Ordinance 11 of 1963, as well as the Namibia Planning Advisory Board constituted by the Town Planning Ordinance, Ordinance 18 of 1954. While the Bill does not refer specifically to the Board's functions, it does provide that the objectives of the Board are to exercise control over-

- (a) structure planning, zoning schemes, planning policies and standards;
- (b) the subdivision and consolidation of land;
- (c) the establishment of new towns or the extension of existing towns; and
- (d) the authorization of local authorities in accordance with prevailing Government policy, so as to ensure order, amenity, convenience, economic sustainability and environmental sustainability in the process of development and land management (Sect. 3).

Observation:

Planning legislation is currently an uneasy amalgam of old order, urban focussed statutory provisions on which a progressive regional planning approach have been imposed. The possible enactment of the Urban and Regional Planning Bill into law will alleviate this tension but the compatibility of this Bill to development planning generally and to coastal considerations in particular needs to be assessed. The Bill should also be reviewed in the context of the decentralisation initiative.

5.4 Dedicated coastal legislation

The chief dedicated coastal legislation which is applicable in Namibia today is the Sea Shore Ordinance, Ordinance 37 of 1958. The Ordinance comprises only three sections: section 1 is definitions; section 2, titled “Determination of actual position of high-water mark” and which comprises the bulk of the Ordinance, sets down comprehensive rules and procedures for establishing and demarcating the physical location of the high- water and low-water marks. This was in all probability enacted because of the celebrated case of the same year of *Consolidated Diamond Mines of SWA (Ltd) v Administrator South West Africa 1958(4) SA 572A* concerning a dispute around the high-water mark and thereby access to the lucrative diamond deposits in the inter-tidal zone. Section 3 provides for the making of regulations regarding the use of the seashore, bathing in the sea, removal from the seashore or bed of the sea “within the three miles limit” of sand, shingle, rock, stone, shells, mussels, redbait or seaweed and the prevention or regulation of depositing or discharging upon the sea shore or in the sea within three miles of offal, rubbish or anything liable to be a nuisance or danger to the health of the public; concerning the control generally of the sea and sea shore or the bed of the sea “within the three miles limit”. (sect 3) (1) (a) to (e).

To this extent the Ordinance echoes provisions of the South African Sea Shore Act, Act 21 of 1935, which was significantly not extended to South West Africa and is thus not in

force in Namibia. Unlike the South African Act, the Ordinance does not vest ownership of the sea and seashore in the State President. In addition it does not provide for any form of integrated coastal zone management, the concept being unknown in 1958. Moreover, it is apparent from reference to the “three miles limit” that it is not in conformity with the 1982 UNCLOS which recognises a 12 nm territorial sea and other maritime zones.

Observation:

The Sea Shore Ordinance, Ordinance 37 of 1958, the key coastal legislation in Namibia is inadequate for many reasons: it does not provide for the legal status of the sea and sea shore (owned by nobody but subject to the enjoyment of all); is limited in its geographic scope to a narrow non- ecological based area and does not refer at all to integrated coastal area management.

South Africa in contrast has recognised that its Sea Shore Act ought to be replaced by new legislation to provide for integrated coastal area management. In the late 1990s it initiated the coastal management policy process which resulted in the publication of the 1999 White Paper for Sustainable Coastal Development in South Africa. This initiative is expected to culminate in the enactment of a Coastal Management Act, a draft of which has been prepared and which will replace the Sea Shore Act.

It is suggested that Namibia follow this, and the example of most coastal states, and replace its Sea Shore Ordinance with a coastal zone management Act. The essence of such an act would be to promote the integrated coastal management in Namibia. This concept was not known of in 1958 and is not incorporated in the Ordinance. New coastal legislation in Namibia would also have the advantage of being dovetailed with the Territorial Sea and Exclusive Economic Zone of Namibia Act, Act 3 of 1990 and the various maritime zones created by the at Act as well as possibly the UNCLOS.

Recommendation:

Dedicated coastal area legislation, underpinned and supported by a thorough public consultation process, could include: the notion that the coast, its natural and cultural resources and sea is owned by nobody and subject to access and enjoyment of all unless otherwise prescribed by law; include a definition of the coastal areas for integrated coastal management purposes; include a set of coastal area management principles; provide for the development of coastal management plans to be incorporated into relevant planning laws of Namibia and related matters.

5.5 Pollution control and waste management laws.

Namibia does not have any framework legislation dealing with pollution and waste management generally. However there are a number of statutes dealing with pollution on a sectoral basis. The main ones are:

- 5.5.1 Atmospheric pollution, the Atmospheric Pollution Prevention Ordinance, Ordinance 11 of 1976, which is dedicated to combating air pollution;
- 5.5.2 Freshwater pollution, the Water Act, Act 54 of 1956 provides for the setting of effluent discharge standards for both sea and freshwater and for the prevention of water pollution;
- 5.5.3 Land based pollution: the Minerals (Prospecting and Mining) Act, Act 33 of 1992 contains no environmental provisions and nothing on waste or pollution management. Similarly, the Diamond Act, Act 13 of 1999 contains no such provisions. This is in stark contrast to the equivalent South African legislation, the Mineral and Petroleum Development Resources Act, and is of paramount importance in the current context of mining developments in the Namib coastal areas⁶.
- 5.5.4 Marine Pollution: The South African Dumping at Sea Control Act, Act 73 of 1980 was never extended to Namibia. This remains a deficiency. The Marine Resources Act, Act 27 of 2000 includes an empowering provision enabling the Minister to make regulations:

⁶ Much of Sperrgebiet coastal areas south of Lüderitz are subject to intensive open-cast diamond mining that causes large-scale surface damage. For more details on current developments in the Namib coastal areas, please refer to the Report “Rapid Assessment of the Development Plans, Biodiversity Conservation Projects and Socio-Economic Situation of the Namib Coastal Regions”.

“regulating or prohibiting the discharge in the sea or discarding on the sea-shore and land of specified substances or materials, or substances or materials not complying with specified requirements or having specified properties (sect 61) (1)(r).”

Agricultural sector pollution is regulated by the Fertiliser, Farm Feeds Agriculture Remedies and Stock Remedies Act, Act 36 of 1947, a vestige of the South African era legislation. More generally the Hazardous Substances Ordinance, Ordinance 14 of 1974 regulates the use of certain toxic substances, as the title implies.

5.6 Governance related laws

5.6.1 The Regional Councils

The Regional Councils Act, Act 22 of 1992, sets out the powers, duties, functions, rights and obligations of Regional Councils (sect 28). Of relevance to the coastal area are the powers to undertake, with due regard to the powers and functions of the National Planning Commission, and any other law relating to planning:

“the planning of the development of the region for which it has been established with a view to –

- (i) the physical, social and economic character of such region...
- (ii) the distribution, increase and movement and the urbanisation of the population in such region;
- (iii) the natural and other resources and the economic development potential of such region;
- (iv) the existing and planned infrastructure, such as water, electricity...in such region;
- (v) the general land utilisation pattern;
- (vi) the sensitivity of the natural environment”. (section 28(1) (a).

This provides the legal basis for the drawing up of Regional Development Plans (RDPs) for the Regions. Although initiated and guided by the NPC the Regional Councils play a central role in developing RDPs.

Observation:

While the initiation of Regional Development Plans (RDPs) has a legislative basis, these plans do not appear to enjoy any legal status in that they provide only guidelines when specific development applications are being considered. This is in stark contrast to the South African Integrated Development Plans (IDPs) which have to be prepared by, regularly updated, and adhered to in terms of the South African Development Facilitation Act, Act 15 of 1994 and Local Government Transition Act, Act 209 of 1993. It is recommended that mechanisms be explored whereby the relevant line Ministries and Town and Regional Planning Board referred to below have to have regard to the RDPs in the respective Regions.

It should be noted that the Regional Councils Act (Sect 23(1) (b)) allows Regional Councils to spearhead socio-economic planning in the regions. However, this function is currently curtailed by limited human, capital and financial resources. The proposed integration of the biodiversity conservation planning and management function is likely to exacerbate this predicament – if not addressed in time. It is, however, believed that an accelerated and effective decentralisation process would ensure that this fundamental development function is executed appropriately. However with the initiation of the decentralisation process a number of line Ministries have seconded staff to Regional Councils resulting in uncertainty as to who these staff are responsible to.

Observation:

It appears that there is much scope for increasing the staff complement and developing staff competencies of Regional Councils; and to concomitantly increase its capacity to carry out conservation related functions particularly in the light of the decentralisation initiative referred to below.

5.6.2 The decentralisation initiative

Of particular importance is the Namibian decentralisation initiative referred to in 5.6.1 above. The Decentralisation Enabling Act, Act 33 of 2000 provides for the regulation and decentralisation of functions currently vesting in line Ministries to Regional Councils and Local Authority Councils. The Minister of Regional, Local Government and Housing is

empowered to decentralise any function determined by him or her to any regional council or local authority council and this would include functions relevant to the coastal area. Considerable progress has been made by the decentralisation process – notably the appointment of managerial staff in Regional Councils. However, the process is hindered by, inter alia, the delay in submission of ministerial action plans by the relevant line ministries.

The mechanics of the decentralisation process are comprehensively set out in *The Decentralisation Implementation Plan: Support to Decentralisation Process in Namibia* (Ministry of Regional and Local Government and Housing). It describes five main decentralisation principles as: Political decentralisation, financial decentralisation, administrative decentralisation, changed central-local relations and functional decentralisation. It sets out the steps in preparation of devolution and assigns responsibilities for the execution thereof. For more detail on the progress of the decentralisation process refer to the Report “Institutional Strengthening and Capacity Building for Conservation and Management of the Namib Coast”.

The interaction between key line ministry staff such as MET and Regional Council staff need to be clarified, both on how they will work together to integrate environmental concerns into the RDPs in the immediate term and intermediate terms and what permanent arrangements should be put in place for the future

Observation:

The decentralisation initiative which is underway has great potential to further the aims and objectives of the NACOMA project in that it will enable Regional Councils to play a more proactive role in developing and implementing coastal plans in their respective areas, as well as address and incorporate coastal zone issues and planning in the RDPs. The challenge is to identify synergies to effect the integration of these complementary vehicles.

6. Conclusions

- 6.1 While Namibia has a comprehensive set of environmental laws on the Statute Book, or in the course of preparation, which is applicable to the entire country, there is no comprehensive, coherent or dedicated coastal legislation or national coastal area policy document. The Sea Shore Ordinance, Ordinance 37 of 1958 is outdated and totally inadequate to address the needs and requirements to achieve the modern day notion of integrated coastal area management. More specifically the Ordinance does not conform to modern day needs, trends and general understanding of what is required or involved in coastal area management, in particular ecological and social dimensions of integrated coastal zone management.
- 6.2 There is no dedicated and community owned coastal policy for Namibia which should underpin future legislative developments as regards coastal area management.
- 6.3 From a planning law perspective coastal area legislation in Namibia is characterised by divided and uncoordinated control both vertically and horizontally, (“horizontally” being between line Ministries at national level; and “vertically” being between national Ministries and lower tiers of government, in particular Regional Councils and Local authorities). More particularly, there is a lack of integration between planning legislation on the one hand, and the plethora of planning policies and recommendations which have been formulated for the coastal area resulting in suboptimal integrated coastal area management.
- 6.4 Effective management linkages in national government, particularly the MET and regional government structures are lacking. However, an opportunity exists in this regard as Namibia is currently in the process of decentralisation as elaborated on in 7.7 below.
- 6.5 Planning legislation is currently an uneasy amalgam of old order South

African imposed legislation which focuses on urban and town planning, with new Namibian enacted legislation which establishes a new governance order which embraces regional and local government in addition to urban planning. The possible enactment of the Urban and Regional Planning Bill into law will alleviate the tension between old and new order legislation, but the compatibility of this Bill to development planning generally, and to coastal considerations in particular, needs to be assessed. The Bill should also be reviewed in the context of the decentralisation initiative.

6.6 While the initiation of Regional Development Plans (RDPs) has a legislative basis, these plans do not appear to enjoy any legal status in that they provide only guidelines when specific development applications are being considered. This is in stark contrast to the South African Integrated Development Plans (IDPs) which have to be prepared by, regularly updated, and adhered to in terms of the South African Development Facilitation Act, Act 15 of 1994 and Local Government Transition Act, Act 209 of 1993.

6.7 The decentralisation area of law and governance is in a state of fluidity because Namibia is currently engaged in a process of decentralisation. This presents a golden opportunity to further integrate coastal area management and regional and local levels of government. Simultaneously the possible enactment of the Urban and Regional Planning Bill into law will divest Namibia of its old South African imposed legislation and provides the opportunity to base Namibia's coastal planning on the principles of integrated coastal area management. More specifically the decentralisation initiative has great potential to further the aims and objectives of the NACOMA project in that it will enable Regional Councils to play a more proactive role in developing and implementing coastal plans in their respective areas, as well as address and incorporate coastal zone issues and planning into coastal RDPs.

6.8 The possible enactment of the Urban and Regional Planning Bill into law is likely to result in an opportunity to give legal effect to any coastal plan which may be drawn up. This initiative must be seen in the context of the

decentralisation policy.

- 6.9 The environmental laws and policies tend to be reactive rather than proactive in ensuring the sustainability of coastal resources. For example, if a developer wants to initiate a particular project or natural resource harvesting, it has to cross the various hurdles, in particular, carry out an EIA, before commencing an activity. The suggestion is to strengthen the planning laws referred to above by indicating various uses areas to which the coastal zone can be put thereby anticipating sustainable development considerations rather than reacting to particular project proposals.
- 6.10 Mining is having a serious impact on coastal resources, and the degree by which it influences the coastal areas, including national parks makes it clear that mining legislation has to be reviewed to bring this industry in line with the sentiments so clearly expressed in the Namibian constitution (see 2.3 above). Moreover there is a serious dearth in the mining legislation of environmental protection and socio-economic provisions. This is in sharp contrast to South African legislation which provides a pertinent model as many Namibian mining companies have South African holdings or associations. The positive effects that coastal areas policy and legislation will aspire to will be nullified if appropriate mining legislation is not developed concurrently so that mining activities cannot so easily override all other considerations as it the case presently.
- 6.11 There is potential to incorporate sustainable development criteria into the marine fisheries legislation which is a mainstay of Namibia's socio-economic development profile.
- 6.12 Tourism policy and legislation is highly relevant to the coastal areas. Tourism is the fastest growing sector in Namibia, and it will be largely through tourism that biodiversity conservation will be realised. For historical reasons the lion's share of the tourist industry ended up in a small sector of society and to a large extent the tourism industry has remained untransformed in terms of broadening its benefits the wider population. Tourism policy makes reference

to “equity” in the papers examined⁷ but by and large the precise mechanisms that will bring about transformation of the industry appear to be lacking. While no intensive study of tourism-related legislation was made, it is nonetheless recommended that Namibia takes a hard look at the industry and finds ways to promote broad-based black empowerment in the industry as soon as possible especially as tourism usually requires a long time to show benefits on the ground.

7. Recommendations and the way forward

7.1 A coastal area policy process should be initiated which is underpinned by a set of policy principles. The underlying vision of such a process should be to develop a comprehensive and coherent legal framework to ensure effective implementation of a national and regional coastal policy plans for Namibia against the backdrop of the principles of integrated coastal area management.

7.2 Agreement should be reached on a practical and working definition of the extent of the coast for integrated coastal management purposes. The suggestion raised at the August 2004 Workshop, namely, that the seaward and landward extent of Namibia’s coastal area should be: 12 nautical mile seaward in conformity with the Namibia’s territorial waters under the Territorial Sea and Exclusive Economic Zone of Namibia Act, Act 3 of 1990; that the landward extent be the existing protected areas boundaries (Skeleton Coast in the Kunene, Namib Naukluft Park, Sperrgebiet) is recommended. Buy-in from all interested and affected parties should be obtained in this regard.

7.3 As regards planning laws it is recommended that:

7.3.1 The various coastal plans which have been formulated should be integrated with planning laws, particularly the Regional Development Plans;

7.3.2 That the Regional Development Plans (RDPs) be accorded legal status akin to the South African Integrated Development Plans (IDPs). This will have the effect that rezoning, subdivision and other developments outside

⁷ White Paper on Tourism, 1994; Revised Draft Tourism Policy 2001 – 2010.

urban areas will have to take cognisance of the plans before being granted approval. It is accordingly recommended that mechanisms be explored whereby the relevant line Ministries and Town and Regional Planning Board referred to below has to have regard to the respective RDPs in approving any developments in the coastal area.

- 7.3.3 It is recommended that legal mechanisms be explored whereby the relevant line Ministries and Town and Regional Planning Board have to adhere to the respective RDPs of the Regions in particular in so far as development may impact the coastal area.
- 7.3.4 It is recommended that the potential of the Urban and Regional Planning Bill for including coastal area management considerations be assessed and that this be done in the context of the decentralisation initiative.

ANNEX 1: LOGICAL FRAMEWORK FOR NACOMA COMPONENT 1: POLICY AND LEGAL FRAMEWORK

Sub-Components	Activity	Steps	Indicators/Outputs
1. Ensure key role players such as Regional Councils and line ministries have a thorough understanding of policy process and legislation	<i>1.1 Through audits, identify gaps in understanding of governance, policy making and environmental legislation</i>	1.1.1 Assess training needs and modes of training 1.1.2 Appointments of trainers 1.1.3 Training and workshops	<i>Level of understanding in Regional Councils and line ministries pertaining governance, policy making and environmental legislation improved, and key staff trained</i>
2. Review environmental legislation relating to the coast and coastal processes and key players	2.1 <i>Assess legislative mandates/ functions of:</i> 2.2 <i>Situational analysis of existing legislation</i>	2.1.1 National/ regional development planning institutions/ bodies 2.1.2 Planning institutions in private sector, NGOs/ CBOs and donors 2.1.3 Relevant planning mechanisms (e.g. NDP/ Vision 2030) 2.2.1 Legal framework for governance/decentralization 2.2.2 Legal framework for biodiversity conservation 2.2.3 Legal framework institutional capacity building 2.2.4 Recommendations to consolidation of legal framework	<i>Planning legislative mandates integrated and harmonized to effect National/Regional Development Plans and Vision 2030</i> <i>Effective management linkages in national government recommended in line with the nation-wide decentralization process and principles of integrated coastal zone management. Strong legal platform for institutional capacity building recommended for incorporation in the envisaged coastal zone management policy. Existing gaps limiting biodiversity conservation identified.</i>

Sub-Components	Activity	Steps	Indicators/Outputs
	<p>2.3 <i>Reduce/ eliminate fragmented environmental legislation</i></p> <p>2.4 <i>Public awareness</i></p> <p>2.5 <i>Amend or repeal legislation.</i></p>	<p>2.3.1 Determine and strengthen synergies in legislation</p> <p>2.3.2 Identify possible overlapping/ incoherent legislation</p> <p>2.4.1 Publicize outcomes</p> <p>2.5.1 Solicit public participation (stakeholder engagement)</p> <p>2.5.2 Draft revised legislation and re-submit to Parliament</p>	<p><i>Coherence in existing legislation achieved through a participative and consultative elimination of shortcomings and consequent consolidation of the legal framework for sustainable coastal zone development.</i></p> <p><i>Amended legislation forwarded to the National Assembly and the National Councils for endorsement and consequent publication.</i></p>
<p>3. Develop and make available region specific Coastal Profiles</p>	<p>3.1. <i>Appoint specialists working group</i></p> <p>3.2. <i>Acquisition of assessment tools</i></p>	<p>3.1.1 Mandated regional employment administration</p> <p>3.1.2 Mandated regional financial administration</p>	<p><i>Regional Coastal Profiles created and published and popular versions produced and widely disseminated..</i></p>
<p>4. Development of a harmonized National Vision</p>	<p>4.1 <i>Regional consultations</i></p> <p>4.2 <i>Solicit public participation</i></p> <p>4.3 <i>Public awareness</i></p>	<p>4.1.1 Regional Councils conduct a consultative process for input from all stakeholders including coastal communities</p> <p>4.2.1 Public meetings, forums, workshops are to consolidate regional visions and endorsements</p> <p>4.2.2 Stakeholder participation</p> <p>4.3.1 Publicize outcomes/vision papers</p>	<p><i>National coastal zone development “Vision Papers” drafted and disseminated.</i></p>

Sub-Components	Activity	Steps	Indicators/Outputs						
5 Namibian Coastal Zone Management Policy Process	<i>5.1 Regional Policy dialogue</i>	5.1.1 Establish a specialist groups (legal and policy, biodiversity, institutional capacity building, and related initiatives) for policy drafting	<i>“White Paper” for Sustainable Coastal Zone Development drafted and published.</i>						
		5.1.2 Analyze deficiencies arising from the existing legislation							
		5.1.3 In harmony with the revised (consolidated) national and regional environmental legislation, determine coastal zone boundaries and the eventual jurisdictional area of the proposed policy or legislation							
		5.1.4 Analyze regional visions (e.g. Sustainable development and utilization of resources in the coastal zones) to guide the formulation of an appropriate Policy.							
		<i>5.2 Policy drafting</i>					5.2.1 Regional deliberations for drafting policy		
	5.2.2 Prepare draft policy								
	5.2.3 Solicit feedback from the stakeholders and public								
	5.2.4 Refine draft and publish								

ANNEX 2:
RELEVANT INTERNATIONAL CONVENTIONS TO WHICH
NAMIBIA IS A PARTY

1948 Convention on the International Maritime Organization, (Member as from 1994).

This Convention simply allows countries to be members of the IMO – a specialized UN agency concerned with safe clean seas. It has initiated and monitors most marine conventions to do with navigation and pollution of the marine environment.

1973/78 International Convention for the Prevention of Pollution from Ships, (MARPOL 73/78). (Annexes 1, 2, 3 and 5 on March 2003).

This convention lays down standards which ships carrying oil in bulk have to comply with.

1992 Protocol to the 1969 International Convention on Civil Liability for Oil Pollution Damage (18 December 2003).

This convention lays down a liability and compensation regime for oil spills from bulk oil carriers where environmental damage occurs in coastal waters of member states.

1992 Protocol to the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND Convention).

This convention supplements the Civil Liability Convention (above) by providing further compensation where damage from oil spills from bulk carriers exceeds a certain ceiling.

1974 International Convention for the Safety of Life at Sea (SOLAS)
1982 United Nations Convention on Law of the Sea (Acceded 18 April 1983).

This is a comprehensive codification of law of the sea; allowing coastal states to claim various maritime zones; regulates international fisheries both within and outside exclusive economic zones; provides a framework for the regulation of marine pollution on all the worlds' oceans and seas and provides for related matters.

Agreement relating to the implementation of Part XI of the convention
(Acceded 28 July 1995)

Agreement for the Implementation of the Provisions of the Convention relating to
the Conservation and Management of Straddling Fish Stocks and Highly
Migratory Fish Stocks (Acceded 8 April 1998)

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

This is a regional convention applicable to 18 members states (including Namibia) in Western and Central Africa which promotes mutual cooperation and combating of the marine and coastal environment of member states and conservation of natural resources.

Natural and Cultural Resources

1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals
(not a party) The Convention aims to conserve terrestrial, marine and avian migratory species where these traverse national boundaries on a regular basis by protecting these species, conserving or restoring the places where they live, mitigating obstacles to migration and controlling other factors that might endanger them.

Non-binding Memorandum of Understanding concerning Conservation Measures for Marine Turtles of the Atlantic Coast of Africa (signed in 1999).

1973 Convention on International Trade in Endangered Species of Wild Fauna and
Flora (CITES) (Acceded 18 December 1990)

The aim of CITES is to ensure that the international trade in wildlife does not threaten the survival of the species being traded.

1972 Convention Concerning the Protection of the World Cultural and Natural
Heritage (World Heritage Convention) (Acceded 04 June 2000).

Member states have to ensure the protection of their natural and cultural heritage.

1994 Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (.Signed 24 October 1994, Ratified 16 May 1997)

This convention seeks to alleviate the negative social and environmental consequences which result from land degradation in Africa by providing for the formulation of action plans and providing financial relief.

1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, (Acceded 18 December 1990).

This convention seeks to regulate and in some cases ban trade in endangered species and/or their products.

1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat and 1982 Protocol (Acceded 23 August 1995).

This convention invites parties to designate wetlands of international importance in their territories with a view to their long term sustainable survival.

1992 Convention on Biological Diversity (Acceded 16 May 1997).

This is a comprehensive convention which has as its objectives the conservation of biodiversity, the sustainable use thereof and the equitable sharing of benefits arising there from.

Pollution and Waste Management

1992 United Nations Framework Convention on Climate Change, and Kyoto Protocol (Signed 12 June 1992 and Ratified 16 May 1995)

This is a framework convention which seeks to reduce the amount of greenhouse gases in the atmosphere to mitigate the effects of climate change. The Kyoto protocol lays down specific targets in this regard.

1985 Vienna Convention for the Protection of the Ozone Layer (Acceded 20 Sept 1993).

This is a framework convention which seeks to reduce the amount of ozone depleting gases in the atmosphere.

1987 Montreal Protocol on Substances that Deplete the Ozone Layer,
(Acceded 20 Sept 1993).

This is a convention which lays down specific targets regarding the reduction of ozone depleting gases into the atmosphere.

1990 London amendment (Ratified 06 November 1997)

The amendment introduced control measures for both production and consumption for three new groups of substances, namely other halogenated CFCs (Annex B, Group I substances), Carbon Tetrachloride (Annex B, Group II) and Methyl Chloroform or 1,1,1-trichloroethane (Annex B, Group III). Control measures also included restrictions on trade with non-Parties.

1992 Copenhagen amendment (Approved 28 July 2003)

The amendment introduced control measures for consumption only for HCFCs (Annex C, Group I substances). The amendment further introduced control measures for both production and consumption for two new groups of substances, namely HBFCs (Annex C, Group II substances) and Methyl Bromide (Annex E, Group I).

1997 Montreal Amendment (not ratified)

The amendment introduced the requirement for licensing systems to allow control and monitoring of trade in substances controlled under the protocol.

1999 Beijing Amendment (not ratified)

The amendment introduced control measures for production for HCFCs (Annex C, Group I substances) and imposed restrictions on trade with non-Parties for these HCFCs. The amendment further introduced control measures for both production and consumption for one new group of substances, namely Bromochloromethane or BCM (Annex C, Group III substance).

1989 Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal, (Acceded 15 May 1995)

This convention lays a down a prior informed consent procedure before hazardous waste may be transported to or through another member state.

1995 Ban Amendment (not ratified)

At the Second Meeting of the Conference of the Parties (COP – 2) in March 1994, Parties agreed to an immediate ban on the export from OECD to non-OECD countries of hazardous wastes intended for final disposal. They also agreed to ban, by 31 December 1997, the export of wastes intended for recovery and recycling (Decision II/12). The amendment makes provision that the Decision III/1 does not use the distinction OECD/non-OECD countries. Rather, it bans hazardous wastes exports for final disposal and recycling from what are known as Annex VII countries (Basel Convention Parties that are members of the EU, OECD, and Liechtenstein) to non-Annex VII countries (all other Parties to the Convention).

1991 Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa (signed only).

This convention seeks to ban the importation of hazardous waste into Africa but does not prohibit intra- African trade in waste.

1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

Countries that are parties to the convention are to control and prevent sources of pollution to the marine environment.

Southern African Region

SADC (Ratified)

This treaty seeks to promote economic development in the SADC region, reduce tariff and non-tariff barriers and harmonize relevant laws in this regard.

1968 African Convention on Conservation of Nature and Natural Resources (Signed 9 Dec 2003)

This treaty seeks to conserve natural resources and provides for cooperation and mutual assistance in this regard.

Protocol on Shared Watercourse Systems in the Southern African Development Community, 1995

This SADC protocol seeks to promote mutual cooperation in the SADC region as regards shared watercourses and water use.

Multilateral Agreement on the Control of Pollution of Water Resources in the South African Region, 1985

Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, Lusaka, 1994

This treaty seeks to promote cooperation between member states as regards the enforcement of resource protection laws.

ANNEX 3: LAWS RELEVANT TO COASTAL AREA MANAGEMENT

General

The Constitution of Namibia, Out of Africa Publishers 1990, pp 1-90.

The Constitution of Namibia lays down the general framework for governance and human rights in the independent sovereign Namibian state.

Resource Related

Minerals

Minerals (Prospecting and Mining) Act (33 of 1992)

This Act lays down a general regulatory regime for the orderly exploitation of Namibia's minerals other than petroleum and diamonds.

Petroleum (Exploration and Production) Act (3 of 1991)

This Act lays down a general regulatory regime for the orderly exploitation of Namibia's petroleum resources.

Diamond Act (13 of 1999)

This Act lays down a general regulatory regime for the orderly exploitation of Namibia's diamond resources.

Water and Freshwater resources

Namibia Water Corporation Act (12 of 1997)

Water Act (54 of 1956)

This act lays down the general regulatory regime for the use and conservation of Namibia's water resources. It is a vestige of the old South African Act and needs to be repealed and replaced with a new water act to suit independent and water scarce Namibia.

Aquaculture Act (18 of 2002)

This act regulates both freshwater and marine aquaculture and includes environmental provisions in this regard

Artesian Water Control Ordinance (35 of 1995)

Inland Fisheries Bill

Forests

Forest Act, (12 of 2001) provides for the development and environmental

protection of Namibia's forests.

Mountain Catchments Areas Act (6 of 1970)

Marine

Territorial Sea and Exclusive Economic Zone of Namibia Act (3 of 1990)

This Act claims a 12 nm territorial sea for Namibia as well as a 200 n.mile exclusive economic zone, and provides for related matters, in conformity with the Law of the Sea Convention referred to above.

Marine Resources Act (27 of 2000)

This Act provides for the conservation and orderly exploitation of Namibia's marine resources.

Walvis Bay and Off-Shore Islands Act

Conservation

Nature Conservation Ordinance (4 of 1975)

Nature Conservation Ordinance Amendment Act (5 of 1996)

Game Products Trust Funds Act, 7 of 1997

DRAFT Parks and Wildlife Bill 2002

Agriculture

Soil Conservation Act (76 of 1969)

Agricultural (Commercial) Land Reform Act (6 of 1995)

Fencing Proclamation (57 of 1921)

Governance Related Laws

Namibian Ports Authority Act (2 of 1994)

Decentralisation Enabling Act (33 of 2000)

National Planning Commission Act (15 of 1994)

Local Authorities Act (23 of 1992)

Town Planning Ordinance (18 of 1954)

Town and Regional Planners Act (9 of 1996)

Communal Land Reform Act (5 of 2002)

Regional Councils Act (22 of 1992)

Traditional Authorities Act (17 of 1995)

Foreign Investment Act (96 of 1990)
Environment Investment Fund of Namibia Act (3 of 2001)
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Tourism related laws

Namibia Tourism Board Act (21 of 2000)
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Planning Related Laws

National Planning Commission Act (15 of 1994)
Township and Division of Land Ordinance (11 of 1963)
Town Planning Act (zoning)
National Housing Development Act (28 of 2000)
Urban and Regional Planning Bill (2000)

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Public Health Act (36 of 1919)
Recommendations for integrated Waste Management and Pollution Control legislation.

Environmental Management Laws

DRAFT Environmental Management Bill

Nuclear Laws

Atomic Energy Act (90 of 1967)
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ANNEX 5: TERMS OF REFERENCE

Consultancy to review the policy and legislation pertaining to Coastal Zone Management in Namibia.

1. Background

The Namibian Government (GRN) is preparing the "Namib Coast Biodiversity Conservation and Management Project" (NACOMA), with grant funds from the Global Environment Facility. The project intends to support Integrated Coastal Zone Management and biodiversity conservation implemented through an effective coastal zone planning framework. The project will be implemented in two phases, an initial 15 month preparatory phase and a five year implementation phase. The project will be implemented through the Regional Councils in Kunene, Hardap, Erongo, and Karas.

The project has three components targeting: (i) Policy and Planning for Sustainable Management of the Namib Coast (including capacity building and institutional strengthening of the Regional Councils); (ii) Biodiversity Conservation and Monitoring & Evaluation; and (iii) Project Coordination Support.

The Integrated Coastal Zone Management Committee (ICZMC) and its Secretariat will facilitate and coordinate the preparation phase activities and project formulation. The ICZMC is representing the four Regional Councils of the coastal regions of Namibia as well as the Ministry of Environment and Tourism, the Ministry of Regional Local Government and Housing, the Ministry of Fisheries and Marine Resources, and the Ministry of Mines and Energy. The ICZMC's Secretariat is currently located in the Erongo Regional Council. The main output of the preparatory phase is the project document and project implementation manual, on which 4 year project implementation will be based.

During the preparation phase, there is a need to update and bring together the information on policy and legislation referring to the Coastal Zone, to gain an overview of the Acts and Ordinances applicable for planning and management, with a future view to adapting these in a larger coordinated framework.

The existing legal framework is fragmented, overlapping and scattered, as most of the Acts and Ordinances pertaining to environment is the responsibility of a large number of line ministries. Although great progress has been made, many laws are outdated and not revised since before the independence.

There is no clearly defined policy framework for CZM, which results in a situation where ministries only define environmental standards once proposals for new development projects are submitted within coastal areas, and thus inconsistent planning results. Certain initiatives (such as NAMPAB, IMSCLUP, LUEB) have in the past attempted to integrate policies for improved planning, but there still seems to be lack of integration, as each region (and local authority) are undertaking planning in isolation from each other.

2. Objectives of the assignment:

To obtain an overview of the legislation in force in the coastal regions, the gaps in coverage, and current application status of laws and regulations pertaining to the coastal zone environment,

3. The Consultancy:

The consultant will work under the supervision of the ICZMC secretariat coordinator in close collaboration with staff from the Regional Councils, and involved line ministries, specifically the MET. All the regions must be visited to collect data from all available sources (Regional Councils, line ministries, NGOs, private and public enterprises, projects, National Statistics Office).

Activities will include:

Some working groups under the ministries have been

1. Review the legislation pertaining to the coastal zone environment, and assess gaps in coastal environmental legislation
2. Review the fate of the Namibian Planning Advisory Board NAMPAB and (originally established to coordinate and integrate land use planning and management actions of the ministries) and the Inter-ministerial Committee for Land Use Planning IMSCLUP, and present an update of current Coastal policy and planning initiatives
3. Review the Green Plan and the progress of enacting the Environmental Act, as part of the policy framework
4. Update current lists of Acts, Ordinances and other legislation pertaining to the Coastal environment (several studies exist e.g. in Erongo Region, which need updating)
5. Prepare an updated lists of international conventions that Namibia is signatory to, and which have been ratified.
6. In coordination with the consultancies on socioeconomic issues and biodiversity hotspots, analyse the legislation pertaining to ongoing development activities and proposed development plans (e.g. mining), and biodiversity conservation areas
7. Analyse the current status on enforcement of the laws, and the role of the Regional Councils in this respect.
8. Present findings in a report summarising the legal context for development & management planning options, to be incorporated in the outline coastal zone profile.

4. Duration

Approximately 0.5 month (~10 days effective)

5. Qualifications

The consultant should have more than 5 years of experience and an post graduate education in environmental law or other relevant education within legal and natural sciences . Should have experience from carrying out similar assignments.

6. Expression of interest

Interested individuals or teams are requested to submit their covering letter and a detailed CV or portfolios to the Project Coordinator, Mr. Timoteus Mufeti, Erongo Regional Council, 461 Tobias Hainyeko Street, Swakopmund, Tel. (064) 403905, Fax 064 412701, Email: tmufeti@iway.na for receipt by 17:00 on 05 April 2004. For further information, also contact Mr. Timoteus Mufeti. Applications may be submitted by post, hand or email to Timoteus Mufeti, but applications sent by fax will not be considered. Only short listed applicants will be contacted, and documents cannot be returned.