



**NAMIBIAN COAST CONSERVATION  
AND MANAGEMENT (“NACOMA”)  
PROJECT**



**REVIEW OF EXISTING INSTITUTIONAL MANDATES,  
POLICIES AND LAWS RELATING TO COASTAL  
MANAGEMENT, AND PROPOSALS FOR CHANGE.**

**FINAL DRAFT**



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## EXECUTIVE SUMMARY

1. The terms of reference for this study (see **Annex 1**) in essence, required this report to:
  - 1.1 assess the degree to which existing and proposed institutions, laws and policies in Namibia are sufficient to achieve effective coastal management;
  - 1.2 identify gaps, overlaps and conflicts within the existing governance framework for coastal management; and
  - 1.3 make recommendations for strengthening the institutional, policy and legal framework to achieve effective coastal management, including evaluating the possibility of decentralising some central government functions to regional councils and local authorities.
2. An overview of the main threats to Namibia's coastal areas, the actual or potential impacts and consequences of these threats, international legal instruments and Namibian laws that address them, and the key legal issues that remain in relation to each of them, is contained in **Annex 2** (International and Namibian Legal Responses to Coastal Issues).
3. The main **findings** of this report are set out below.

### **Rights and duties in respect of the coast**

- 3.1 The precise legal status of the seashore (i.e. the area between the high-water and low-water marks) is unclear. The legal status of the seashore is not defined in legislation although section 100 of the Constitution suggests that it is owned by the State. However, given the adoption of South Africa common law in Namibia it is likely that a court would regard the seashore in Namibia as being vested in the State as custodian on behalf of the people (i.e. as *res publicae*).
- 3.2 The rights of the public to use the seashore and coastal waters, and to gain access to the coast and to move along it, are not specified in legislation and are unclear.
- 3.3 Since the responsibilities of the state to conserve and protect the seashore and coastal waters on behalf of the inhabitants of Namibia are not defined in legislation, it would be difficult for any member of the public to institute legal proceedings to ensure that such areas are protected and to prevent the on-going degradation of coastal areas.
- 3.4 Existing public and private rights to own and build on land up to the high water mark are not conducive to protecting environmental quality, maintaining the natural character of the coast or the promotion of sustainable coastal development. These rights should be restricted by appropriate zonings, building set-back lines, and other measures to establish an effective buffer zone inland of the high-water mark.

## **Coastal planning**

- 3.5 Existing statutory spatial plans (namely town planning schemes established under the Town Planning Ordinance) do not provide an appropriate legal basis for implementing and enforcing integrated coastal management plans. The situation would be improved by the enactment of the Urban and Regional Planning Bill. But the value of this legislation as a coastal planning instrument will be limited unless it is amended to enable structure plans and zoning schemes to apply to the seashore and marine environment and to facilitate the imposition of restrictions to protect the coastal environment without paying compensation.
- 3.6 Even if comprehensive coastal plans were prepared there is no institution with a clear legal mandate and powers to co-ordinate the implementation of those plans by different government agencies.

## **Protection of the coastal environment**

- 3.7 There are significant gaps in the legal framework for the protection of the environment in general<sup>1</sup> and much existing legislation is outdated and prescribes penalties that are no longer adequate deterrents.
- 3.8 Notwithstanding the above constraints, government institutions responsible for various aspects of coastal management show inadequate commitment to implementing existing safeguard instruments. In particular:
  - 3.8.1 Governance regarding the awarding of concessions for prospecting and mining as well as expansion of urban areas is cause for concern.
  - 3.8.2 Officials from government run tourism facilities have allegedly facilitated illegal angling by tourists in protected areas (e.g. Skeleton Coast Park). Fisheries inspectors have allegedly colluded in these activities. Also, the Namibian Police stationed at Terrace Bay and Möwe Bay regularly go fishing in 'closed' areas, using government vehicles and during working hours. These examples show that the integrity of coastal protected areas is declining.
  - 3.8.3 Conditions of approval, set either in response to a completed EIA or 'best judgment', are generally weak – enabling developers to do almost as they please.
  - 3.8.4 Monitoring of development projects is inadequate, and even when transgressions are detected, enforcement of laws or conditions of approval, is weak.
- 3.9 The use of sustainable development tools such as SEA and EIA is inconsistent and inadequate. There is considerable scope for the use of SEA along the coast, where there are many cumulative impacts caused by various sectors. For example, SEAs could be conducted for:

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<sup>1</sup> For example, there is inadequate legislation to control the use of vehicles such as quad bikes and four wheel drive vehicles in coastal areas.

- The development of the Walvis Bay-Swakopmund strip for housing and recreation
- Aquaculture development in the Luderitz and Walvis Bay areas.
- Uranium prospecting and mining in the central Namib.
- Mining in protected areas.
- Tourism development in the northern, central and southern Namib, and
- Desalination of seawater and distribution of desalinated water to development nodes.

Project level EIAs are more commonly undertaken, but they do not address cumulative impacts nor consider the 'big picture'. Also, the evidence suggests that the process followed and the quality of the EIAs is often poor.

- 3.10 There appears to be resistance by government to enter into meaningful, formal partnerships with civil society regarding protection of the coastal environment – this is self defeating given the Constitutional obligations of government, the enormity of the collective mandate of various line ministries and the inadequate capacity within government to meet its obligations.

#### **Mechanisms to promote integrated coastal management**

- 3.11 Enforcement of the legislation that exists is inadequate and is complicated by a lack of clarity regarding which government agency is responsible for enforcing key provisions and in some cases by inadequate legal mandates.<sup>2</sup>
- 3.12 The establishment of an effective ICM programme and institutions with the necessary legal mandates and capacity to implement the programme would facilitate the fulfilment by Namibia of its obligations and aspirations as reflected in various treaties and non-binding international instruments.
- 3.13 Despite the absence of legislation designed to facilitate the implementation of ICM, existing legislation such as the National Heritage Act and the Aquaculture Act could be used to implement some aspects of an ICM regime.
- 3.14 From a legal perspective coastal management could become more integrated if a range of functions currently performed by different Ministries were coordinated by a 'coastal agency'. There are serious concerns about the capacity of the various Regional Councils (RCs) to successfully undertake ICM. There is also doubt about the wisdom of having 4 authorities (1 per region) all planning for, and managing, a 'slice' of the coast – one would be better. However, each Region could coordinate its activities within an overall National Coastal Management and Development Strategy (that still needs to be compiled).

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<sup>2</sup> For example the MET apparently does not have a mandate to deal with aspects of the marine environment (including seabirds and turtles) which do not fall within the mandate of the MFMR.

4. The main **conclusions and recommendations** of this report are set out below.
  - 4.1 Namibia has a number of laws that regulate human activities within the coastal zone but the existing legal framework has significant gaps from the perspective of integrated coastal management and does not provide an adequate basis for the effective implementation of integrated coastal management (ICM).
  - 4.2 The range of legal powers to implement effective coastal management would be greatly enhanced if the Water Resources Management Act, 2004 and the Environmental Investment Fund of Namibia Act, 2001 were brought into force and if the Draft Environmental Assessment and Management Bill, the draft Pollution Control and Waste Management Bill and the draft Parks and Wildlife Bill were finalised, enacted and implemented. (The latter will also require the making of regulations). We recommend that this be given urgent attention.
  - 4.3 We recommend that new coast-specific legislation should be enacted to achieve a range of purposes including:
    - 4.3.1 to maintain, enhance and clarify the legal status of the seashore and coastal waters as the common property of all;
    - 4.3.2 to define the rights and obligations of both the public and the State in respect of the seashore, islands, tidal waters and adjacent areas;
    - 4.3.3 to define areas within the coastal area to enable different control measures to be applied within different areas and to provide a legally defined coastal zone for the purpose of implementing ICM;
    - 4.3.4 to establish a system for developing integrated and legally binding spatial plans and associated regulations for the purposes of implementing an ICM programme and for ensuring consistency between these and other sectoral plans; and
    - 4.3.5 to give effect to Namibia's obligations under international law.
  - 4.4 We strongly recommend that the relevant line ministries significantly improve their governance regarding the allocation of various land and resource-use rights. These include prospecting and mining, urban expansion/development, tourism and the use of marine resources.
  - 4.5 There needs to be significant improvements in terms of building the capacity of the institutions with major responsibilities for coastal management. Specifically we recommend:
    - 4.5.1 Establishing a 'Coastal Management Agency' – that is able to implement an ecosystems approach towards the management of the coastal areas (in contrast to the existing sectoral approach which has achieved little to date). Establishing such an agency could be done step-by-step: Initially, the various

ministries could collaborate in a formally constituted 'Coastal Agency Forum' – perhaps chaired by one of the Regional Governors. This interim measure could last a few years, during which the structure, functions and enabling instruments of the Agency could be established. The establishment of such an agency must take cognisance of the likely establishment of the 3-nation Benguela Commission so that consistency of purpose is achieved.

- 4.5.2 The 4 regions should each coordinate activities within their area of jurisdiction, with technical services provided by the respective line ministries and contracted NGOs and consultants. However, every region must act in accordance with the 'National Coastal Management Strategy' – which is yet to be written.
- 4.5.3 The Coastal Management Agency must be well resourced (perhaps through the Environmental Investment Fund or other mechanisms) so that it can hire professional staff (perhaps 5 full time dedicated officers) – preferably without being constrained by public service parameters. This core staff will assist the agency and the RCs to keep their 'finger on the pulse' and to facilitate consistent and sustained input from the line ministries and other partners. The RCs and LAs must be part of the agency in order to provide input and so that they can direct requests for assistance as and when required.
- 4.5.4 The establishment of meaningful formal partnerships between government (and the 'Agency') and civil society. This consultancy has found that there is much goodwill within the public to assist the authorities to conserve the coastline – but resistance from government to embrace civil society input. The establishment of 'Honorary Coastal Wardens' is strongly recommended. These carefully selected individuals could assist the authorities with monitoring, data collection, reporting of transgressions and conducting inspections. Some might even be sufficiently qualified to undertake law enforcement functions. In our opinion, it is incorrect for government to fear 'losing control' when civil society becomes increasingly involved in helping to implement a national vision. Namibia's CBNRM programme and the contribution of farmers to game conservation are proof that a complimentary partnership can easily be achieved if there is enough confidence to give it a chance to succeed.
- 4.5.5 Using independent experts (e.g. consultants) to help the authorities to achieve more rigorous quality control in SEA and EIA studies and processes. A more consistent and professional approach is needed to ensure that these tools are applied properly.
- 4.5.6 Improving governance in development planning. This point is linked to many of the previous recommendations, but requires a specific statement in this summary. Simply stated, the

current trend of inconsistent application of policies and laws must be reversed. Whilst it is perfectly acceptable for political objectives to be pursued for a range of valid socio-economic reasons, rules and procedures must still be adhered to. Circumvention of government policies cannot and must not be tolerated.

- 4.5.7 Improving capacity in LAs to apply sustainable development tools more effectively in town planning. Our opinion is that few LAs are serious about incorporating environmental issues in town planning – as evidenced by the inconsistent application of national policies (e.g. EIA). The current trend of inappropriate development (e.g. buildings too close to the beach, developments in environmentally sensitive areas, high-density developments in areas where a more aesthetically pleasing approach would be more appropriate, etc.) indicates greed and a short term vision regarding coastal development. Regular conflicts between LAs and developers vs. conservation agencies and civil society organisations indicate that the degree of prior consultation and governance are perhaps inadequate in some cases.
5. We recommend that the Government of Namibia consider prioritising the enactment of new legislation that will enable integrated and effective planning of coastal and other areas (taking into account ecological considerations as well as human land use and development).

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## **ACRONYMS AND ABBREVIATIONS**

Abidjan Convention	Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the Central and Western African Region <sup>3</sup>
Abidjan Protocol	Protocol concerning Co-operation in Combating Pollution in cases of Emergency
BCLME	Benguela Current Large Marine Ecosystem
CS	continental shelf
DEA	Directorate of Environmental Affairs
DMA	Directorate of Maritime Affairs
DWA	Department of Water Affairs
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
FAO	Food and Agriculture Organization
FAO Code	The Food and Agricultural Organization Code of Conduct for Responsible Fisheries
HABs	Harmful Algal Blooms
IMO	International Maritime Organisation
MAWF	Ministry of Agriculture, Water and Rural Development
MET	Ministry of Environment and Tourism (Namibia)
MFMR	Ministry of Fisheries and Marine Resources (Namibia)
MLR	Ministry of Lands and Resettlement
MME	Ministry of Mines and Energy (Namibia)
MRA	Marine resources Act
MRLGH	Ministry of Regional, Local Government and Housing
MWTC	Ministry of Works, Transport and Communications
NHA	National Heritage Act
NAMPAB	Namibia Planning Advisory Board

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<sup>3</sup> Namibia is not a signatory to this Convention.

NPC	National Planning Commission
Ramsar site	A protected area designated under the Ramsar Convention on Wetlands of International Importance, particularly as a Wild Fowl habitat
Rio Declaration	The United Nations Declaration on Environment and Development (1992)
SADC	Southern African Development Community
SEAFO	South East Atlantic Fisheries Organisation
TAC	Total Allowable Catch
UNCLOS	United Nations Convention on the Law of the Sea

## **RELEVANT TREATIES AND INTERNATIONAL INSTRUMENTS**

<b>Date</b>	<b>International Instrument</b>
1954	International Convention for the Prevention of Pollution of the Sea by Oil (London) In force 26 July 1958. Amended 1962 and 1969.
1968	African Convention on the Conservation of Nature and Natural Resources (Algiers). In force 16 June 1969.
1969	International Convention on Civil Liability for Oil Pollution Damage (Brussels), In force 19 June 1975, 1976 Protocol, In force 8 April 1981. Replaced by 1992 Convention
1969	International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Damage (Brussels), In force 30 March 1983.
1971	Convention on Wetlands of International Importance (Ramsar), In force 21 December 1975. Amended 1982 and 1987 in force 1 May 1994.
1971	Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Brussels). In force 16 October 1978. Replaced by 1992 Convention
1972	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage. In force 17 December 1975.
1972	Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London). In force 30 August 1975. To be replaced by 1996 Protocol
1973	Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington). In force 1 July 1975.
1974	Convention for the Prevention of Marine Pollution from Land-Based Sources (Paris). In force 6 May 1978. Amended by Protocol of 1986, 27 <i>ILM</i> (1988), 625, in force 1 February 1990. Replaced by 1992 Paris Convention
1978	Protocol Relating to the Convention for the Prevention of Pollution from Ships (MARPOL). In force 2 October 1983. Annexes I-III, V in force. Annexes III, VI not in force.
1979	Convention on the Conservation of Migratory Species of Wild Animals (Bonn). In force 1 November 1983.
1982	UN Convention on the Law of the Sea (Montego Bay), In force 16 November 1994.
1989	The International Convention on Salvage
1992	Declaration of the UN Conference on Environment and Development, UN Doc. A/CONF.151/26/Rev.1, <i>Report of the UNCED</i> , vol. 1 (New York).

Date	International Instrument
1992	Framework Convention on Climate Change, In force 21 March 1994.
1992	Convention on Biological Diversity, 31. In force, 29 December 1993.
1992	Convention on Civil Liability for Oil Pollution Damage, In force 3 May 1996. Amended by Protocol 2000, in force 1 November 2003.
1992	Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Amended by Protocol 2000, in force 1 November 2003.
1993	FAO Agreement to Promote Compliance with Conservation Measures on the High Seas,
1995	UN Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Migratory Fish Stocks.
1995	FAO International Code of Conduct for Responsible Fisheries.
1995	Declaration on the Protection of the Marine Environment from Land-based Activities (Washington).
1996	Protocol to the London Dumping Convention, 36 <i>ILM</i> (1997), 7. Not in force.
1997	United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses
1997	SADC Protocol on Mining
1997	Protocol to the Framework Convention on Climate Change (Kyoto)
1998	The Cape Town Declaration on an African Process for the Development and Protection of the Coastal and marine Environment, particularly in Sub-Saharan Africa
2001	SADC Protocol on Fisheries (signed 14 August 2001)
2001	Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (“SEAFO”) (Signed on 20 April 2001 by South Africa, Angola and Namibia and came into force on 13 April 2003)
2003	International Convention for the Control and Management of Ships’ Ballast Water and Sediments (not yet in force)

## Relevant Namibian legislation

### Legislation

Accommodation and Tourism  
Ordinance 20 of 1973

### Comments

Date of commencement: 1 January 1974  
Amendments:  
Ord. 25/1973, Ord. 17/1974,  
Ord. 5/1977. It was extended to the Rehoboth  
Gebiet by AG 56/1978, Regulations are  
contained in GN 75/1974 (18 April 1994), as  
amended by the following: GN 24/2000 (GG  
2264) (Regulations 1 and 3, Schedules II, III,  
IV, XIIA, XIIB, XIIC, XVIIIIA, XVIIIIB and  
XVIIIIC) GN 89/2000 (GG 2304) (Regulation 1  
and Schedules II and IV).

Aquaculture Act 18 of 2002

Assented to: 23 December 2002  
Commenced: 3 December 2003

Atmospheric Pollution Prevention  
Ordinance 11 of 1976  
Communal Land Reform Act 5 of 2002

Regulations contained in GN 37/2003 (GG  
2926).

Constitution of the Republic of Namibia  
1990

Decentralisation Enabling Act 33 of  
2000

Assented to 21 December 2000  
Date of commencement: 5 March 2001

Environmental Investment Fund of  
Namibia Act 13 of 2001

Assented to 6 December 2001  
Date of commencement: to be proclaimed

Forest Act 12 of 2001

Assented to 6 December 2001  
Date of commencement: 15 August 2002]  
Repeals: the Preservation of Bees and Honey  
Proclamation, 1923 (Proclamation 1 of 1923),  
Preservation of Trees and Forests Ordinance,  
1952 (Ordinance 37 of 1952) and the Forest  
Act, 1968 (Act 72 of 1968).

Hazardous Substances Ordinance 14  
of 1974

Inland Fisheries Resources Act 1 of  
2003

Assented to 3 April 2003  
Date of commencement: 6 June 2003

Local Authorities Act 23 of 1992

Assented to 28 August 1992  
Date of commencement: 31 August 1992  
As amended by:  
Registration of Deeds in Rehoboth  
Amendment 35 of 1994  
Local Authorities Amendment Act 3 of 1997  
Local Authorities Second Amendment Act 14  
of 1997  
Local Authorities Amendment Act 24 of 2000  
Local Authorities Amendment Act 17 of 2002  
Electoral Amendment Act 7 of 2003  
Local Authorities Amendment Act 14 of 2004

Marine Resources Act 27 of 2000

Assented to 21 December 2000

## Legislation

## Comments

	Commenced: 1 August 2001
Marine Traffic Act 2 of 1981	Assented to: 4 February 1981 Commenced: 28 December 1984 made applicable in Namibia with effect from 7 June 1985 by Proc. 93 of 1985. Amended by: Marine Traffic Amendment Act 5 of 1983 Marine Traffic Amendment Act 15 of 1991 Namibia Ports Authority Act 2 of 1994 General note: S. 5 of Act 15 of 1991 substituted in general- "Namibia" for "the Republic"; and "territorial sea" for "territorial waters"
Minerals (Prospecting and Mining) Act 33 of 1992	Assented to 16 December 1992 Date of Commencement: 1 April 1994
Mountain Catchment Areas Act 63 of 1970 Nature Conservation Ordinance, 1974 Namibian Ports Authority Act, 2 of 1994	Assented to 25 February 1994 Commenced: 1 March 1994 Amended by: National Transport Services Holding Company Act 28 of 1998 Namibian Ports Authority Amendment Act 12 of 2000
National Heritage Act 27 of 2004	Assented to 19 December 2004 Date of commencement: 1 September 2005 Repeals: (a) the National Monuments Act, 1969 (Act 28 of 1969); (b) the National Monuments Amendment Act, 1970 (Act 22 of 1970); (c) the National Monuments Amendment Act, 1971 (Act 30 of 1971); (d) the National Monuments Act Amendment Act, 1979 (Act 7 of 1979); and (e) the National Monuments Amendment Act, 1979 (Act 35 of 1979).
National Planning Commission Act 15 of 1994	Assented to 14 September 1994 Date of commencement: 27 September 1994]
Petroleum (Exploration and Production) Act, 2 of 1991	Assented to 19 March 1991 Date of commencement: 30 September 1992 Amendments: Petroleum Matters (Amendment and Validation) Act 27 of 1992 Minerals (Prospecting and Mining) Act 33 of 1992 Petroleum (Exploration and Production) Amendment Act 2 of 1993 Petroleum (Exploration and Production) Amendment Act 11 of 1997 Petroleum Laws Amendment Act 24 of 1998

## Legislation

## Comments

Prevention and Combating of Pollution of the Sea By Oil Act 6 of 1981	Assented to 6 February 1981 Date of commencement: 1 October 1982 made applicable in Namibia with effect from 7 June 1985 by Proc. 93 of 1985] Amendments: Prevention and Combating of Pollution of the Sea by Oil Amendment Act 59 of 1985 Prevention and Combating of Pollution of the Sea by Oil Amendment Act 63 of 1987 Prevention and Combating of Pollution of the Sea by Oil Amendment Act 24 of 1991 Namibian Ports Authority Act 2 of 1994
Regional Councils Act 22 of 1992	Assented to 28 August 1992 Date of commencement: 31 August 1992 except the repeal of sec 2 and sec 45(1) which come into operation on 17 October 1992. As amended by: Regional Councils Amendment Act 17 of 1997 Regional Councils Amendment Act 30 of 2000 Regional Councils Amendment Act 12 of 2002
Sea Shore Ordinance 37 of 1958	Brought into force by Proclamation 144 of 1982 (GG 8344)
Soil Conservation Act 76 of 1969	Commenced in Namibia on 1 April 1971 by virtue of the Second Soil Conservation Amendment Act 38 of 1971.
Subdivision of Agricultural Land Act 70 of 1970	Assented to 28 September 1970 Date of commencement: 2 January 1971 (Signed by the President) as amended by: Subdivision of Agricultural Land Amendment Act 55 of 1972 Subdivision of Agricultural Land Amendment Act 19 of 1974 Subdivision of Agricultural Land Amendment Act 18 of 1977
Territorial Sea and Exclusive Economic Zone of Namibia 3 of 1990	Amended by Act 30 of 1991
Town Planning Ordinance 18 of 1954	Assented to: 21 June 1954 Amended by: Town Planning Amendment Act 27 of 1993.
Townships and Division of Land Ordinance	Assented to: 27 June 1963 Amended by: Act 28 of 1992
Trespass Ordinance 3 of 1962	Amended By Act 20/1985
Trust Fund for Regional Development and Equity Provisions Act, 2000	
Walvis Bay and Off-Shore Islands Act 1 of 1994	Assented to 24 February 1994 Date of commencement: 1 March 1994

**Legislation**

Water Act, No. 54 of 1956

Water Resources Management Act No  
24 of 2004

Wreck and Salvage Act 5 of 2004

**Comments**

Assented to 8 December 2004  
Date of commencement: to be proclaimed

Assented to: 13 July 2004.  
Commenced: 1 November 2004

## 1. INTRODUCTION

### 1.1 *The purpose of this report*

The terms of reference for this consultancy are attached as **Annex 1**. The report is part of a broader process aimed at improving the development and management of Namibia's coastline. It thus functions both as a "baseline" report recording the *status quo*, and as input into the compilation of a coastal White Paper and eventual strengthening of laws and institutions in order to promote integrated coastal management in Namibia.

### 1.2 *Background*

Integrated coastal management is now internationally accepted as the most effective approach to managing human activities in coastal areas. In recent years ICM has been heavily influenced by what is often referred to as "the ecosystem approach." The shift towards the "ecosystem approach" to environmental management has been one of the most important developments at the international level over the last decade. The Conference of the Parties to the Convention on Biological Diversity ("the COP") first endorsed this approach at its Fifth Meeting in Nairobi, in May 2000.<sup>4</sup> In 2002 the World Summit on Sustainable Development in Johannesburg endorsed the ecosystem approach as a key means of achieving sustainable development of the oceans and sustainable fisheries management. In particular it encouraged:

"the application by 2010 of the ecosystem approach, noting the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem<sup>5</sup> and decision V/6 of the Conference of the Parties to the Convention on Biological Diversity."<sup>6</sup>

The Annex to the resolution of the COP describes the ecosystem approach as "a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way." As its name suggests, the ecosystem approach is based on the understanding that ecosystems must be addressed as complex, dynamic systems which we do not fully understand. As systems, they cannot be understood by applying a reductionist approach of attempting to analyse each of the part of aspects in order to understand how the whole system works. The ecosystem must be studied as a whole with particular emphasis on looking at "the essential structure, processes, functions and interactions among organisms and their environment".<sup>7</sup> Furthermore people are understood as being an integral component of any ecosystem in which they are present, rather than as external observers, owners, beneficiaries or managers of the ecosystem.

### 1.3 *The main pressures on coastal environments*

At a consultative workshop held in Swakopmund from 12 to 13 October 2006, stakeholders identified what they perceived to be the primary threats to Namibia's coastline and marine environment as well as appropriate responses to reduce the threats and promote sustainable development. The threats were grouped into eight major categories, namely:

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<sup>4</sup> UNEP/CBD/COP/5/23 Decision V/6 Ecosystem Approach.

<sup>5</sup> See Food and Agriculture Organisation of the United Nations document C200/INF/25, Appendix I.

<sup>6</sup> See UNEP/CBD/COP/5/23, annex III.

<sup>7</sup> See UNEP/CBD/COP/5/23 Decision V/6 Ecosystem Approach.

1. extractive marine living resource use (particularly the overexploitation of fish and other marine living resources and the destruction of habitat);
2. pollution (from marine traffic, oil spills and land based sources);
3. mining (including offshore oil and gas operations, and mining salt, sand and diamonds and other minerals along the coast);
4. coastal development causing the physical alteration of coastal areas (caused for example by the expansion of urban areas, industrialisation, and tourism);
5. threats to catchments (including pollution and over-abstraction of rivers);
6. tourism (including habitat destruction, the inappropriate development of facilities, pollution, resource consumption and the alienation of coastal communities);
7. invasive alien organisms, (including those introduced via ships' ballast water and genetically modified organisms); and
8. mariculture, (including the prospects of introducing pathogens and invasive species and the potential for conflicts with other coastal users).

These threats are typical of the threats facing coastal areas in many parts of the world. **Annex 2 (International and Namibian Legal Responses to Coastal Issues)** gives an overview of the actual or potential impacts and consequences of these threats, international legal instruments and Namibian laws that address them and the key legal issues that arise from an integrated coastal management ("ICM") perspective. (Annex 2 should be read in conjunction with the analysis of Namibian legislation contained in section 4.)

## 2. TEAM AND APPROACH

The team that undertook this work consisted of **Dr Peter Tarr**, Executive Director of SAIEA and Team Leader for this project. Early in his career, Peter Tarr worked as a conservationist along the Namibia coastline for over 10 years and he continues to be involved in a number of projects along the coast and the Namib.

**Ted Rudd**, Managing Director of Urban Dynamics has an intimate knowledge of the workings of regional and local government, and led this aspect of the study. He has been involved in a number of similar projects in the past few years and he is well known amongst the Regional Councils and municipalities in Namibia.

**Dr Hartmut Krugmann** assisted Ted Rudd with the institutional review work as well as contributing to the review of policies pertaining to the coastal zone. Having recently coordinated the work of OKACOM (GEF funded project aimed at achieving the integrated management of the Okavango River Basin), he has recent insights into the mechanisms of integrated management and institutional and policy challenges.

**Mr Cormac Cullinan**, one of southern Africa's best qualified and most experienced environmental lawyers was responsible for reviewing legislation pertaining to the coastal zone and advising on governance and institutional issues. He has worked in more than 20 countries and has particular expertise in integrated coastal zone management. He recently drafted South Africa's national Integrated Coastal Management Bill.

**Ms Gudrun Denker**, SAIEAs Office Manager was responsible for project administration and financial management and reporting.

The information in this report has been derived primarily from the proceedings of the consultative workshop held in Swakopmund on 12-13 October 2006<sup>8</sup> and from our review of Namibian legislation. In addition we have consulted other reports provided to us including a document entitled “Coastal Profile of the Erongo Region” dated August 1999 and a report entitled “Harmonisation of National Environmental Policies and Legislation for Marine Mining, Dredging and Offshore Petroleum Exploration and Production Activities in the BCLME Region” (“BCLME project”) (BEHP/LA/03/03). We have also drawn on FAO Legislative Study 93 entitled “Integrated coastal management law: Establishing and strengthening legal frameworks for integrated coastal management”. This study by the author of this report was published in Rome by the Food and Agriculture Organization of the United Nations in late 2006. The analysis, recommendations and conclusions of this report also reflect the extensive experience of the consultancy team regarding governance aspects of ICM in several countries.

In analysing the legal framework for coastal management in Namibia we have sought both to identify existing provisions that could be used to support the implementation of an ICM programme in Namibia, and also to draw attention to how the existing legal framework could be substantially developed and strengthened in order to facilitate ICM in Namibia.

The desk-top review described above was complimented by extensive consultations with a variety of stakeholders and visits to various field sites that illustrate the key problems encountered along the coast. These consultations and field visits were spread over 6 months, taking advantage of opportunities provided by other activities engaged in by the team members. This enabled greater efficiency in terms of use of budget funds. The results of the workshop referred to above are attached as **Annex 3**.

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<sup>8</sup> Convened by the Southern African Institute for Environmental Assessment for the Benguela Environment Fisheries Interaction and Training Programme (“BENEFIT”) and NACOMA.

### **3. INTRODUCTION TO THE EXISTING GOVERNANCE SYSTEM**

#### **3.1 *Approach to assessment***

This report assesses the adequacy and usefulness of existing Namibian laws from a coastal management perspective and focuses on identifying those aspects of the governance framework that could be strengthened. It does not purport to provide a comprehensive assessment of the effectiveness of the governance systems dealing with the marine and coastal environment of Namibia which would require significant further field research.

The development of national ICM systems throughout the world is increasingly being driven and informed by developments at the international level (such as Agenda 21 and the Johannesburg Plan of Implementation) and regional levels (such as the BCLME Programme). For this reason it is important at the outset to be conscious of Namibia's international law obligations and non-binding aspirations (expressed in various international documents) which must be taken into account in developing and implementing the NACOMA project and any law reform initiative aimed at promoting ICM.

#### **3.2 *International obligations and undertakings***

A list of most of the international instruments which have a bearing on the conservation and use of Namibia's coast is set out at the front of this report. A detailed thematic analysis of each of these instruments is beyond the scope of this study, but an overview of some of the key obligations and (non-binding) undertakings and aspirations which Namibia has already committed itself to, is set out in **Annex 2**.

At the regional level the development under the auspices of the BCLME Programme of a legal and policy framework for cooperation between Namibia, Angola and South Africa in relation to the BCLME will have a significant influence on the development of Namibian laws and policies that affect activities in coastal and marine areas.

#### **3.3 *The BCLME Programme***

The Benguela Current Large Marine Ecosystem Programme is a cross-sectoral initiative by Angola, Namibia and South Africa to manage the living marine resources of the BCLME in an integrated and sustainable manner and to protect the marine environment. The Programme commenced in 2002 and will run until 2007 (unless extended), and is funded by the Global Environment Facility (GEF) with the United Nations Office of Programme Services (UNOPS) as an executing agency. The three member countries provide further financial and in-kind contributions.

The BCLME Programme focuses on a number of key sectors, including fisheries; environmental variability; seabed mining; oil and gas exploration and production; coastal zone management; ecosystem health; socio-economics and governance. The area of operation encompasses the region extending from the northern border of Angola (Cabinda Province) to the eastern part of the Western Cape Province in South Africa (i.e. Port Elizabeth). The east-west boundary extends from the high water mark out to the edge of the 200 mile Exclusive Economic Zone and further seaward in the region of the Angola-Benguela front.

A major goal of the BCLME Programme is to improve the structures and capacities of the three countries to deal with problems and issues which occur across national boundaries and to establish an appropriate institutional framework to manage shared resources and to resolve conflicts. The BCLME programme undertook a Transboundary Diagnostic Analysis (“TDA”) which identified the key problems and issues concerning the BCLME and then developed a Strategic Action Programme<sup>9</sup> (“SAP”) to address and mitigate these problems.

In 2006 Namibia signed an Interim Agreement with South Africa and Angola which establishes Benguela Current Commission in order to establish a formal institutional structure for cooperation between the three countries that will facilitate the understanding, protection, conservation and sustainable use of the Benguela Current Large Marine Ecosystem by the Parties and further the objectives recorded in the SAP.

#### **4. REVIEW OF RELEVANT LEGISLATION**

##### **4.1 Introduction**

Namibian legislation consists of legislation enacted by the South African Parliament during the South African occupation of South West Africa (as it then was), legislation enacted by the South West African legislation and Namibian legislation that has been passed since independence in 1990. While a number of pre-independence laws were expressly repealed by the Constitution (section 112), in accordance with Clause 140 of the Constitution all other laws in force immediately before the date of independence, remain in force until they are repealed or amended by new legislation or are declared unconstitutional by a competent court. Consequently many South African Acts that were in force at the time of independence are still operative although several have been amended since independence.

##### **4.2 Institutional Framework legislation**

###### **Constitution of the Republic of Namibia, 1990**

The 1990 Constitution is the supreme law of Namibia<sup>10</sup> and provides *inter alia* for the establishment of the main organs of state, namely the Executive, the Legislature and the Judiciary, as well as guaranteeing various fundamental rights and freedoms. Legislative power is vested in the elected National Assembly which can pass laws with the assent of the President and subject to the powers and functions of the second chamber, the representative National Council.<sup>11</sup>

Chapter 11 of the Constitution deals with Principles of State Policy. Provisions relating to the environment are contained in article 95, which is entitled ‘Promotion of the Welfare of the People’. This article provides that:

‘The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the following:....  
(l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the

<sup>9</sup> The Strategic Action Programme was adopted and signed by Angola, Namibia and South Africa between 10 November 1999 and 25 February 2000.

<sup>10</sup> Article 1(6).

<sup>11</sup> Article 44.

benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.'

It is important to note that article 95 does not create legally enforceable rights, but instead acts as a guide to Government policy regarding the enactment and application of legislation. This is made clear in article 101 of the Constitution, which states:

'The principles of state policy contained in this Chapter shall not of and by themselves be legally enforceable by any Court, but shall nevertheless guide the Government in making and applying laws which give effect to the fundamental objectives of the said principles. The Courts are entitled to have regard to the said principles in interpreting any laws based on them.'

### **Decentralisation Enabling Act 33 of 2000**

As its name suggests, this Act establishes procedures for decentralising powers exercised functions vested in various Ministries (referred to in the Act as "Line Ministries" to regional councils and local authority councils. The Act empowers the Minister responsible for regional and local government matters by notice in the Gazette, to decentralise<sup>12</sup> any function to any regional council or local authority council.<sup>13</sup>

### **Regional Councils Act 22 of 1992**

This Act provides for the establishment of a regional council for each of the regions determined in accordance with Article 103 of the Namibian Constitution.

In addition to the powers conferred upon a regional council by article 108 of the Namibian Constitution and under other legislation, this Act grants a range of powers to regional councils including the power-

- "(a) to undertake, with due regard to the powers, duties and functions of the National Planning Commission ... the planning of the development of the region for which it has been established with a view to-
  - (iii) the natural and other resources and the economic potential of such regions;
  - (v) the general land utilisation pattern;
  - (vi) the sensitivity of the natural environment;
- (b) to exercise in connection with its region such powers, and to perform the duties and functions connected with such powers, as may be delegated by the president to the regional council in terms of section 29;
- (o) to exercise any power assigned to regional council by the law governing land which vests in the government of Namibia by virtue on the provisions of Schedule 5 to the Namibian Constitution, or any other power so assigned by or in terms of any other law;"

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<sup>12</sup> Section 1 provides that: " "decentralisation" means the delegation or devolution, as the case may be, under section 2 of any function from a Line Ministry to a regional council or to a local authority council, as the case may be, and "decentralise" has a corresponding meaning;"

"devolution" means the transfer by the Minister, by means of decentralisation under section 2, of a function from a Line Ministry to a regional council or to a local authority council, as the case may be, in order to empower and enable the regional council or local authority council to which the function has been decentralised, to perform the function for its own profit or loss, and "devolve" has a corresponding meaning;"

<sup>13</sup> Section 2.

A regional council may also enter into an agreement with the government of Namibia, with other regional councils or with any local authority in terms of which it agreed to exercise powers as their agent or in co-operation with them.<sup>14</sup>

The regional council may also declare areas that fall outside of the local authority area to be settlement areas<sup>15</sup> and to manage and control settlement within those areas<sup>16</sup> using powers which would otherwise have been exercised by a local authority under the Local Authorities Act, 23 of 1992 (had the area fallen within jurisdiction of a local authority).

A regional council may, after consultation with the Minister, make regulations relating to the prohibition, restriction, regulation and control of the conducting of any trade, business or occupation or other activity for gain in areas outside local authority areas.<sup>17</sup>

### **Local Authorities Act 23 of 1992**

The Local Authorities Act establishes the system of local government in Namibia and defines the powers, duties and functions of local authority councils. The Act is administered by the Minister responsible for regional and local government and housing.

The area over which a local authority has jurisdiction is declared by the Minister by notice in the *Gazette*.<sup>18</sup> The Minister is given the power by notice in the *Gazette* to alter the boundaries of any local authority area by excluding any proportion from the area or adding any area to it.<sup>19</sup>

Local authorities are given wide-ranging powers<sup>20</sup> including powers: to supply water to residents; to provide and maintain sewerage and drainage systems; to provide waste removal services; to supply electricity or gas to residents; to establish and operate sand, clay, stone or gravel quarries; and to promote tourism. A local authority council may also enter into agreements with other local authority councils, the Government of Namibia or regional councils in relation to the exercise or performance of powers, duties and functions which allows them to act co-operatively or on behalf of one another.<sup>21</sup>

If a local authority council discharges water from any waterworks or water main, or any storm water, into a public water course, it must at all times keep the natural channel of banks (up to the 50 year flood-line) clean and free from any artificial or natural obstructions which are likely to interfere with the flow of the watercourse or create a danger from flood waters (other than buildings lawfully erected before the

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<sup>14</sup> Section 30.

<sup>15</sup> Section 31.

<sup>16</sup> Section 32.

<sup>17</sup> Section 44A.

<sup>18</sup> Section 3. Article 111(2) of the Constitution provides that: "the boundaries of Local Authorities, ... shall be determined by Act of Parliament". Determinations by the Minister under the Local Authorities Act appear to be based on earlier work by Demarcation Boards. We have not had access to the documents that define these areas and consequently we have not yet been able to ascertain whether any of the areas of jurisdiction of local authorities extend below the high water mark. However we but presume that they do not.

<sup>19</sup> Section 4(1)(b).

<sup>20</sup> In terms of section 13.

<sup>21</sup> Section 32.

commencement of the Act).<sup>22</sup> The local authority council may also require private landowners to do likewise and if they fail to do so, it may take the necessary measures and recover the cost from the person concerned.

A major shortcoming is that the Act does not impose any specific obligation on local authorities to address environmental conservation in the coastal and marine areas or to promote sustainable development. However it does grant municipalities certain powers that can be used for these purposes. For example, a local authority may, after consultation with the Minister, make regulations by notice in the Gazette, in respect of:

“the supply, distribution and use of water in its local authority area including the protection from pollution of water;”<sup>23</sup>

and

“the restriction, regulation and control of the use of common pasture and townland, including a prohibition on the removal of soil, sand, vegetation etc from such land”<sup>24</sup>

Local authorities are empowered to establish a housing scheme either alone, or in conjunction with any other person. This must however be done with the prior approval of the Minister and in accordance with conditions that may be determined by the Minister.<sup>25</sup>

### **Namibian Ports Authority Act 2 of 1994**

This Act establishes the Namibian Ports Authority (NPA) to undertake the management and control of ports and lighthouses in Namibia and the provision of related facilities and services. The NPA is given a range of functions, including:

- “(c) to operate, or construct and operate, lighthouses, and to provide and maintain other aids to navigation, whether within a port or within the territorial waters of Namibia or along the coast of Namibia;
- (d) to provide and maintain surveillance aids and other equipment to monitor the movement of ships;
- (e) to provide and maintain lifeboats and other life-saving equipment;
- (f) to provide and maintain search and rescue services;
- (g) to undertake dredging services in ports and channels and approaches thereto;
- (h) to provide tug and pilotage services;
- (i) to protect the environment within its areas of jurisdiction;
- (j) subject to such terms and conditions as may be agreed upon with the Minister under section 27(5) of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (Act 6 of 1981) to store, maintain and deploy oil recovery equipment for the purpose of combating pollution of the sea.”<sup>26</sup>

The NPA has powers:

- to control the movement of goods or passengers within a port;

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<sup>22</sup> Section 19.

<sup>23</sup> s94(1)(a)(viii).

<sup>24</sup> s94(1)(z)(ad).

<sup>25</sup> s30(1)(i).

<sup>26</sup> Section 14.

- to raise, remove or destroy any sunken, stranded or abandoned ship or wreck, within the Authority's area of jurisdiction or to remove any other obstacle that may endanger ships entering or leaving port, and to recover the costs incurred from the person responsible; and
- to exercise control over the waters of any port and the approaches thereto, and to control all marine traffic in any port.<sup>27</sup>

### **National Planning Commission Act 15 of 1994**

This Act establishes the National Planning Commission. The mandate of the Commission is to plan the priorities and direction of national development as assigned to it by Article 129(1) of the Namibian Constitution, with due regard to the principles stipulated in Articles 95 and 98 of the Constitution. It is empowered to do anything necessary or expedient to fulfil its mandate, including:

“any activities in relation to-

- (a) the orientation, design and surveillance of economic and social plans and policies in accordance with national objectives;
- (b) macro-economic analysis, national and sectoral development planning and employment strategies, budgeting and project analysis;
- (c) regional and development planning, design and co-ordination;
- (d) the organization and execution of economic and social studies;
- (e) the collection and organization of statistics and other data required for planning and other related purposes;
- (f) the management and co-ordination of international aid resources, including for non-governmental activities;
- (g) the establishment and operation of strategic information systems and services in the fields of planning and statistics;
- (h) the establishment and operation of registry documentation and library services in the fields of planning and statistics;
- (i) the design of and participation in staff development and training programmes in the fields of planning and statistics;
- (j) the design of and participation in institution building and capacity strengthening activities.”<sup>28</sup>

### **Environmental Investment Fund of Namibia Act 13 of 2001**

This Act provides for the establishment of the Environmental Investment Fund of Namibia to support sustainable environmental and natural resources management in Namibia, but has not been brought into effect despite being assented to in 2001. The Act provides that:

“The objects of the Fund are to procure moneys for the maintenance of an endowment fund that will generate income in perpetuity and to allocate such income to activities and projects aimed at promoting-

- (a) the sustainable use and management of environmental and natural resources;
- (b) the maintenance of the natural resource base and ecological processes;
- (c) the maintenance of biological diversity and ecosystems for the benefit of all Namibians; and

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<sup>27</sup> Section 15.

<sup>28</sup> Section 3.

- (d) economic improvements in the use of natural resources for sustainable rural and urban development.”<sup>29</sup>

### **4.3 Legislation that defines the coastal zone**

#### **Overview**

ICM management is based on an integrated approach to planning and managing a defined geographical area that spans the interface between land and sea. From a legal perspective, in order to implement specific legal measures that apply only to the coastal zone or to areas within it, it is first necessary to define coastal areas with legal precision. This requires determining the inland and seaward boundaries of the coastal zone as well as the lateral boundaries with adjacent States.

Article 1(4) of the Constitution provides that:

“the national territory of Namibia shall consist of the whole of the territory recognized by the international community through the organs of the United Nations as Namibia, including the enclave, harbour and port of Walvis Bay, as well as the off-shore islands of Namibia, and the southern boundary shall extend to the middle of the Orange River.”

Article 100 of the Constitution provides that:

“land, water and natural resources below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia shall belong to the State if they are not otherwise lawfully owned.”

Namibia’s rights in relation to the marine environment are determined by the Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990 and by the Walvis Bay and Off-Shore Islands Act 1 of 1994. Procedures for determining the inland boundary of the seashore (i.e. the high-water mark) are provided in the Seashore Ordinance of 1958. Namibia’s southern boundary with South Africa is disputed and is the subject of international negotiations between the two countries.

#### **Territorial Sea and Exclusive Economic Zone of Namibia Act 3 of 1990 (amended by Act 30 of 1991)**

This Act determines Namibia’s territorial sea, internal waters, contiguous zone, Exclusive Economic Zone (EEZ) and continental shelf in conformity with international law. It defines Namibia’s territorial sea as the sea within a distance of 12 nautical miles from baseline (the low water mark). It establishes Namibia’s internal waters as waters landward of its low water line or any other baseline.

The contiguous zone is established as the sea outside the territorial sea but within a distance of 24 nautical miles. In this zone Namibia may exercise any powers deemed necessary to prevent the contravention of any laws, for example on immigration.

In the 200 nautical mile EEZ established under the Act, Namibia may exercise powers to control the use and conservation of living marine resources the continental shelf is regarded as State land for the purposes of exploiting non-living resources, such as minerals, including diamonds, and petroleum.

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<sup>29</sup> Section 4.

### **Seashore Ordinance 37 of 1958**

The Sea-shore Ordinance<sup>30</sup> provides for the determination of the actual position of the high watermark and empowers the former Administrator of Namibia (now the relevant Minister) to make regulations that are not inconsistent with the Ordinance concerning the use, control or doing of any act upon or in relation to the sea-shore.<sup>31</sup> These include regulations:

- “(a) concerning the use of the sea-shore;
- (b) concerning bathing in the sea;
- (c) concerning the removal from the sea-shore or the bed of the sea within the three miles limit of sand, shingle, rock, stone, shells, mussels, red bait or seaweed;
- (d) for the prevention or the regulation of the depositing or the discharging upon the sea-shore or in the sea within the three miles limit of offal, rubbish or anything liable to be a nuisance or danger to the health of the public;
- (e) concerning the control, generally, of the sea-shore and of the sea and the bed of the sea within the three miles limit;
- (f) concerning the doing of any act upon or in relation to the sea-shore or the bed of the sea or the sea within the three miles limit and for prescribing fees therefore;
- (g) prescribing the fees and expenses referred to in subsection (15) of section 2.”

Any regulation may provide a penalty or a fine not exceeding 25 Pounds or a period of imprisonment not exceeding three months.

The Ordinance specifically provides that nothing in it shall affect the rights or powers conferred upon “the railways and harbours administration of the Union” in relation to any law relating to ports and harbours or the rights of any member of the public to use the sea-shore or the sea or the bed of the sea within the three miles limit (except insofar as such rights are inconsistent with legally conferred rights contained in leases, permits etc.).<sup>32</sup> Consequently it appears that the rights of the public to use and enjoy the sea-shore are governed primarily by the common law and that the Ordinance does not affect Namport’s ability to administer ports and harbours.

This Ordinance does not appear to have been implemented nor have regulations been made under it. Furthermore it is not clear which Minister is authorised to use the powers granted by the Ordinance to the Administrator.

### **Walvis Bay and Off-Shore Islands Act 1 of 1994**

This Act gives effect to the agreement between the Government of the Republic of Namibia and the Government of the Republic of South Africa that South Africa would cease, with effect from 1 March 1994, to exercise any control over Walvis Bay and the off-shore islands and provides for the full integration of these areas into the national territory of Namibia in accordance with Article 1(4) of the Namibian Constitution.

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<sup>30</sup> Ordinance 37 of 1958. The application of the Ordinance to Walvis Bay was affected by Proclamation 144 of 1982 (GG 8344).

<sup>31</sup> Section 3 (1)(a), (e) and (f) of the Ordinance.

<sup>32</sup> Section 4.

#### **4.4 Legislation governing Land use and Development Planning**

##### **Overview of development planning legislation**

There is no legislation in Namibia that requires the preparation of a coherent, national and regional land use framework but it is envisaged that this will be introduced when the Draft Urban and Regional Planning Bill is enacted. Currently the establishment of towns and the subdivision of land are regulated by the Townships and Division of Land Ordinance of 1963 while the development and application of town planning schemes is regulated by the Town Planning Ordinance 18 of 1954. Both these Ordinances must be read with the Local Authorities Act 23 of 1992.

##### **Institutional arrangements**

The National Planning Commission is responsible for coordinating and directing national development planning<sup>33</sup> while individual ministries are responsible for their own sector planning. The Ministry of Regional and Local Government and Housing (“MRLGH”) is responsible for spatial land use planning at a regional level. The Ministry of Lands and Resettlement (MLR) is in charge of land use planning for communal land in rural areas. State owned land is controlled by the Ministry of Works, Transport and Communications but the Ministry does not routinely undertake land use planning.<sup>34</sup> The Ministry of Environment and Tourism has on occasions undertaken land use planning in respect of areas designated for nature conservation such as the Skeleton Coast Park.

##### **The Town Planning Ordinance 18 of 1954**

The Town Planning Ordinance makes provision for the preparation and carrying out of town planning schemes. The Ordinance aims to ensure that every town planning scheme shall have for its purpose, the coordinated and harmonious development of the area to which it relates

“in such a way as will most effectively tend to promote health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications.”<sup>35</sup>

The Ordinance applies to every local authority listed in the third schedule to the Ordinance<sup>36</sup> but the Minister is empowered to apply the provisions of the Ordinance to any other local authority.<sup>37</sup>

Section 4 requires every local authority to which the Ordinance applies to prepare and submit a town planning scheme to the Minister in respect of all land situated within the local authority area or with the consent of the Minister, specified land outside the boundaries of such local authority area. In preparing a scheme, the local authority must conduct a survey of the matters set out in the First Schedule to the

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<sup>33</sup> Namibia published its first National Development Plan in 1996.

<sup>34</sup> Coastal Profile of the Erongo Region – August 1999, page 134.

<sup>35</sup> Section 1(1)

<sup>36</sup> Section 3(1).

<sup>37</sup> Section 4(1).

Ordinance<sup>38</sup> and deal in detail with the matters set out in the Second Schedule in the scheme.<sup>39</sup> The matters listed in the Second Schedule include:

- “1. A contour or topographical map of the area;
- 6. Sewerage, drainage and sewage disposal.
- 7. The prohibition, regulation or control of the deposit or disposal of waste materials and refuse.
- 9. The reservation of land for Administration and local authority purposes of a public nature.
- 10. The demarcation or zoning of areas to be used exclusively or mainly for residential, business, industrial, and other specified purposes.
- 15. The preservation of buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty.”

The Ordinance also provides for the continued existence as a body corporate of the Namibia Planning Advisory Board (NAMPAB).<sup>40</sup> The main function of the NAMPAB is to advise the Minister of Local Government and Housing in relation to town planning matters, but the NAMPAB is given wide powers and its functions include:

- “(b) to formulate in general terms a town planning policy for Namibia ...
- (f) to advise and assist local authorities generally in connection with the preparation of town planning schemes; ... and
- (g) to advise the Minister on the subdivision of land situated outside an approved township or outside the townlands of such a township where either the subdivision or the remainder thus created is smaller than 25 hectares.”<sup>41</sup>

Town planning schemes must be approved by the Minister<sup>42</sup> but the authority responsible for administering an approved scheme (usually the local authority) is given extensive powers to carry out and enforce the scheme. These include powers to remove, pull down or alter buildings or structural works which were in existence when the scheme came into operation and which do not conform to the scheme and to reinstate land which was being used for a purpose which now contravenes the provisions of the scheme.<sup>43</sup>

In certain circumstances a person who suffers damage, incurs expenditure or whose property is injuriously affected by the coming into operation of a scheme is entitled to recover compensation from the responsible authority.<sup>44</sup> However the Ordinance provides that no compensation is payable in respect of certain types of restriction imposed by schemes, including provisions that: fix building lines; regulate the character, size, height, harmony, design or external appearance of a building; or that prohibit the use of land for a purpose likely to involve a danger to life or danger or injury to health or serious detriment of the neighbourhood.<sup>45</sup> Unfortunately, the Ordinance does not provide for the exclusion and limitation of compensation where town planning schemes impose restrictions in the interests of the protection of the environment or the promotion of sustainable development. Accordingly compensation may be payable if such restrictions are imposed in town planning schemes unless

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<sup>38</sup> These include: physical characteristics (such as topography and contours, geology, rainfall, temperature, and winds); land utilization, with maps illustrating the usages of the area, (e.g. residential, commerce, industry, public buildings, open spaces, parks, and recreation grounds); and population densities and growth rates.

<sup>39</sup> Section 15.

<sup>40</sup> Previously the South West African Planning Advisory Board.

<sup>41</sup> Subsection 12(2).

<sup>42</sup> Section 21.

<sup>43</sup> Section 28(2).

<sup>44</sup> Section 32.

<sup>45</sup> Section 33(1)(b), (d) and (k) respectively.

they can be justified on other grounds as well. (For example, it may be possible to justify restrictions on how close buildings may be situated to the high water mark on the basis that the restriction is imposed in order to reduce the threat to humans and properties imposed by sea level rise and storms.)

In circumstances where the introduction of the scheme or work undertaken by a responsible authority to implement a scheme, results in an increase in the value of private properties, the responsible authority may recover up to 75% of that increase in value from property owners. These amounts may either be recovered immediately or secured by way of a mortgage against the property and paid off over a period of up to 30 years.<sup>46</sup> It is conceivable that where restrictions are imposed in order to protect the natural environment that the values of properties will be increased and local authorities could use this provision to their advantage, although there are likely to be difficulties in establishing the extent to which any increase in value can be attributable to the actions of the local authority.

The Minister is empowered to order a local authority to prepare a scheme and to bring it into operation and if the local authority fails to do so to the satisfaction of the Minister within the time specified in the order, the Minister may direct the NAMPAB to do so at the expense of the local authority.<sup>47</sup> The Minister may also order a municipality to enforce compliance with a scheme or to do anything which the scheme requires to be done and the Ordinance provides that such an order may be enforceable by means of a *mandamus* (i.e. a court order). Alternatively the Minister may authorise the NAMPAB to take the necessary measures. If the local authority is unwilling to amend its scheme in order to give effect to coastal management objectives (e.g. by establishing building setback lines and other restrictions designed to preserve the coastal landscape) these provisions could conceivably be used to require them to do so.

In addition to the Town Planning Schemes provided for by the Act, municipalities often prepare additional (non-statutory) development and structure plans. For example, Swakopmund has prepared a structure plan with a 15 to 20 year perspective which involves the urban design of the beachfront area. The plan was prepared with public participation and is due to be reviewed every five years.<sup>48</sup> Strategic plans to guide the future development of towns in response to socio-economic factors are also developed by some local authorities (e.g. Walvis Bay and Swakopmund) and used as a means of prioritising municipal investments and informing annual budgeting.<sup>49</sup>

### **Draft Urban and Regional Planning Bill and regulations**

It is envisaged that the current system of land use planning and development controlled in Namibia will be comprehensively reformed by the enactment of the draft Urban and Regional Planning Bill and regulations made under it.<sup>50</sup> The Bill provides for the establishment of national, regional and urban structure plans, and the development of zoning schemes. It also deals with a variety of related land use control issues such as the subdivision and consolidation of land and the

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<sup>46</sup> Section 34.

<sup>47</sup> Section 43.

<sup>48</sup> Coastal Profile of the Erongo Region – August 1999, page 136.

<sup>49</sup> Coastal Profile of the Erongo Region – August 1999, page 136.

<sup>50</sup> We have been provided with a copy of the Bill dated 26 March 2003 and with a copy of regulations to be enacted under the Bill dated 18 February 2003.

establishment and extension of urban areas. The long title of the Bill indicates that it is intended that this will be done in the manner that “will most effectively promote health, safety, order, amenity, convenience and environmental and economic sustainability in the process of development”.

Part I of the Bill provides for the establishment of an Urban and Regional Planning Board and for various committees of the Board. The main function of the Board is to co-ordinate, evaluate and supervise spatial planning, the subdivision and consolidation of land, and the establishment or extension of urban areas.

Part II of the Bill deals with national, regional and urban structure plans in order to “guide the social and economic development and land use patterns of Namibia, its regions and local authority areas, as the case may be.”<sup>51</sup> The Bill requires the Minister of Regional and Local Government and Housing to prepare a national structure plan that deals with the spatial aspects of Namibia’s social and economic development in a manner that the general welfare of Namibia is most effectively promoted.<sup>52</sup> Regional councils are empowered (but not required) to prepare a regional structure plan or sub-regional structure plans to deal with the spatial aspects and potential for social and economic development of the region or part of the region, in a manner that most affectively promotes the general welfare of that area.<sup>53</sup> Similarly, local authorities may prepare urban structure plans and indeed must prepare urban structure plans for the urban areas under their control if they wish to be granted the status of an “authorised local authority” by the Minister.<sup>54</sup> An urban structure plan must deal with the spatial development of the local authority area concerned in order to secure orderly, co-ordinated, efficient and environmentally sound urban development and proper use of land in a manner that most effectively promote the general welfare and order of the area.<sup>55</sup>

It is important to appreciate that a regional urban structure plan is a strategic planning instrument and does not confer or take away any use rights in respect of land<sup>56</sup> but an urban structure plan may contain conditions authorising an authorised local authority to amend an existing zoning scheme that is in force within its area.<sup>57</sup>

The draft Urban and Regional Planning Bill Regulations deal in detail with the procedures for preparing structure plans and zoning schemes and their content. The regulations specify the objectives of structure plans in general as well as elaborating on the specific objectives of the national structure plan, regional structure plans and urban structure plans. The regulations make it clear that such plans must take account of environmental matters. For example, the regulations refer to the need to take account of: the “environmentally sound and proper use of land”; the optimum use of land for a variety of uses, including wild life; and the sustainable development of available natural and human resources.<sup>58</sup>

Part III of the Bill deals with zoning schemes, which unlike structure plans, “must determine use rights and provide for control over use rights and over the use of land in the local authority area”.<sup>59</sup> Zoning schemes must be prepared in areas where

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<sup>51</sup> Section 12(7).

<sup>52</sup> Section 12(1) as read with section 13(1).

<sup>53</sup> Section 12(2) as read with section 16.

<sup>54</sup> Section 12(3) and (4) as read with section 27.

<sup>55</sup> Section 16(1).

<sup>56</sup> Section 25(1).

<sup>57</sup> Section 24(1).

<sup>58</sup> See regulations 4(1), 4(2)(d), and 6(b).

<sup>59</sup> Section 28(5).

urban structure plans exist and may be prepared in relation to other areas. It is important to appreciate that such zoning schemes will constitute the primary mechanism for controlling the use of land in Namibia and the Bill requires every local authority to “comply and enforce compliance with this Act, a zoning scheme and conditions imposed under or in terms of this Act or a rezoning scheme...”<sup>60</sup>

The Bill also makes it an offence to contravene or fail to comply with the zoning scheme or conditions imposed in terms of the Act, or to use any land for a purpose or in a manner other than that for which such land has been approved.<sup>61</sup> It also specifically provides that the Act binds the state and all parastatal enterprises.<sup>62</sup>

Despite the fact that the zoning schemes provided for in the Bill could be used to exercise control over the use of land along the coast, it is important to appreciate that as currently drafted, the Bill is unlikely to affect existing use rights significantly. For example:

- town planning schemes approved in terms of the Town Planning Ordinance, 1954 are deemed to be zoning schemes for the purposes of the Bill,<sup>63</sup> and a provision of a zoning scheme which relates to land use will prevail over any conflicting provision of another law, enactment, title deed or regulation made under a law;<sup>64</sup>
- when a zoning scheme commences existing uses of land that are not unlawful may continue even if that use is not provided for in the zoning scheme but will lapse if the right is not exercised for an uninterrupted period of two years or 15 years after the zoning scheme commences, unless the continuation of the use right is specifically authorised;<sup>65</sup>
- although using land in contravention of a zoning scheme would usually be an offence, it is deemed not to be an offence if the land was being lawfully used for that purpose before the use was prohibited by the introduction of a zoning scheme or by rezoning;<sup>66</sup> and
- municipalities are likely to be reluctant to use zoning schemes to restrict the rights of existing land-owners because the Bill provides that persons whose land is detrimentally affected by the commencement of zoning schemes, or suffer damages as a consequence, may claim compensation from local authorities (subject to certain restrictions such as the requirement that the claim must be made within 12 months of the commencement of the provision giving rise to the claim).<sup>67</sup>

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<sup>60</sup> Section 69(1).

<sup>61</sup> Section 69(2) as read with section 75(2).

<sup>62</sup> This is a welcome inclusion since there is currently some doubt as to whether national government departments are obliged to comply with any zoning scheme requirements imposed by municipalities in respect of state-owned land. This has apparently created uncertainty regarding, for example, whether or not the Walvis Bay municipality may control quad biking on state land within the municipal boundaries.

<sup>63</sup> Section 29(1).

<sup>64</sup> Section 30(1).

<sup>65</sup> Section 33.

<sup>66</sup> Section 77.

<sup>67</sup> Sections 35 and 36. The Bill also provides that in certain circumstances compensation is not payable or will be limited (for example if the use of land for purposes likely to involve danger to life or health is prohibited, the land owner cannot claim compensation). However the Bill does limit the payment of compensation where a restriction is imposed for the purposes of protecting the environment.

Part IV of the Bill establishes the procedures for the subdivision and consolidation of land and Part V deals with the extension of existing urban areas or the establishment of new urban areas. (These matters are also elaborated upon in the draft Urban and Regional Planning Bill Regulations.)

From an integrated coastal management perspective the Bill and the regulations made under it suffer from the limitation that they are designed to regulate the use of land (which is defined in a manner that suggests that it does not include submerged land). This means that it is unlikely that a zoning scheme could be used to control any activities in the sea and, in any event, could not be used by a municipality in an area beyond its area of jurisdiction (e.g. in the sea).

Coastal management objectives and policies could be included in the national structure plan and possibly also in regional structure plans. (The latter depends on whether or not the area of jurisdiction of the regions includes the seashore and coastal waters). However, it is important to appreciate that even if appropriate provisions are included in a regional structure plan, the provisions of such a plan do not directly affect use rights. It will be necessary to amend existing town planning schemes or establish new zoning schemes which give effect to the policies established in the structure plan in order to create an effective legal mechanism for prohibiting inappropriate coastal development.

Furthermore, as discussed above, the Bill provides extensive protection for existing land use rights and even provides that the provisions of a town planning scheme adopted under the Town Planning Ordinance, 1954 will prevail if it is in conflict with the new Bill or regulations unless the new zoning scheme regulations have been amended after following the public participation procedure provided for in the Bill.<sup>68</sup>

### **Subdivision of Agricultural Land Act 70 of 1970**

This Act controls the subdivision and use of agricultural land. It provides that the written consent of the Minister of Agriculture is required before certain actions can be taken in respect of agricultural land. These include: the subdivision of agricultural land; the vesting of undivided shares in agricultural land in any person; the granting of leases over agricultural land for periods of more than 10 years, and the advertising or sale of agricultural land.<sup>69</sup>

The Act defines "agricultural land" to mean any land, except-

- land situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management board, village management council, local board, health board or health committee, and a peri-urban area established under section 9 of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970 of South-West Africa), but excluding any such land declared by the Minister after consultation with the executive committee concerned and by notice in the Gazette to be agricultural land for the purposes of this Act;
- land of which the Namibian State [as the successor to the administration of the territory of South-West Africa] is the owner or which is held in trust by the State or a Minister for any person;

<sup>68</sup> See section 30(2) as read with section 32.

<sup>69</sup> Section 3.

- land referred to in section 4 of the South-West Africa Bantu Affairs Administration Act, 1954 (Act 56 of 1954);
- land included in the "Gebiet" as defined in section 1 of the Rehoboth Investment and Development Corporation Act, 1969 (Act 84 of 1969); and
- land excluded from the provisions of the Act by the Minister after consultation with the executive committee concerned.

#### **4.5 Legislation for the conservation of the environment and heritage**

##### **National Heritage Act 27 of 2004**

The purpose of the NHA is

“ to provide for the protection and conservation of places and objects of heritage significance and the registration of such places and objects; to establish a National Heritage Council; to establish a National Heritage Register; and to provide for incidental matters.”

The NHA establishes a National Heritage Council of between seven and fifteen members including the Permanent Secretary responsible for Culture, as a body corporate.<sup>70</sup> The Council is required to maintain the Namibian Heritage Register of heritage places and heritage objects protected under the Act. Heritage places may include national monuments,<sup>71</sup> protected places<sup>72</sup>; and listed buildings.

Unless excluded by the Minister by publication in the Gazette, the remains of all ships that have been situated on the coast or in the territorial waters or the contiguous zone of Namibia for 35 years or more are defined as “historic shipwrecks”.<sup>73</sup> However if the exact name or location of a historic shipwreck is not known, its name and location need not be recorded in the Register.

Unless authorised by a permit or the Council has decided that a permit is not required, it is an offence for any person to remove, demolish, damage, despoil, develop, alter or excavate, all or any part of a protected place.<sup>74</sup> A person who contravenes this provision is liable to a fine of up to N\$100 000 or to imprisonment for up to 5 years, or to both the fine and imprisonment.

The NHA empowers the Council to declare by notice in the Gazette, and after consultation with the relevant municipality, any area defined in the notice to be a conservation area on the ground of its historic, aesthetic or scientific interest.<sup>75</sup> Certain activities<sup>76</sup> may not be undertaken with a conservation area without the permission of the Council. A person wishing to undertake such an activity must give

<sup>70</sup> Sections 3 to 15.

<sup>71</sup> That is, heritage places declared as national monuments under section 35 of the Act and those which were national monuments immediately before the commencement of the Act by virtue of a declaration made under the National Monuments Act, 28 of 1969;

<sup>72</sup> The Act defines "protected place" to mean a place declared and registered as a heritage place under the Act.

<sup>73</sup> Section 57.

<sup>74</sup> Section 46.

<sup>75</sup> Section 54.

<sup>76</sup> These activities are: a) a development which exceeds 10 000 square metres in extent or the estimated costs of which exceed N\$2 million; (b) the construction of a road, wall, powerline, pipeline, canal or any other similar form of linear development or barrier exceeding 300 metres in length; or (c) the construction of a bridge or similar structure exceeding 50 metres in length.

the Council at least 90 days notice. Within 30 days of receipt of the notification the Council, must inform that person where or not the Council requires him or her to obtain, at his or her expense, an environment impact assessment from a person with appropriate professional qualifications or experience.

The Council must obtain the consent of the Minister responsible for environment before requiring and EIA and the scope of any such EIA is apparently limited:

“to determining-

- (a) the existence of heritage resources in the vicinity of the relevant area where work is to be carried out;
- (b) the impact of the proposed work on those resources; and
- (c) the extent to which the proposed area and height of the proposed development may be obtrusive in relation to the area and height of any protected place or listed building in the vicinity.”<sup>77</sup>

The report on the environment impact assessment (EIA) must be submitted to the Council and the Minister responsible for the environment.

The Council must progressively introduce and maintain a site management plan for each protected place which is a national monument and for other protected places determined by it.<sup>78</sup> A site management plan must be prepared in accordance with the best cultural, environmental, ecological, scientific and education principles that can reasonably be applied, taking into account the location, size and nature of the site and the extent of the resources of the Council. The NHA provides that such a site may be managed: (a) solely by the Council; (b) by the Council in conjunction with staff members of the Ministry of Environment and Tourism designated by the Minister responsible for that Ministry; or (c) by any person, traditional authority, institution or undertaking in accordance with the terms and conditions of a contract entered into with the approval of the Minister.

Member of the Namibian Police Force and customs and excise officers are heritage inspector for the purposes of this Act and the Council may appoint other persons to be heritage inspectors.<sup>79</sup>

If damage is caused to a heritage place or object as a result of a failure to comply with the Act, the Council may give notice to the person responsible to remedy the damage within a specified period and at the person's own expense. If the person fails to do so the Council may itself take the necessary action and recover the cost for the remedial work from that person unless that person proves that he or she was not responsible for the damage either directly or indirectly through default or neglect.<sup>80</sup>

## **Overview of environmental legislation and policies**

*Namibia's Environmental Assessment Policy for Sustainable Development and Environmental Conservation* was approved by Cabinet in 1995. This policy requires that all policies, programmes and projects, as listed in the policy, whether they are initiated by the government or private sector, should be subject to an Environmental Assessment. The Government of Namibia recognises that EIAs are key tools to

<sup>77</sup> Section 54(7).

<sup>78</sup> Section 58.

<sup>79</sup> Section 65.

<sup>80</sup> Section 66.

further the implementation of a sound environmental policy which strives to achieve Integrated Environmental Management (IEM).<sup>81</sup> The Government also recognises that EIAs seek to ensure that the environmental consequences of development projects and policies are considered, understood and incorporated into the planning process. The purpose of the Policy is seen as informing decision makers and promoting accountability, ensuring that alternatives and environmental costs and benefits are considered, promoting the user pays principle, and promoting sustainable development.

The list of policies, programmes and projects requiring an Environmental Assessment<sup>82</sup> include:

- structure plans;
- rezoning applications;
- any government policy, programme or project on the use of natural resources
- the declaration of limited development areas;;
- land acquisition for national parks, nature reserves, marine reserves, protected natural environments or wilderness areas;
- mining and mineral exploration,
- ports and harbours;
- reclamation of land from the sea;
- salt works;
- mariculture;
- tourism and recreation facilities; and
- effluent and desalination plants.

### **The Nature Conservation Ordinance, 1975**

The Ordinance is the most important piece of legislation governing the protection of wildlife in Namibia. It applies to state-owned land, communal land, except in areas governed by other legislation such as the West Coast recreation area (which is regulated in accordance with the Ordinance on Accommodation Establishments and Tourism).

The Ordinance protects various categories of wild animals and plants and provides in Chapter 2 for the establishment of Game Parks and Nature Reserves. These areas may be declared for a variety of reasons including for the protection and preservation of wild animal and plant life, fisheries, to preserve objects of geological, ethnological, archaeological, historical and scientific interests and for the benefit and enjoyment of the inhabitants of Namibia.

The Ordinance has been criticised for not providing adequate parameters for tourism generally, and the regulation of 'marine tourism'<sup>83</sup> is absent. This ordinance is in the process of being replaced by the Parks and Wildlife Management Bill.

### **Parks and Wildlife Management Bill**

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<sup>81</sup> In the context of IEM, the term "environment" is broadly interpreted to include biophysical, social, economic, cultural, historical and political components.

<sup>82</sup> Appendix B.

<sup>83</sup> There has been rapid growth in marine tourism lately, with whale, dolphin and seal watching boat trips increasing in number and intensity. The concern is that there are no rules regarding human behaviour on such trips and there is the possibility of marine wildlife being placed under stress or danger as a result.

Updated Parks and Wildlife legislation, superceding and repealing the pre-independence Nature Conservation Act of 1975, has been in preparation for some time now. The Parks and Wildlife Management Bill is expected to be tabled soon in Parliament. The new legislation will *inter alia*, enable the proclamation of marine reserves and generally improve the conservation of biodiversity in Namibia.

### **Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981**

This Act provides a framework for the prevention and combating of pollution of the sea by oil and for determining liability in respect of loss or damage caused by the discharge of oil from ships, tankers or offshore installations. It implements Namibia's obligations under the Marpol 73/78 Convention and provides a mechanism for regulating oil spills, including those associated with the transfer of oil and fuels between vessels at sea.

In terms of this Act it is an offence to discharge oil from any ship, tanker or offshore installation except in an emergency, or as a consequence of damage or through accidental leakage, provided all necessary and reasonable steps have been taken to prevent this from happening. Any such discharge must be reported to the nearest port authority by the quickest means possible.

The Act confers upon the Minister of Works, Transport and Communication, extensive powers to take steps to prevent pollution of the sea where oil is being, or is likely to be, discharged (including unloading, transferring, disposing, or burning the oil, moving, sinking or redirecting a ship), and to order any person, capable of doing so, to render assistance in cleaning up the oil. It also allows for inspection of ships or tankers and of their records in the event that there is reasonable grounds to suspect that an offence has been committed, and for taking of samples of oil for the purpose of preventing discharge of oil from the vessel. It provides for entry onto any land for purposes of, or connected to, the cleanup of spilled oil.

The Act provides for a State Revenue Fund into which any revenue derived in terms of this Act must be paid, which can be used for conducting any research connected with the pollution of the sea by oil, or for any action required for preventing or removing oil in, or discharged from, a ship or offshore installations.

### **Forest Act 12 of 2001**

The Forest Act regulates the management and use of forests and forest produce; establishes a Forestry Council, and provides for the protection of the environment and the control and management of forest fires.

The Act specifies that:

“The purpose for which forest resources are managed and developed, including the planting of trees where necessary, in Namibia is to conserve soil and water resources, maintain biological diversity and to use forest produce in a way which is compatible with the forest's primary role as the protector and enhancer of the natural environment.”<sup>84</sup>

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<sup>84</sup> Section 10(1).

The Act provides for the classification of forests into various categories and requires that a management plan be prepared for each classified forest.<sup>85</sup> Part IV of the Act deals with the protection of the environment and provides among other matters for the establishment of protected areas and the protection of vegetation.

The Act empowers the Minister responsible for forests to declare protected areas by notice in the Gazette after following a process of negotiation and reaching an agreement on the establishment and management of the protected areas with the owners and occupiers of the land, including traditional authorities. If the Minister is on reasonable grounds satisfied that on any area of land it is necessary to protect the soil, water resources, protected plants and other elements of biological diversity he or she must initiate consultations with the Minister of Lands, Resettlement and Rehabilitation, the Minister of Agriculture, Water and Rural Development, the owner or occupier of the land in question and in the case of communal land, the chief or traditional authority for that communal land or the authority which is authorised by law to grant rights over that communal land.<sup>86</sup> Once agreement has been reached the protected area is declared by notice in the Gazette and it becomes an offence to damage or destroy vegetation in the protected area contrary to provisions of the notice. In certain circumstances (e.g. if the conservation measures to be applied substantially diminish the long-term use of the area) the Minister must pay compensation to the owner of land or the members of a community in respect of any communal land.

The Act also establishes a general prohibition on cutting, destroying or removing vegetation on any land which is not part of a surveyed erven of a local authority area<sup>87</sup> without a licence.<sup>88</sup> The Minister may also, by regulation, declare any plant or species of any plant to be a protected plant and impose conditions under which that protected plant shall be conserved, cultivated, used or destroyed by any person.

### **Soil Conservation Act 76 of 1969**

The Soil Conservation Act commenced on 26 March 1970 in South Africa but was made applicable in Namibia with effect from 1 April 1971.<sup>89</sup> References in the Act to the "Republic" include the territory which is defined to mean "the territory of South-West Africa".<sup>90</sup> This Act does not apply, among other things, to land situated in an urban area<sup>91</sup> and to land in the territory included in the "Gebiet" as defined in section 1 of the Rehoboth Investment and Development Corporation Act.<sup>92</sup> However, this provision was made subject to section 26(2) which states that the "Minister may, by notice in the *Gazette*, declare the Act applicable to land specified in such notice and

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<sup>85</sup> Section 12.

<sup>86</sup> Section 21.

<sup>87</sup> As defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992)

<sup>88</sup> Section 22(1) provides that: Unless otherwise authorised by this Act, or by a licence issued under subsection (3), no person shall on any land which is not part of a surveyed erven of a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992) cut, destroy or remove-

(a) vegetation which is on a sand dune or drifting sand or on a gully unless the cutting, destruction or removal is done for the purpose of stabilising the sand or gully; or (b) any living tree, bush or shrub growing within 100 metres of a river, stream or watercourse."

<sup>89</sup> In terms of the Second Soil Conservation Amendment Act 38 of 1971.

<sup>90</sup> Section 1 of the Soil Conservation Act.

<sup>91</sup> "Urban area" means "the area of a local authority established for a specific town or city, and includes any area subdivided into erven or lots and public open spaces and streets bounded by such erven or lots or spaces, but does not include any commonage in any such area." (Section 1).

<sup>92</sup> Act 84 of 1969. Section 26(1) of the Soil Conservation Act.

situated in an urban area." Furthermore, in any prosecution under the Act, the Act is deemed to be applicable to the land in respect of which that offence is alleged to have been committed, unless the contrary is proved.<sup>93</sup> The onus is placed on the accused to prove that the Act does not apply to that particular land. This may be unconstitutional.

The objects of the Soil Conservation Act are to make provision for combating and preventing soil erosion, as well as conserving, protecting and improving the soil, vegetation and sources and resources of the water supplies.<sup>94</sup>

The Minister may by notice in the *Gazette* or by written notice to the owner or occupier of the land referred to in the notice declare a direction to be applicable to that land.<sup>95</sup> This direction may relate, among other things, to the protection and stabilising of barrier dunes on the coast and of dunes where drift-sand may occur and of the vegetation on it; the prevention of erosion, denudation, disturbance or drainage of the land; any other disturbance of the soil which may create conditions which may cause any form of erosion or pollution of water by silt or drift-sand; and any matter which the Minister considers necessary or expedient for achieving the objects of the Soil Conservation Act.<sup>96</sup>

Directions so issued are binding upon the land owner and occupier. The Minister may, either by notice in the *Gazette* or written notice to the owner or occupier of the land, withdraw, amend or suspend a direction.<sup>97</sup> The Minister may also make regulations relating to the manner in which directions are to be served and acknowledged, and generally for all matters which the Minister considers necessary or expedient to prescribe.<sup>98</sup>

Any officer of any department of State<sup>99</sup> and any person duly authorised by the Minister may enter upon land at all reasonable times for the purpose of declaring directions applicable to that land<sup>100</sup> or ascertaining whether the provisions of the Soil Conservation Act or any direction has been or is being properly carried out or complied with.<sup>101</sup>

Any person who obstructs or hinders any officer of the State or person duly authorised by the Minister in the execution of his or her duties or functions or contravenes or fails to comply with any provision of the Act or a direction is guilty of an offence and liable on conviction to a fine not exceeding R 1000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.<sup>102</sup>

The directions may be issued against land owners or occupiers of land. Although a direction may not be issued against the drivers of off-road vehicles, quad bikes or motorcycles, the power may be used against land owners or occupiers of land who allow these activities to take place on their land. As these directions may be

<sup>93</sup> Section 26A of the Soil Conservation Act.

<sup>94</sup> Section 2 of the Soil Conservation Act.

<sup>95</sup> Section 3(1) of the Soil Conservation Act.

<sup>96</sup> Section 3(1)(g), (k), (m) and (n) of the Soil Conservation Act.

<sup>97</sup> Section 3(2) and (3) of the Soil Conservation Act.

<sup>98</sup> Section 20(e) and (f). In the time available to us we only managed to source GN R2121 in GG No. 4081 of 16 November 1973 which refers to Fire Protection Committees.

<sup>99</sup> State, except for the purposes of section 7 and 8 of the Soil Conservation Act, includes the Administration of the territory (section 1).

<sup>100</sup> Section 17(3)(a)(i) of the Soil Conservation Act

<sup>101</sup> Section 1(3)(iv) of the Soil Conservation Act.

<sup>102</sup> Section 21(1)(a), (b) and (d) of the Soil Conservation Act.

declared for any matter which the Minister considers necessary or expedient for achieving the objects of the Act, the Minister would be able to issue directions allowing certain areas on specified land to be used for off-road vehicular activities as this may ensure the prevention of soil erosion and the conservation of the soil and vegetation. However, in our view, before the Minister may issue such a direction the land owner or occupier must be informed of the Minister's intention to do so and be granted an opportunity to make representations in this regard. This would be in accordance with the rules of natural justice particularly the rule to hear the other side and to grant him, her or it an opportunity to state why the direction should not be issued.

### **The Hazardous Substances Ordinance 14 of 1974**

The Ordinance applies to the manufacture, sale, use, disposal and dumping of hazardous substances, as well as their import and export and is administered by the Minister of Health and Social Welfare. Its primary purpose is to prevent hazardous substances from causing injury, ill-health or the death of human beings. The Ordinance, which is substantially the same as the South African Hazardous Substances Act,<sup>103</sup> allows for the classification of substances into four different groups. However, it appears that only the classification of Group I hazardous substances has taken place in Namibia.<sup>104</sup> Until further classification occurs, the Ordinance is of limited legal effect in that it regulates very few substances which are a hazard to the environment. Despite this, an outdated version of the South African substance classification appears to be in use although the validity of any legal actions taken under the Ordinance is questionable.<sup>105</sup>

The Executive Committee constituted in terms of the Ordinance may make regulations regulating, among other things, the importation, transportation and dumping or other disposal of any grouped hazardous substances or class of grouped hazardous substances. It does not appear that the permitting requirement under the Ordinance is enforced.

The Ordinance provides for the appointment of inspectors who are granted wide-ranging powers, including search and seizure powers, and powers relating to the examination of documentation and inspection.<sup>106</sup> The penalties upon conviction for an offence under the Ordinance are relatively low and may not be sufficient to deter non-compliance. A first offender attracts a fine of N\$500 or imprisonment not exceeding six months and a repeat offender would attract a maximum penalty of N\$2,000 or imprisonment for a period not exceeding two years, or both.<sup>107</sup> The Magistrate's Court has jurisdiction to impose the penalties provided for in the Ordinance. The Ordinance also provides for the detention and analysis of imported substances as well as their confiscation, or the return of the substance to its import harbour or port of shipment or place of origin.<sup>108</sup> In addition, the Ordinance provides

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<sup>103</sup> *Act No. 15 of 1973.*

<sup>104</sup> In terms of GN 99/79 in Government Gazette 398 on 25 June 1979. It includes such substances as arsenic and antimony.

<sup>105</sup> The final draft of the Environmental Management Bill contains a definition of "Hazardous Substance" which specifically refers to the Ordinance and any other legislation that may be enacted to provide for the control of hazardous substances. This reference clearly assumes the validity of the classification of hazardous substances which will need to be addressed so as to avoid the creation of a loophole in the Environmental Management Bill.

<sup>106</sup> Section 9(2).

<sup>107</sup> Section 20(1)(c).

<sup>108</sup> Section 13(2).

that an employer or principal is liable for offences of an employee, manager or agent.<sup>109</sup>

### **The Atmospheric Pollution Prevention Ordinance 11 of 1976**

The principal item of legislation on air pollution in Namibia is the 1976 Atmospheric Pollution Prevention Ordinance<sup>110</sup>. On promulgation, the provisions of the Ordinance were administered by the Director of Health Services of the Administration of South West Africa.<sup>111</sup> The Ordinance is administered by the Ministry of Health and Social Welfare. However, in practice, most of the Ordinance is of no effect in Namibia and those parts of it which are in force are, generally speaking not administered.

The Ordinance is divided into six parts, which address: administrative appointments and their functions; the control of noxious or offensive gases; atmospheric pollution by smoke; dust control; motor vehicle emissions; and general provisions.

Central to the Ordinance is the standard of the “best practical means.” It is defined as follows:

“When used in relation to the prevention of the escape of noxious or offensive gases or the dispersal or suspension of dust in the atmosphere or the emission of fumes by vehicles, includes the provision and maintenance of the necessary appliances to that end, the effective care and operation of such appliances, and the adoption of any other methods, which, having regard to local conditions and circumstances, the prevailing extent of technical knowledge and the cost likely to be involved, may be reasonably practicable and necessary for the protection of any section of the public against the emission of noxious or offensive gases, dust or any such fumes”.<sup>112</sup>

The practical application of the definition is therefore limited by a variety of factors such as technical expertise and cost. In addition, the definition focuses on protection of the public, and not the wider environment.

The control of noxious or offensive gases is governed by Part II of the Ordinance. In order to affect this control, the Executive Committee was empowered to declare any area to be a controlled area.<sup>113</sup> The Ordinance prohibits anyone from carrying on a scheduled process<sup>114</sup> without a registration certificate in a controlled area.<sup>115</sup>

The registration certificate must be issued if it can be demonstrated that the best practical means are being adopted for preventing or reducing the escape into the atmosphere of noxious or offensive gases produced by the scheduled process. However, apart from Walvis Bay, it does not appear that any part of Namibia has ever been declared a controlled area for the purposes of the Act. It therefore follows that subject to this one exception, there are no valid legal controls for one of the most significant sources of air pollution in Namibia.

Air pollution by smoke is regulated by Part III of the Ordinance. The provisions of Part III apply only in areas in which the Executive Committee has declared them to be applicable by way of notice in the Official Gazette<sup>116</sup> and following consultation

<sup>109</sup> Section 17(1).

<sup>110</sup> *Ordinance No. 11 of 1976*.

<sup>111</sup> Section 1(v).

<sup>112</sup> Section 1.

<sup>113</sup> Section 4 of the Ordinance.

<sup>114</sup> These include 60 processes that have a significant impact on atmospheric quality. They are listed in Schedule 2 of the Ordinance.

<sup>115</sup> Section 5.

<sup>116</sup> Section 10 of the Ordinance.

with the relevant urban local authority. However, apart from Walvis Bay, it does not appear that any areas of Namibia have been so declared. Accordingly, with the exception of Walvis Bay, there is also no legal control of atmospheric pollution by smoke in the country.

If the Executive Committee is satisfied that smoke emanating from premises (under the authority of a local authority) is causing a nuisance, the Executive Committee may, if in its opinion the urban local authority has not taken or is not taking reasonable steps with a view to preventing the continuation of the nuisance, direct that the powers conferred upon urban local authorities by Part III of the Ordinance shall be exercised wholly or to the extent determined by it, by the Director. The direction must be promulgated by notice in the Official Gazette.<sup>117</sup>

The Executive Committee is also empowered to deem the provisions of Part III to be applicable in respect of premises not situated within an area in which the provisions have been declared to be applicable.<sup>118</sup> This section empowers the Executive Committee to extend the ambit of protection against smoke pollution to, for example, an industrial process situated in a rural area.

Urban local authorities are also empowered by the Ordinance to make regulations on a range of matters. These include regulations to prohibit emission from any premises of smoke of a darker colour or greater density or content than is specified in such regulations; to prohibit the installation of fuel burning devices which do not comply with regulatory requirements; and relating to the keeping of records and returns to be rendered to the local authority by any person who controls any fuel burning appliance.<sup>119</sup> It does not appear that any such regulations have been made.

Part IV of the Ordinance deals with dust control. Dust control areas may be declared by the Executive Committee, for the purposes of the Ordinance. These declarations must be promulgated by notice in the Official Gazette.<sup>120</sup> It does not appear that any areas of Namibia have been declared to be dust control areas. The Ordinance prescribes the adoption of the best practicable means for preventing dust from being dispersed or causing a nuisance. It also requires any person in a dust control area who carries on any industrial process (which in the opinion of the Director causes or is likely to cause a nuisance) to comply with the provisions of the Ordinance.<sup>121</sup> The expression "best practicable means" includes, for the purposes of dust control, any steps within the meaning of the defined expression which may be determined by the Director and specified in a written notice.

The Ordinance provides further that if the person liable to take any steps in terms of Section 24 is deceased or has (in the case of a corporate entity) ceased to exist, or if the Executive Committee is of the opinion that it would in all the circumstances be impracticable or inequitable to require such person to take such steps or adopt such means, the Executive Committee can take certain steps.<sup>122</sup> The Executive Committee may, after consultation with a local authority, take the required steps or cause steps to be taken by the Director or the local authority willing to do so or by any other person designated by the Executive Committee, and direct that the cost

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<sup>117</sup> Section 10(6)(a).

<sup>118</sup> Section 10(6)(b).

<sup>119</sup> Section 14 of the Ordinance, which prescribes the ambit of matters on which the urban local authority may make Regulations.

<sup>120</sup> Section 23.

<sup>121</sup> Section 24.

<sup>122</sup> Section 26.

involved may be paid from any Dust Control Contribution Account.<sup>123</sup> The Ordinance extends the meaning of "owner" to include holders of mineral rights or prospecting rights and holders of any rights to the use of the surface of the land.

Part V of the Ordinance regulates pollution of the atmosphere by gases emitted by vehicles. The provisions of this part apply only in an area within the jurisdiction of an urban local authority in respect of which they have been declared to be applicable by the Executive Committee. No declaration may be made without consultation with the urban local authority having jurisdiction in that area.<sup>124</sup> It does not appear that any such declaration has been made.

The person authorised by the local authority to carry out the examination of any motor vehicle is empowered, after satisfying him- or herself that noxious or offensive gases are being emitted from such vehicle, to serve a notice on the offender requiring that person to take the necessary steps for preventing the unlawful emission of the noxious or offensive gases and thereafter to make the vehicle available for examination to confirm compliance with the requirements of the Ordinance. The Ordinance provides for the lodging of an objection in writing by any person who feels aggrieved with the procedures prescribed by the Ordinance, for the examination of vehicles.<sup>125</sup>

The Executive Committee is empowered to make regulations prohibiting the use on any public road of any vehicle from which noxious or offensive gases that exceed the standards set in the regulations, are emitted. The Committee can also prescribe steps to prevent this emission and prescribe the method to be applied in order to determine whether any vehicle emits noxious or offensive gases.<sup>126</sup> It does not appear to have done so.

In Part VI ("General Provisions"), the Executive Committee is empowered to make regulations "generally in regard to any matter in respect of which (it) may consider it necessary to make regulations in order that the objectives of this Ordinance be achieved".<sup>127</sup> The provisions of the Ordinance are binding on the State,<sup>128</sup> with the exception of sections 10 to 22, which deal with atmospheric pollution by smoke. This exception is problematic in that smoke pollution caused by entities under public administration, such as hospital incinerators, is not covered by the Ordinance.

The main inadequacy of the Atmospheric Pollution Prevention Ordinance is that it has never been fully implemented because with the exception of Walvis Bay, no control areas, as required by the Ordinance, have been declared, nor have any regulations been passed. Apart from that, its effectiveness would depend on regular inspections and enforcement of its provisions. This would require the employment of qualified personnel. Furthermore, the penalties that can be imposed for infractions under the Ordinance are not likely to be sufficient to act as a deterrent.

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<sup>123</sup> These accounts may be established under Section 27 of the Ordinance.

<sup>124</sup> Section 33 of the Ordinance prescribes the procedure in the event of a contravention of regulations relating to gases emitted by vehicles, as well as penalty for non-compliance.

<sup>125</sup> Section 34(1).

<sup>126</sup> Section 35(1).

<sup>127</sup> Section 40(h).

<sup>128</sup> Section 41.

## Draft Environmental Management and Assessment Bill<sup>129</sup>

A final draft of the Environmental Management Bill was completed in 1998 by the Ministry of the Environment and Tourism's Environmental Legislation Project, following extensive consultation but it has not yet been presented to Parliament.

The purpose of the Bill is to –

“give effect to Article 95(l) and 91(c) of the Namibian Constitution by establishing general principles for the management of the environment and natural resources; to promote the co-ordinated and integrated management of the environment; to give statutory effect to Namibia's Environmental Assessment Policy; to enable the Minister of Environment and Tourism to give effect to Namibia's obligations under international conventions.”

In outline, the Bill contains provisions on the environmental rights and duties of Namibians; seeks to broaden the rules of standing (*locus standi*) in respect of environmental cases; includes provisions on access to environmental information and public participation in environmental decision making; contains a number of binding environmental principles; establishes a Sustainable Development Commission (the 'SDC') and defines its powers and duties; establishes the office of the Environmental Commissioner whose powers and functions are also defined; requires the undertaking of both environmental assessment and a form of strategic environmental assessment in respect of certain listed matters and establishes procedures for these; grants the Minister of Environment both regulatory and regulation making powers; and creates a number of offences the penalties for which are specified.

The Bill envisages that the inter-ministerial SDC will be given a number of tasks relevant to pollution control and waste management, including: 'co-ordinating pollution control and waste management'; 'advising on and liaising with Ministries regarding the setting up of appropriate environmental standards relating to pollution control and waste management'; 'developing and regularly a national strategy and action plan for waste management and pollution control and the control of substances harmful to the environment in consultation with appropriate Ministries and interested and affected parties'; and monitoring that strategy.

The Bill also proposes that various powers be conferred on the Minister of the Environment and Tourism, including a power to make regulations on a number of matters, including registers and databases held by private and public bodies regarding emissions and the storage and disposal of hazardous waste and for the implementation of international environmental agreements to which Namibia is party. In addition, the Minister is to be given powers to direct any person whose actions (or failure to act) are causing harm to the environment to take steps to either cease such activities or to remedy the harm.

From a coastal management perspective once of the most significant aspects of the Bill is that it provides a legal basis for environmental impact assessments. A list of activities which may not be undertaken without first conducting an EIA and receiving authorisation is listed in Schedule 1. These include a number of activities that would, or may be, carried out in coastal areas, including: the erection or construction of any structure below the high-water mark of the sea, or any structure associated with aquaculture and that is not situated within an aquaculture development zone and the declaration of an aquaculture development zone.

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<sup>129</sup> Final draft of the Bill, 2007.

## **Draft Pollution and Waste Management Bill**

The purpose of this Bill is to regulate and prevent discharge of pollutants to the air, water and land in Namibia, and to enable the country to fulfil its international obligations in this regard.

The draft Bill forbids any person from discharging or disposing of pollutants into any water or water course without a water pollution licence (aside from the discharge of domestic waste from a private dwelling or the discharge of pollutants or waste to a sewer or sewage treatment works).

The Bill provides for the issuing of water pollution licences. Such licence must specify: the amount of pollutants that may be discharged over a specified period, the locations of pipes or structures from which discharges may take place, any treatment or pre-treatment to which pollutants must be subject to prior to discharge, the design, construction, operation and maintenance of any structures required to achieve this, requirements for monitoring and reporting of the amount and rate of discharges, and provision for seasonal and other variations that may occur in the amount of pollutants which may be discharged.

The Bill requires that the application for a water pollution licence must be accompanied by details of the activity to which the application relates, including the nature and location of the activity and its actual and potential effects on the environment. Members of the public must be given the opportunity to comment on all licence applications.

A registry of all licences issued will be maintained. Water protection works may be carried out to prevent or reduce the discharge of pollutants or waste into a water body or watercourse, to remove or dispose of the pollutant or waste, and to remedy, mitigate and restore waters or water courses, including dependent flora and fauna, to conditions existing prior to the pollution having entered the system.

The costs of such works can be recovered from the person or persons who caused the pollution to enter the system, unless they have been issued a licence in this regard. The Inspectors may be appointed for the purposes of this Bill, who have wide ranging powers in respect of monitoring compliance with the Bill, including the power to enter and search any premises or vehicle without a warrant or court order and to collect evidence as required.

### **4.6 *Legislation for Water Resources***

#### **Overview**

Water resources are currently regulated by the 1956 Water Act which is administered by the Department of Water Affairs (DWA) within the Ministry of Agriculture, Water and Rural Development (MAWF). This Act will be repealed when the Water Resource Management Act 24 of 2004 commences.

#### **Water Act, 54 of 1956**

The Water Act provides that it is a criminal offence to –

“Pollute fresh water or the sea in a way that makes the water less fit for any purpose for which it is or could be used by people, including use for the propagation of fish or other aquatic life, or use for recreational or other legitimate purpose.”<sup>130</sup>

The Act requires that water used for industrial purposes be purified before it is returned to a public stream or the sea, so as to conform with requirements established by the Minister of Agriculture, Water and Rural Development, but can be exempted from doing so, subject to certain conditions. The Minister in this instance may issue a permit to allow the discharge of waste water, effluent or waste in a unpurified or semi-purified state into a public stream, subject to such conditions that it does not cause pollution of “public or other water, including sea water” or provided that the discharge point is sufficiently close to the sea that no person will be prejudicially, and no aquatic or marine life detrimentally, affected by such discharge.

### **Water Resources Management Act 24 of 2004**

The Water Resources Management Act (WRMA) was assented to on 8 December 2004 but as at the date of this report, the date of commencement had not yet been proclaimed. When it commences the WRMA will repeal the Water Act 54 of 1956 (as amended).

#### *Scope and purpose*

The WRMA provides that the State owns both surface and underground water resources<sup>131</sup> in Namibia (including the sea) and must ensure that water resources are managed and used to the benefit of all people in furtherance of the objective referred to in section 2 and compatible with the fundamental principles referred to in section 3.<sup>132</sup> The WRMA provides that the Minister responsible for health must ensure that the water supply is healthy and safe for all Namibians<sup>133</sup> and the Minister responsible for water must ensure that all Namibians are provided with an affordable and a reliable water supply that is adequate for basic human needs.<sup>134</sup>

The purpose of the WRMA is described in the long title as read with the objectives in section 2. The long title states that the WRMA is:

“To provide for the management, development, protection, conservation, and use of water resources; to establish the Water Advisory Council, the Water Regulatory Board and the Water Tribunal; and to provide for incidental matters.”

Section 2 states that:

“The objective of this Act is to ensure that Namibia's water resources are managed, developed, protected, conserved and used in ways which are consistent with or conducive to the fundamental principles set out in section 3.”<sup>135</sup>

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<sup>130</sup> Section 22.

<sup>131</sup> Section 1 states that: “water resource,” includes a watercourse, an aquifer and the sea and meteoric water;”

<sup>132</sup> Section 4.

<sup>133</sup> Section 25(1).

<sup>134</sup> Section 26(1).

<sup>135</sup> Section 3 states that: “This Act must be interpreted, and be reasonably and fairly applied, in a manner that is consistent with and promotes the following fundamental principles-  
(a) equitable access to water resources by every citizen, in support of a healthy and productive life;

### *Institutional Arrangements*

The Minister responsible for water is required to establish an executive agency known as the Water Resources Management Agency<sup>136</sup> with wide-ranging powers to manage water.<sup>137</sup> The Minister is also empowered to establish irrigation areas and irrigation boards to manage them,<sup>138</sup> as well as basin management committees<sup>139</sup> to undertake the protection, use, development, conservation, management and control of water resources within a water management area defined by the Minister.<sup>140</sup>

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- (b) access by every citizen, within a reasonable distance from their place of abode, to a quantity of water sufficient to maintain life, health and productive activities;
  - (c) essentiality of water in life, and safe drinking water a basic human right;
  - (d) harmonisation of human needs with environmental ecosystems and the species that depend upon them, while recognising that those ecosystems must be protected to the maximum extent;
  - (e) integrated planning and management of surface and underground water resources, in ways which incorporate the planning process, economic, environmental and social dimensions;
  - (f) openness and transparency, by making available water resources information accessible to the public;
  - (g) management of water resources so as to promote sustainable development;
  - (h) recognition of the economic value of water resources and of the need for their development to be cost-effective;
  - (i) furthering a process of human resources development and building of competency in water resources decision-making;
  - (j) facilitating and encouraging awareness programmes and participation of interested persons in decision-making;
  - (k) consistency of water resources decisions with firm and specific mandates from Government that separate policy making from operational and regulatory roles;
  - (l) prevention of water pollution, and the polluter's duty of care and liability to make good;
  - (m) meeting Namibia's international obligations and promoting respect for Namibia's rights with regard to internationally shared water resources and, in particular, to the abstraction of water for beneficial use and the discharge of polluting effluents; and
  - (n) regional diversity and decentralisation to the lowest possible level of government consistent with available capacity at such level."

<sup>136</sup> Section 7.

<sup>137</sup> Section 7(2) provides that: "(2) The functions of the Water Resources Management Agency, include-

- (a) the integrated management of water resources in Namibia;
- (b) technical analysis of applications for licences to abstract and use water and permits to discharge effluent or to construct an effluent treatment facility or disposal site, including applications for renewal of such licences and permits;
- (c) the collection, analysis and sharing of data concerning the conservation and management of water resources in Namibia;
- (d) the monitoring and review of water usage by all water users and effluent discharges to assess compliance with this Act;
- (e) technical analysis of the need for water management areas, including recommendations regarding the establishment of such areas, their geographical boundaries and any limitations to be imposed on such areas;
- (f) guiding, assisting and coordinating the basin management committees; and
- (g) the collection and analysis of information necessary for the development of the Master Plan and the information concerning internationally shared water resources."

<sup>138</sup> Section 8.

<sup>139</sup> Section 12.

<sup>140</sup> Basin management committees have a wide range of potential functions. Section 13 provides that:

"The functions of a basin management committee are-

- (a) to protect, develop, conserve, manage and control water resources within its water management area; (b) to promote community participation in the protection, use, development, conservation, management and control of water resources in its water management area through education and other appropriate activities; (c) to prepare a water resources plan for the basin which plan must be submitted to the Minister for consideration when developing the Master Plan in terms of section 23; (d) to make recommendations regarding the issuance or cancellation of licences and permits under this Act; (e) to promote community self-reliance, including the recovery of costs for the operation and maintenance of waterworks; (f) to facilitate the establishment of an operational system and maintenance system of waterworks and the accessing of technical support for water management institutions

Basin management committees must be broadly representative of all interested persons and must include representatives of each regional council within the basin.<sup>141</sup>

In addition a basin management committee must co-ordinate with the regional planning component in the relevant regional council to ensure that water resources within the basin and the region are effectively managed in accordance with the WRNA.

The WRMA also establishes a Water Advisory Council (which includes representatives of regional councils) to advise the Minister on the development or review of water policy, water resources management, water abstraction and use and any other matters relating to water referred to it by the Minister or upon its own initiative; or raised by any basin management committee.<sup>142</sup>

The Minister is given wide powers to delegate and assign functions and to issue written directives to water management institutions regarding the exercise of their powers and performance of their functions.<sup>143</sup> The Minister is specifically empowered to delegate a power or assign a function conferred or imposed upon the Minister by or under the Act to a regional council.<sup>144</sup>

### *Planning*

The WRMA requires the Minister, in cooperation with regional councils and after consultation with any interested persons, to develop a National Water Master Plan based on water resources plans prepared by basin management committees. A draft Master Plan must be approved by the Cabinet before being tabled in the National Assembly, and must be reviewed at least once every five years.

### *Protection of water resource*

The Minister, with the concurrence of the relevant regional councils may reserve part or all of the flow of a watercourse, including any groundwater resource and the water stored in a public reservoir to meet the domestic use of the water users concerned; and

to reasonably protect aquatic and wetland ecosystems, including their biological diversity, and to maintain essential ecosystem functions.<sup>145</sup> Any such reserve must be taken into account in the licensing of water abstractions and the permitting of effluent discharges.

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within its water management area; (g) to monitor and report on the effectiveness of policies and action in achieving sustainable management of water resources in its water management area; (h) to collect, manage and share such data as are necessary to properly manage the basin in coordination with the Water Resources Management Agency; (i) to develop a water research agenda, together with the Water Resources Management Agency, appropriate to the needs of water management institutions and water users within its water management area; (j) to help resolve conflicts relating to water resources in its water management area; and (k) to perform any such additional functions as the Minister may direct under section 9 or assign under section 10.

<sup>141</sup> Section 12(3).

<sup>142</sup> Section 11.

<sup>143</sup> Section 9.

<sup>144</sup> Section 10(1)(e).

<sup>145</sup> Section 27.

### *Water use*

The WRMA provides that a licence under the Act is required to abstract or use water (including brackish or marine water) for any purpose, unless the Act provides otherwise.<sup>146</sup> An application for a licence to abstract and use water must be accompanied by an environmental impact analysis of the proposed abstraction of water upon the environment and existing water users and water resources.<sup>147</sup>

### *Internationally shared water resources*

The WRMA also states<sup>148</sup> that:

“In its dealings with neighbouring states and other riparian states in relation to internationally shared water resources, the Republic of Namibia-

- (a) exercises its rights, and observes and complies with all its duties as conferred and imposed upon it by any international treaty, convention or agreement to which it is a signatory; and
- (b) must uphold such principles and rules of customary international law as are accepted and observed by all nations and as are reflected in-
  - (i) the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses; and
  - (ii) the Southern African Development Community Protocol on Shared Water Courses.”

It is notable that although these international instruments deal with freshwater, the term “internationally shared water resource” is defined to mean “a water resource that is shared by Namibia and its neighbouring states and other riparian states;”. However this would include the sea by virtue of the fact that, as discussed above, “water resource” is defined as including the sea.

The Minister, is also empowered to declare, by notice in the Gazette, an area as water management area –

“for the purpose of protecting any water resource, riverine habitat, watershed, wetland, environment or ecosystem at risk of depletion, contamination, extinction or disturbance from any source, including aquatic and terrestrial weeds, ..”<sup>149</sup>

Once a water management area has been declared no activity that impairs or conflicts with the purposes for which a water management area is declared, may be undertaken within the area. The Minister is also given very wide powers to prescribe limitations to be observed within a water management area.<sup>150</sup>

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<sup>146</sup> Section 32.

<sup>147</sup> Section 33(3).

<sup>148</sup> Section 53.

<sup>149</sup> Section 72.

<sup>150</sup> Section 73(2) states that these limitations: “must include, among others, a prohibition or limitation on-

- (a) on the abstraction of water;
- (b) on the erection of any structures;
- (c) on the application or storage of any chemicals, including pesticides or fertilisers;
- (d) on the alteration of existing land contours, including any grading or construction of roads or cultivation of crops;
- (e) on the clearing or harvesting of vegetation, including the felling of trees, the removal of riparian growth or the draining of wetlands, or use of wetland resources;
- (f) on the discharge of effluent;
- (g) on mining, dredging or the reclamation of land; and
- (h) necessary for the protection of a water resource.”

#### 4.7 Legislation on fishing and aquaculture

Marine fisheries are regulated by the Marine Resources Act, 27 of 2000 and inland fisheries by the Inland Fisheries Resources Act 1 of 2003, while aquaculture is regulated by the Aquaculture Act of 2002, all of which are administered by the Ministry of Fisheries.

##### The Marine Resources Act, 27 of 2000

Marine fisheries in Namibia is governed by the Marine Resources Act<sup>151</sup> (MRA) and the regulations made under it ("MRA Regulations"). The MRA provides for the control, management, protection, and utilisation marine resources within the Namibian territory and exclusive economic zone. It provides for the appointment of fishery inspectors and observers, for the establishment of a Fishery Observer Agency, a Marine Resources Advisory Council, and a Marine Resources Fund.

Part III of the MRA authorises the Minister to designate, appoint, and determine powers, duties and functions of fisheries inspectors, honorary fisheries inspectors and fisheries observers. Provisions are also made for the responsibilities of other people *vis-a-vis* the appointed officials.<sup>152</sup>

Part IV deals with the establishment of a fisheries observer agency. The establishment of the Marine Resources Advisory Counsel, its Constitution, and its administrative matters is dealt with in Part V of the MRA.<sup>153</sup>

The issues of direct relevance to MCS are dealt with in Part VI of the MRA. It begins by prescribing the controls upon harvesting marine resources in Namibia.

The MRA prohibits:

- (a) the harvesting, in Namibia or in Namibian waters, of any marine resource for commercial purposes, except under a right, an exploratory right or a fisheries agreement;<sup>154</sup>
- (b) the use, in Namibian waters, of any vessel to harvest any marine resource for commercial purposes, except in terms of a licence;<sup>155</sup>
- (c) the harvesting, by a Namibian flag vessel, of any marine resource in any waters outside of Namibian waters where it does not have a licence; and
- (d) the harvesting, by a Namibian flag vessel, of any marine resources to which any international agreement applies, where this is not authorised by a right granted under section 33, an exploratory right granted under section 34, or a quota allocated under section 39, as the case may be.

The President has discretion to enter into a fisheries agreement with a member country of the SADC providing for such country to harvest marine resources in Namibian waters.<sup>156</sup> Such agreements have to be published in the *Government Gazette* and the Minister has discretion, for the purposes of any fisheries agreement entered into, to make such regulations as he or she may consider necessary or

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<sup>151</sup> Act 27 of 2000.

<sup>152</sup> Section 4, 5,6 and 7.

<sup>153</sup> Section 24 – 31.

<sup>154</sup> Section 32.

<sup>155</sup> Licence issued under section 40.

<sup>156</sup> Section 35.

expedient for the carrying out and giving effect to the provisions of any such agreement or any amendment of such agreement.<sup>157</sup>

A holder of a right in terms of the MRA, who wishes to use a fishing vessel for commercial purposes in Namibian waters or a person who wishes to use a Namibian flag vessel for harvesting any marine resources by Namibian waters is obliged to apply for a licence.<sup>158</sup> The MRA Regulations set out in Part II forms on which different applications have to be made and the procedures to be followed.<sup>159</sup> The Minister has a wide discretion to grant or refuse an application for such licence.<sup>160</sup> Also important to note is that a licence is only valid if the licensee holds a right or an exploratory right for that resource, and if a quota has been allocated, and he holds a quota for that resource.

The financial provisions of the MRA are set out in Part VII. It provides for fees and levies, the marine resources fund and the fisheries observer fund.<sup>161</sup> In respect of the two funds, it specifies moneys which should go into each fund and how these funds should be administered.

Part VIII of the MRA deals mainly with management and control measures. Firstly, it contains a prohibition of certain methods of fishing (e.g. using drift nets, explosives, poison or noxious substances).<sup>162</sup> Secondly, the Minister has discretion to prescribe measures for the conservation of marine resources, for the control of harvesting of such resources and for the protection of the marine environment.<sup>163</sup> The Minister has prescribed these measures in Part IV of the MRA Regulations by: stipulating the gear used for harvesting for commercial purposes; providing for the clearance of fishing vessels; restricting certain methods of fishing; restricting fishing of certain species of fish and importation of live marine resources; and restricting entrance or remaining in a marine reserve.<sup>164</sup>

Furthermore, in Part V of the MRA Regulations there is restriction on dumping of fishing gear and other types of wastes in the marine environment<sup>165</sup> while Part VII provides for the landing of by-catches and the fees payable thereof.<sup>166</sup>

The MRA obliges every person holding a right, an exploratory right, a quota, a licence or other authorisation under the Act, in relation to the activity permitted by the right, exploratory right, quota, licence or other authorisation, to keep such records and furnish the permanent secretary with such information as may be prescribed.<sup>167</sup> The provisions of the MRA relating to reporting are further clarified by the regulations.

The Minister is empowered to declare any area within Namibian waters, with the consent of the Minister under whose authority an area of state falls, and upon appropriate consultation with the competent authorities, to be a marine reserve for the protection or regeneration of marine resources.<sup>168</sup> Section 52 imposes penalties

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<sup>157</sup> Section 36 and section 37.

<sup>158</sup> Section 40.

<sup>159</sup> Regulations 2 and 3.

<sup>160</sup> Section 40.

<sup>161</sup> Section 44, 45 and 46.

<sup>162</sup> Section 47.

<sup>163</sup> Section 47(3).

<sup>164</sup> Regulations 5 – 22.

<sup>165</sup> Regulations 23 and 24.

<sup>166</sup> Regulation 31.

<sup>167</sup> Section 48.

<sup>168</sup> Section 51.

for the dredging or extraction of sand and gravel in Marine Reserves, discharges or deposits waste or any other polluting matter and discharges in Namibian waters of anything which may be injurious to marine resources or which may disturb the ecological balance.

Part IX of the MRA deals with offences and penalties. Any owner, lessee, charterer or master of a foreign flag vessel who uses such vessel in Namibian waters for harvesting marine resources, or allows it to be used without the authorisation of a valid licence, is guilty of an offence and is liable to a fine not exceeding 2 million Namibian dollars.<sup>169</sup> The same amount of fine and the offence follows where a person being the owner, the lessee, the charterer or the master of a Namibian flag vessel, uses such vessel to harvest marine resources, or allows it to be so used, without the authorisation of a valid licence.<sup>170</sup>

The MRA provides that, upon conviction, the Court shall summarily enquire into and determine the monetary value of any advantage or potential advantage which the convicted person has or could have gained in consequence of that offence; and in addition to any other penalty that may be imposed in respect of that offence, impose a fine equal to three times the value determined, which fine may be recovered as a civil judgement.<sup>171</sup>

### **Inland Fisheries Resources Act, 1 of 2003**

This Act regulates the conservation and protection of (freshwater) aquatic ecosystems, the sustainable development of inland fisheries resources and the control and regulation of inland fishing.

The Act requires the Minister to formulate a general policy with regard to the conservation and utilisation of Namibian inland fisheries resources with a view to managing, protecting and conserving inland aquatic ecosystems; promoting the sustainable utilisation and protection of inland fisheries resources; and promoting co-operation with other countries with regard to shared resources.<sup>172</sup> The Act establishes an Inland Fisheries Council to advise the Minister.<sup>173</sup>

A licence is required to fish in any inland waters<sup>174</sup> using fishing gear regulated<sup>175</sup> by the Act. The Act prohibits certain fishing methods<sup>176</sup> and provides that a fishing licence does not authorise the holder to fish in an area that has been declared as a game park or a nature reserve under section 14(1) of the Nature Conservation Ordinance, 1975.<sup>177</sup>

The Act also prohibits, without the written permission of the Minister, the introduction of any species of fish into any inland water system or the transfer of species from one sort of water system to another, the import into Namibia of any live fish, and the

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<sup>169</sup> Section 52(1).

<sup>170</sup> Section 52(2).

<sup>171</sup> Section 53.

<sup>172</sup> Section 2.

<sup>173</sup> Section 3.

<sup>174</sup> Section 1 provides that: "inland waters' means a river, stream, water course, lake, swamp, pond, dam, reservoir or other fresh water body, excluding a fresh water body situated on private property, other than property owned or controlled via any board, institution or other authority established by any law;".

<sup>175</sup> Section provides that: "regulated fishing gear' means- (a) a rod, reel, line and hook; or a net".

<sup>176</sup> Section 17.

<sup>177</sup> Section 18.

export from Namibia of any live fish that have been declared to be endangered species.<sup>178</sup> Any authority empowered to authorise the erection or installation of any structure in the river or stream, may only exercise that power after consultation with the Minister.<sup>179</sup>

The Minister is also empowered to declare any area of inland water as a fisheries reserve for a variety of purposes including preservation of the aquatic environment and to protect, preserve or rehabilitate the natural environment of fish, related ecosystems including wetlands, lakes, lagoons, nursery and sporting areas which are essential to maintaining the integrity of an ecosystem, species or assemblages of species.<sup>180</sup> Once such a fisheries reserve has been declared, no person may without the written permission of the Minister fish in that area or dredge or extract any material or discharge or deposit any waste or other polluting manner in the area, or in any way destroy, disturb or interfere with the natural environment of fish and related ecosystems.

The Act also authorises the Permanent Secretary to delegate powers conferred upon the Permanent Secretary under the Act, and the delegation may be made to a person employed by a regional council or local authority council.<sup>181</sup>

### **Aquaculture Act, 18 of 2002**

The Aquaculture Act was enacted to regulate and control aquaculture activities and to provide for the sustainable development of aquaculture resources. The Act, together with the Regulation on Licensing (December 2003), provides the legal basis for implementing the 2001 policy *Towards Responsible Development of Aquaculture* and is Namibia's *Aquaculture Strategic Action Plan*, of May, 2004. The Act is administered by the Ministry of Fisheries and Marine Resources (MFMR)<sup>182</sup>.

The Act requires the Minister responsible for fisheries, in consultation with the Aquaculture Advisory Council<sup>183</sup> to formulate a 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 eco-systems;
- (c) the promotion and operation of aquaculture projects.”<sup>184</sup>

The Act prohibits any person from engaging in aquaculture without a licence issued by the Minister<sup>185</sup> and provides that the Minister, with the concurrence of the Minister responsible for environment, must decide whether or not an applicant for an aquaculture licence must also submit an environmental assessment for the proposed aquaculture project.<sup>186</sup>

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<sup>178</sup> Section 19.

<sup>179</sup> Section 20.

<sup>180</sup> Section 22.

<sup>181</sup> Section 30(3).

<sup>182</sup>The establishment of an ‘inter-Ministerial Committee for aquaculture’ functions as a ‘one-stop shop’, in that the actual applicant need only work through one Ministry, namely MFMR, from where the aquaculture licences are also issued.

<sup>183</sup> Established by section 3.

<sup>184</sup> Section 2(1).

<sup>185</sup> Section 11 is read with section 13.

<sup>186</sup> Section 12(2).

The Minister is empowered to take over and operate an aquaculture facility if it is operating without a licence, is abandoned or it is necessary for public safety<sup>187</sup> and may by written notice direct any person who formally carried on aquaculture to remove aquaculture facilities and to restore the site to a specified standard.<sup>188</sup>

Licencees and other persons engaged in aquaculture must immediately report the presence of any disease or harmful organism in an aquaculture facility<sup>189</sup> and must take all possible measures to prevent the spread of the disease or other harmful organisms. The Minister is also required to ensure that a water quality monitor system is established to provide timely information to licencees of any pollution or natural phenomenon that may have a harmful effect on the aquatic environment or aquaculture and must also immediately test water in which aquaculture is conducted if it is affected by any pollution or natural phenomenon, particularly to ascertain whether or not aquaculture products farmed in that area are fit for human consumption.<sup>190</sup>

The Act specifically prohibits the introduction to Namibia or any Namibian waters<sup>191</sup> of any species of aquatic organism or any genetically modified aquatic organism, or the transfer of any species of aquatic organism for one aquaculture facility or location in Namibia to another, without the written permission of the Minister.<sup>192</sup> The Minister may not grant such permission unless the impact of any introduction or transfer has been assessed, where required, in accordance with any legislation or policy dealing with environmental assessments.<sup>193</sup> The Act also prohibits the import or export of aquatic organisms without the written permission of the Minister.<sup>194</sup>

From a coastal zone management perspective, the most important provisions of the Aquaculture Act concern the establishment of aquaculture development zones.<sup>195</sup> The Minister may by notice in the *Gazette* declare any area of Namibia or Namibian waters (including sub-aquatic lands) to be an aquaculture development zone. Before making such a declaration, the Minister must consult with the advisory council and with any ministry having jurisdiction in the area, and must undertake an environmental impact assessment and establish the development objectives of the zone.<sup>196</sup> In order to protect the aquaculture activities undertaken in the zone, the Minister may also, by notice in the *Gazette*, specify restrictions and conditions on the conduct of activities and uses not only in the aquaculture development zone, but also in the waters draining into the zone and on any land or water area adjacent to an aquaculture development zone.<sup>197</sup> No person may conduct any business or

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<sup>187</sup> Section 21.

<sup>188</sup> Section 22.

<sup>189</sup> Section 25.

<sup>190</sup> Section 26.

<sup>191</sup> Section 1 provides that: "'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 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 54 of 1956);"

<sup>192</sup> Section 27(1).

<sup>193</sup> Section 27(3).

<sup>194</sup> Section 28.

<sup>195</sup> Section 1 provides that: "'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;"

<sup>196</sup> Section 33.

<sup>197</sup> Section 33(3).

undertaking other than aquaculture in such a zone without the written permission of the Minister.<sup>198</sup>

Despite the fact that this Act is intended to promote the development of aquaculture, because aquaculture is highly sensitive to environmental quality (particularly the maintenance of good water quality and the absence of pathogens) the wide-ranging powers given to the Minister could be used to achieve a range of coastal management objectives.

#### **4.8 Legislation regulating mining, oil and gas**

##### **Petroleum (Exploration and Production) Act, 2 of 1991**

This Act regulates the reconnaissance, exploration, production and disposal of petroleum and related matters.

This Act stipulates that all rights in relation to exploration for, production and disposal of petroleum, vests in the State. The Act states in Article 12 that the Minister, in considering a licence application, may require the applicant to carry out environmental impact studies. It provides for the issuing of licences for reconnaissance, exploration and production of petroleum, and in Article 71 for the control of environmental pollution caused by such activities.

The Act requires the undertaking of two environmental impact assessment studies prior to starting any activity. The first of these EIAs is required to be carried out in two parts - a baseline study to be undertaken prior to a seismic survey, followed by an environmental impact assessment of the effects of drilling on the environment. The second of the EIAs constitutes an assessment of the effects of production on the environment and the EIA report must contain environmental guidelines to be followed in order to minimize environmental damage. The guidelines must deal with issues such as marine resource protection, fuel storage and handling, liquid and solid waste disposal, selection of drilling sites, blowout prevention, combating oil spills, flaring, well abandonment, rig dismantling, site completion and reclamation and noise control.

Applicants for production licences must comply with more stringent requirements including stipulating the manner in which they intend preventing pollution, dealing with waste, safeguarding natural resources, and reclaiming and rehabilitating land disturbed by production operations, as well as providing a statement setting out any significant effect production operations are likely to have on the environment and the manner in which they intend controlling or eliminating this effect.

If a licence holder relinquishes their right, or if such a right lapses or is cancelled, the holder is required to remove all goods brought into the license area, to plug or close off any wells drilled, and to perform any actions specified by the Minister required for the protection of natural resources in the area.

In accordance with the Act, a Petroleum Agreement is entered into between the Government of Namibia (Ministry of Mines and Energy) and the licence holder. The standard Petroleum Agreement defines environmental damage as -

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<sup>198</sup> Section 35.

“any damage or injury to, or destruction of, soil or water or any plant or animal life, whether in the sea or in any other water or on, in or under land.”<sup>199</sup>

‘Site restoration’ is defined in the agreement as meaning

‘all activities required to return a site to its natural state or to render a site compatible with its intended after-use after cessation of petroleum operations in relation thereto, and shall include removal of equipment, offshore and onshore structures and debris, establishment of compatible contours and drainage, replacement of top soil, re-vegetation, slope stabilization or infilling of excavations’.

Clause 11 of the standard Petroleum Agreement deals with environmental protection. The contracting company is required to employ the best available techniques in accordance with good oilfield practices in order to prevent environmental damage to its area of operation as well as neighbouring land. It must also implement the proposals contained in its Development Plan (submitted in terms of section 46(2) of the Petroleum Act) for the prevention of pollution and the treatment of wastes.

Under clause 11(3) of the agreement, the contracting company also agrees to remedy damage to the environment by non-compliance with the agreement or with any law. This clause thus affords the Government a contractual remedy, in addition to existing delictual and criminal law remedies, against an offending party.

The provisions of clause 11 regulate a variety of other matters, such as remedial measures for pollution, the carrying out of environmental impact assessments in order to assess the effects of proposed operations in the license area, and the preparation of oil spill and fire contingency plans. The assessments referred to above must contain proposed environmental guidelines to be followed in order to minimise environmental damage, including guidelines relating to liquid and solid waste disposal, combating oil spills and reclamation for abandonment.

The Minister of Mines and Energy is entitled, after receipt of an application for a licence issued in terms of the Act, to require the applicant to furnish the Minister with any information which the Minister (in his or her sole discretion) may require for purposes of considering the application. The Minister may also require the carrying out of environmental impact studies by an applicant.<sup>200</sup>

No rights conferred by the Act may be exercised within a horizontal distance of 100 metres of any spring, well, borehole, reservoir, dam, dipping-tank, waterworks, perennial stream, artificially constructed watercourse, kraal, building or any structure except with permission of the landowner on whose property the right is to be exercised.<sup>201</sup> Section 16(4) provides a penalty of a fine of not more than N\$20,000 or imprisonment for not longer than five years (or both) for an infringement of the provisions of this section.

The Minister is entitled to give written instructions to a licence holder concerning, among other things, the prevention of the spilling of water or drilling fluid or any other substance extracted from a well, or used to drill that well.<sup>202</sup> Failure to comply attracts substantial penalties.

<sup>199</sup> Clause 1.1(q).

<sup>200</sup> Section 12(2)(b). This requirement will be supplemented by the requirements of the Environmental Management Bill.

<sup>201</sup> Section 16(b)(ii).

<sup>202</sup> Section 21(1)(d).

Section 71 deals with the liability of licence holders for pollution of the environment or other losses or damage caused. The licence holder must report the pollution and remedy the damage. If the Minister has to remedy the damage, then he or she can recover the costs of doing so from the licence holder. Penalties for offences under the Act may include forfeiture of any petroleum recovered to the State.<sup>203</sup>

The Petroleum Laws Amendment Act, 1998 introduced decommissioning plans and requires the establishment of a trust fund for such decommissioning on cessation of production operations.

### **Minerals (Prospecting and Mining) Act, 33 of 1992**

This Act deals with the reconnaissance, prospecting and mining for, minerals in Namibia and related matters. Mineral rights are vested in the state, and companies or individuals are required to apply to the Ministry of Mines and Energy (MME) for licences to explore and mine mineral deposits.

In the event that a mineral licence lapses, is cancelled or the holder of the licence abandons a license area (including reconnaissance, prospecting, retention or mining areas), they are required to take all necessary steps to remedy, to the satisfaction of the Minister, any damage caused to the environment by their activities.

The Act also requires that the holder of a mineral licence to report any incidence in which any mineral is spilled in the sea or on land or if such land becomes polluted or if any damage is caused to any plant or animal, to the Minister of the MME and to take whatever steps are considered necessary in terms of good practice to remedy the situation. If the licence holder fails to comply with this in good time, the Minister has the right to take whatever steps are necessary to remedy the situation, at the expense of the licence holder.

The definition of “mineral” includes any liquid, solid or gaseous substance but excludes water not taken from land or sea for the extraction of minerals, petroleum (as defined in the Petroleum Act), soil, sand, gravel or stone in specified circumstances. Consequently the Act does not regulate the mining of sand and gravel in coastal areas.

The Act defines ‘good mining practices’ as:

‘any practices which are generally accepted by persons involved in mining operations, prospecting operations or reconnaissance operations, as the case may be, in other countries of the world as good, safe and necessary in carrying out any such operations in relation to a mineral or a group of minerals’.

This definition comprises the only statutory environmental control which is imposed on licence holders. The standard is too widely framed to impose sufficiently stringent constraints to ensure that environmental protection is a priority for mineral licence holders.

The Act provides for the establishment of a Minerals Board of Namibia. The Board may co-opt a person designated by each of the following Namibian Ministers, whose ministries have a direct or substantial interest in Namibia’s environmental legislation and its application, to serve on it: the Minister of Finance; the Minister of Wildlife, Conservation and Tourism; the Minister of Fisheries and Marine Resources; the

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<sup>203</sup> Section 76.

Minister of Health and Social Service; and the Minister of Agriculture, Water and Rural Development.

The Ministry of Environment and Tourism is not empowered to exercise control over the Ministry of Mines and Energy, but is able to influence its decisions via the Minerals Prospecting and Mining Rights Committee, which considers all applications for prospecting and mining rights in the country. The Committee consists of representatives from the Ministries of Environment and Tourism, and Finance, as well as a representative from the Department of Geological Survey. Where the application is for offshore mining rights, a representative from the Ministry of Fisheries and Marine Resources is co-opted. When an application is received, it is circulated by the Mining Commissioner to all members of the Committee for their comments and recommendations. Apparently consensus is usually reached.

In applying for a mining licence, an applicant is obliged to give the Minister details of the anticipated effects of proposed prospecting and mining operations on the environment as well as the proposed minimisation or prevention steps that the applicant intends taking.<sup>204</sup> The Act empowers the Minister to give directions to mineral licence holders in relation to the protection of the environment<sup>205</sup> and the conservation of natural resources and the prevention of the waste of such resources.<sup>206</sup> Should the mineral licence holder fail to comply with these directions, then the Minister is empowered to take the steps specified and to recover the costs from the licence holder.

A shortcoming of the Act is that its powers are restricted to mineral licence holders only. If an illegal operator is carrying on activities the Minister may not issue the same directives, nor may he or she recover the costs of remediation, except perhaps under common law. While the Act criminalises prospecting activities in the absence of a licence and provides for a meaningful fine for such activities, the restriction of ministerial powers should be removed by an amendment to section 57.

Pollution prevention is addressed in part by the Act giving the Minister the authority to declare any prospecting operation or mining operation which may be carried on by any licence holder to be undertaken only with the special Ministerial permission, and subject to such terms and conditions as may be determined by him or her.<sup>207</sup>

The Act makes provision<sup>208</sup> for the remedying of damage caused to land where mining or prospecting activities have been carried on. The Minister may by notice to the licence holder, direct the demolition of any structures erected and the removal of all debris and objects brought into the area where mining was carried on, except insofar as the landowner and the licence holder agree to the retention of such structures. The Minister can order the licence holder to take all necessary steps to remedy to the Minister's satisfaction any damage caused by prospecting and mining operations to the surface of, and the environment in, the area. If the licence holder does not comply with this direction, the Minister may direct that rehabilitation be undertaken at the State's cost and then be recovered from the person who was obliged to undertake the rehabilitation. The Act makes provision for a fine not exceeding N\$100,000 or to imprisonment for a period not exceeding five years or to

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<sup>204</sup> Section 91(f)(ii) and (iii).

<sup>205</sup> Section 57(i)(b).

<sup>206</sup> Section 57(i)(c).

<sup>207</sup> Section 122(2)(b).

<sup>208</sup> Section 128.

both penalties, in the event of non-compliance with rehabilitation obligations.<sup>209</sup> The provisions of this section do not impose a compulsory obligation on the Minister to ensure rehabilitation of an area occupied by a licence holder. The exercise of his or her powers is discretionary.

The Act also provides that mineral licence holders are liable for damage to the environment or other damages or losses caused.<sup>210</sup> If, during the course of any mining-related operations, any mineral or group of minerals is spilled in the sea or on land or in any water, and if any plant or animal life is endangered or destroyed, or damage or losses are caused to any person, then the licence holder is required to report the spillage and consequent pollution to the Minister and to remedy the damage caused. In the event that there is non-compliance with this provision, the Minister may take the necessary steps him or herself and recover in a competent Court the costs incurred from the licence holder.

A new Bill is being prepared which introduces requirements for financial guarantees for reparation of environmental damage and the setting up of trust funds for rehabilitation after mine closure. Specification of these requirements will be contained in yet to be drafted Regulations.

#### **4.9 Legislation on Shipping and Related Matters**

##### **Marine Traffic Act, 2 of 1981**

The main purpose of the Marine Traffic Act is to regulate marine traffic in Namibia and it deals with a range of matters such as the right of innocent passage through Namibian waters.

The Act provides that:

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

- (a) sink, dump or dispose of, or cause to be sunk, dumped or disposed of a ship, a wreck or a hulk except at a place agreed to by the Minister; or
- (b) abandon a ship which is not in distress, a wreck, a hulk or an object which may interfere with navigation.”<sup>211</sup>

The Act empowers the Minister of Works, Transport and Communication to make regulations –

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

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

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

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<sup>209</sup> The Act does not appear to make liability strict, although this section has not been tested in court.

<sup>210</sup> Section 130.

<sup>211</sup> Subsection (1) substituted by sec 6 of Act 5 of 1983.

## **Wreck and Salvage Act, 5 of 2004**

This Act provides for the salvage of ships, aircraft and life and the protection of the marine environment. The Act does not affect the right of Namibia to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right to give directions in relation to salvage operations.<sup>212</sup>

The Act authorises persons to cross or camp on land where necessary to render assistance to a ship that is wrecked, stranded or in distress or to save the lives of any shipwrecked persons.<sup>213</sup>

A salvor, in carrying out any salvage operation in respect of a ship or other property in danger, and the owner and master of a ship, or the owner of other property, in danger, must each exercise proper care to prevent or minimise damage to the environment<sup>214, 215</sup>. In fixing the reward for a salvage operation the skill and efforts of the salvor in preventing or minimising damage to the environment must be taken into account.<sup>216</sup> A salvor of a ship where the ship or its cargo threatened damage to the environment is generally entitled to special compensation from the owner of a ship salvaged over an above the usual salvage reward but may be deprived of some or all of this special compensation if the salvor negligently failed to prevent or minimise damage to the environment.<sup>217</sup>

The Minister may direct the master or owner of a ship that is wrecked, stranded or in distress, to move such ship to a place specified by the Minister, and if they fail to do so, may have the ship moved and recover the expenses from the owner of the wreck or ship in question or, in the case of an abandoned wreck or ship, from the person who was the owner thereof at the time of the abandonment.<sup>218</sup> If the master or the owner of a wreck or ship cannot be contacted, the Minister may, subject to section 15(1)(d) and (g) of the Namibian Ports Authority Act, 2 of 1994, cause any wreck or any wrecked, stranded or abandoned ship or any part of it to be raised, removed or destroyed or dealt with in such other manner as he or she may consider fit.<sup>219</sup>

### **4.10 Tourism legislation**

#### **Accommodation and Tourism Ordinance 20 of 1973 (West Coast Park)**

The Accommodation Establishments and Tourism Ordinance came into operation on

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<sup>212</sup> Section 40.

<sup>213</sup> Section 14.

<sup>214</sup> Section 1 provides that: "damage to the environment" means substantial or significant physical damage to human health or to marine life or resources in- coastal or inland waters or areas adjacent thereto; or (b) any other place where such damage may occur, caused by pollution, contamination, fire, explosion or similar major incidents;"

<sup>215</sup> Section 18.

<sup>216</sup> Section 20.

<sup>217</sup> Section 21.

<sup>218</sup> Section 33.

<sup>219</sup> Section 33.

1 January 1974. It consolidates the laws relating to accommodation establishments and provides for the establishment of tourist recreation areas.<sup>220</sup> The Ordinance was amended on numerous occasions and the meaning of “tourist officer” was inserted it means “any person appointed as a tourist officer under section 55A”.<sup>221</sup> Schedule 1 of the Ordinance excluded, among other properties, the Swakopmund and Walvis Bay municipal areas from the national tourist recreation area. However, Schedule 1 was repealed.<sup>222</sup>

The Executive Committee may appoint persons as may be necessary as tourist officers for the proper enforcement of the provisions of the Ordinance.<sup>223</sup> These officers must be provided with a certificate of appointment and a badge by the Director of Nature Conservation and Tourism of the Administration.<sup>224</sup> These officers are granted specific powers under the Ordinance which include the power at any time to conduct any investigation which it deems necessary in order to determine whether the provisions of the Ordinance are being complied with. Tourist offices also have the power to order a person who performs an act which is prohibited under the Ordinance or is dangerous or may cause damage to other persons in the area to stop performing that act, and may also order persons to leave the tourist area and may remove and seize anything which is not removed in accordance with an order given by a tourist officer.<sup>225</sup>

Any area may be declared a tourist recreation area<sup>226</sup> for its orderly development, preservation of the environment and in the interest and for the benefit of persons.<sup>227</sup> The Executive Committee is required to control, manage and maintain the tourist recreation area in line with the objectives as identified above.<sup>228</sup> Consequently, it may lay out roads and other facilities for recreation and may also carry out such work as it considers necessary for the control, management, development or maintenance of tourist recreation areas.<sup>229</sup> Furthermore, the Executive Committee may also make regulations with regard to any matter which is required or permitted to be prescribed under this Ordinance<sup>230</sup> including fees for the admission of motor vehicles or other vehicles to a tourist recreation area or for any other purpose connected with the use and enjoyment of the tourist recreational area.<sup>231</sup> Regulations may also be made for the protection and preservation of the tourist recreation area, for traffic in such area, and in general for any matter which it may deem necessary to prescribe in order to ensure compliance with the Ordinance.<sup>232</sup>

Consequently, there is no expressed provision that would allow for the provision of areas to be used as off-road tracks; however, the provision of such tracks may be in line with the objects referred to in section 50 which requires any orderly development of such an area for the preservation of the environment and in the interest and for the benefit and enjoyment of inhabitants and visitors to the area.

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<sup>220</sup> Section 59.

<sup>221</sup> Section 1 of Accommodation Establishment and Tourism Amendment Ordinance, 5 of 1977.

<sup>222</sup> See section 5 of Accommodation Establishments and Tourism Amendment Ordinance, 25 of 1973.

<sup>223</sup> Section 55A(1).

<sup>224</sup> Section 55A(2).

<sup>225</sup> Section 55B(1)(i) and (ii).

<sup>226</sup> Section 48(2)(a) as amended.

<sup>227</sup> Section 50 as amended.

<sup>228</sup> Section 51(1).

<sup>229</sup> Section 51(2)(a).

<sup>230</sup> Section 56(1)(a).

<sup>231</sup> Section 56(1)(m)(iii).

<sup>232</sup> Section 56(1)(m)(iv),(v) and 56(1)(n).

Practically, protection of the dunes could be achieved by declaring the whole area of concern to be a tourist recreation area, and then by specifying, in accordance with section 51(1), those areas that may be used for off-road vehicles and quad bikes, and those which may not. In order to comply with the requirements of natural justice, notice should be given to land owners in the area of the intention to make the declaration, explaining that they have the right to state why the declaration should not be made.

The Ordinance distinguishes between “officer” which means “a person who has been appointed to a post in the Nature Conservation and Tourism Branch under the Administration of the Public Service Act, 54 of 1957 or the Administration Employees Ordinance, 1957 17 of 1957”<sup>233</sup> and “tourist officer” which means “any person appointed as a tourist officer under section 55A”.<sup>234</sup> In terms of that provision the Executive Committee may appoint a person as a tourist officer. The Ordinance distinguishes between an officer and a tourist officer. However, no provision is made for the powers of an officer. Consequently, it is not clear what powers an officer may exercise under the Ordinance. An officer, in our view, would be the equivalent of a game ranger or warden appointed under the Nature Conservation Tourism Branch. A tourist officer is appointed by the Executive Committee and for the proper enforcement of the Ordinance relating to tourist recreation areas only. We have not considered the powers that game rangers or wardens may exercise under the Nature Conservation legislation but it would appear that the powers granted to the tourist officers under the Ordinance may be exercised by tourist officers only. However, this would depend on the nature and extent of the powers granted to game rangers or wardens.

Any person who fails to comply with any regulation made under section 56 of the Ordinance may on conviction be sentenced to a fine not exceeding R 200 or imprisonment for a period not exceeding six months or to both such fine and imprisonment.<sup>235</sup> Furthermore, any person who fails to comply with any lawful order or direction given to him by a tourist officer is guilty of an offence and on conviction may be sentenced to a fine not exceeding R 200 or to imprisonment for a period not exceeding six months or both.

As noted earlier, there is concern that the marine-based tourism is currently unregulated, and that the welfare of certain marine species (e.g. whales, dolphins and seals) is not catered for in legislation. It is hoped that the new Parks and Wildlife Management Bill will address this.

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<sup>233</sup> Section 1.

<sup>234</sup> Section 1 as amended by the Accommodation and Establishments Tourism Amendment Ordinance No. 5 of 1977.

<sup>235</sup> Section 56(3).

## 5. REVIEW OF RELEVANT INSTITUTIONS

Namibia might be described as having a confused and incoherent system of planning, which results in a multitude of parallel plans that seldom relate to each other, both at central level and lower down. These plans are highly variable in quality and their implementation even more variable. In an attempt to develop a more coherent structure and system, government has tried to improve its National Planning approached since Independence. The first attempt, NDP1, was a selection of disjointed sector development plans, integrated by 'stapling'. NDP11 was far more systematic, with intersectoral discussions taking place as part of the formulation process. NDP 111 is set to follow a different approach yet again.

In order to contribute to participatory democracy and planning, the NPC in the late 1990's, commissioned the preparation of strategic Regional Development Plans (RDP's) for all 13 regions. These plans were to be drafted in a participatory manner and were supposed to feed into NDP II. At the same time, however, many line ministries also prepared their own strategic development plans and subsequently implemented a suite of sector development projects, either in accordance with or contrary to those plans. A situation therefore arose where RDP's operated alongside sector plans which were not properly integrated with the RDP's. While the RDP's were used by the RC's as their strategic plans for regional development, line ministries ignored them. The RDPs are generally regarded as having been poor to start off with and are now largely irrelevant.

A critical analysis of the current development planning process in Namibia reveals the following key shortcomings:

- The process combines a bottom-up approach with a top-down control system. This undermines genuine bottom-up planning because what comes from the bottom is usually regarded as a secondary input – to be disregarded in favour of decisions taken at central level. This leads to frustration at grass roots level.
- The process enables parallel master plans and/or development plans to run simultaneously, even if they are not in support of each other.
- The process discourages coordination, notably between the sectoral ministries and the regional councils. This would be acceptable if sectoral ministries did their own master or development plans which consider the bigger picture, BUT then these must be disaggregated to regional level and the regional councils must incorporate these into their regional development plans. Only then would the various tiers be able to pursue the same objectives.
- There are inadequate information flows and poor quality information at regional level upon which to base development decisions. Consequently, the regional councils are at a disadvantage while substantial information is available at sector or central level.
- The base of decision making power is at the central level, which defeats the objective of participatory planning and democracy.

In preparation for the drafting of NDP III, the NPC envisaged that the RDP's be reviewed and redrafted by the regions themselves to ensure their commitment to the plans. These plans would then be used as a basis for the drafting of NDP III. Over the past year, the process of reviewing the RDP's did not commence as planned and the Directorate of Development Planning had no option but to consider other alternatives.

It is now argued that Vision 2030 (Office of the President, 2004) represents the national vision for the development of the country and that regional development should strive to achieve the same vision. The formulation of NDP III must therefore be aimed at achieving Vision 2030 and regional development planning must support this aim.

In order to align NDP III with Vision 2030, an Integrated Results Based Management (IRBM) approach has been adopted for the formulation and implementation of NDP III. This approach requires that all Key Result Areas (KRA's), goals and programmes be result orientated and have the end result in mind. It includes an Integrated Results Based Budgeting System, an Integrated Personnel Performance System, an Integrated Monitoring and Evaluation System, an Integrated Management Information System and an Electronic Government Support System.

The new approach translates the 8 Vision 2030 objectives into eight KRA's namely

1. Equality and Social Welfare
2. Peace and Political Stability
3. Productive and Competitive Human Resources and Institutions
4. Competitive Economy
5. Quality of Life
6. Productive Utilisation of Natural Resources and Environmental Conservation
7. Knowledge Based and Technology Driven Nation
8. Regional and International Stability and Integration

Within each KRA there would be sub sectors that should focus on their role and contributions to the KRA and the NDP goals.

A critical analysis of and comparison with the "old" development planning process enables one to gauge the extent to which the new process will contribute to solving the problems of the old process. The following key observations are made:

- The new process also combines a bottom-up approach with a top down control system which has exactly the same shortcomings of the old system. It may even be regarded as more centralised than the old system because proceedings are likely to be dominated by the lead ministry.
- Where the old system saw parallel master plans and development plans being pursued at the same time, the new system is likely to favour the sectoral master plans since the regions will not even have development plans any more. They will therefore have no choice but to fall in with the sectoral plans. This will lead to a more central and sectoral bias.
- The new process does nothing to improve coordination. Although the need is spelled out the practical systems are not being put in place. One can therefore expect similar problems with coordination as was experienced before.
- Whereas the guidelines require quality and in depth information on which to base the situation analysis, there is no system in place that could yield this information. There is a severe lack of quality information at regional level and it is not clear how this situation will be improved.
- The lack of skills and capacity at regional level means that planning and implementation of any system will remain a major challenge.
- The use of indicators for monitoring and evaluation of the achievements of NDP III goals is welcomed, but there is doubt about the appropriateness of the chosen indicators.
- The cross sectoral approach to focus on KRA's which require line ministries and stakeholders to work together towards common goals is a good innovation as is the teamwork approach under the leadership of lead ministries.

The institutions responsible for managing human activities of most concern from a coastal management perspective are reflected in Figure 1 and are discussed below. As appears from Figure 1 and the discussion below, responsibility for coastal management is spread among several Ministries and agencies and there is no single agency responsible for planning or co-ordinating coastal management.

Diamond mining (including marine diamond mining), provides the bulk of Namibia's foreign exchange income, while the fishing industry has traditionally been the second most important sector of the Namibian economy. Consequently both the Ministry of Mines and Energy (MME), and the Ministry of Fisheries play a prominent role in national affairs.

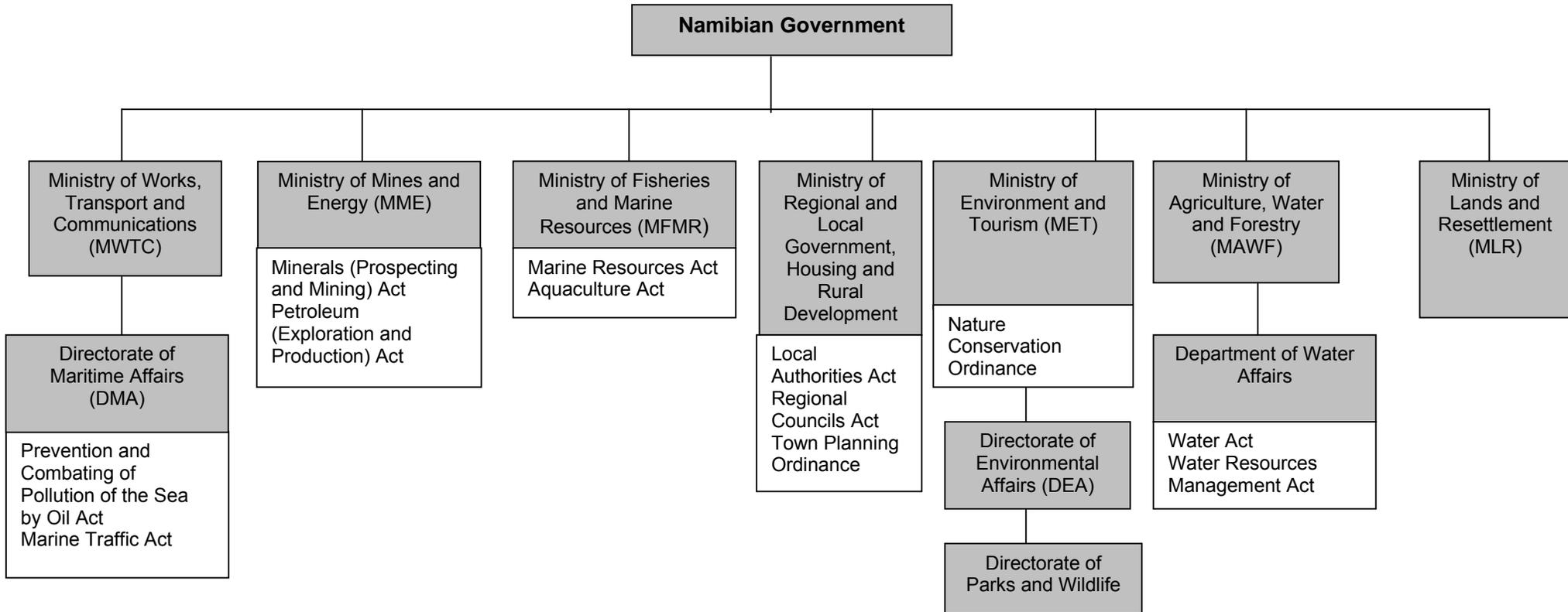
The Ministry of Environment and Tourism (MET) has primary responsibility for terrestrial environmental conservation but its role in relation to the marine environment is limited. This is due partially to a dispute as to whether or not its jurisdiction extends below the high water mark, and partially because key environmental legislation drafted over the last decade, has not yet been enacted.<sup>236</sup> The fact that this dispute has not been settled and the fact that crucial legislation has remained in 'draft form' for so long indicates inertia in the responsible ministries. MET is also responsible for providing leadership regarding Namibia's lucrative and fast-growing tourism industry – much of which is centred along the coastline. There is a widely held view (shared by the consultants) that the Directorate of Tourism has provided inadequate (even poor) leadership and that the industry has flourished only as a result of entrepreneurship shown by the private sector.

Responsibility for regulating the environmental effects of mining and petroleum exploration and production activities on the marine environment is shared between the Ministry of Mines and Energy, the Ministry of Environment and Tourism and the Ministry of Agriculture, Water and Rural Development (MAWF). The Department of Water Affairs (DWA) in MAWF is responsible for controlling pollution of the land environment and the marine environment from land-based sources through the current Water Act.

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<sup>236</sup> This include a draft Environmental Assessment and Management Bill, a draft Pollution and Waste Control Bill and a draft Parks and Wildlife Bill.

**Figure 1 GOVERNMENT AGENCIES WITH PRIMARY RESPONSIBILITY OF ASPECTS OF COASTAL MANAGEMENT**



## 5.1 Ministry of Environment and Tourism (MET)

The mission of the Ministry is “to maintain and rehabilitate essential ecological processes and life-support systems, to conserve biological diversity and to ensure that the utilization of natural resources is sustainable for the benefit of all Namibians, both present and future, as well as the international community, as provided for in the Constitution”.<sup>237</sup>

### 5.1.1 Organizational structure

The Ministry organizes its work under one technical Department and four technical Directorates, two of which fall under the Department, and two parastatals linked to the Ministry, as follows:

#### Department of Resource Management

- Directorate of Parks and Wildlife Management
- Directorate of Scientific Services
- CBNRM Unit
  
- Directorate of Environmental Affairs
  
- Directorate of Tourism
  - National Tourism Board
  - National Wildlife Resorts

A Directorate of Administration provides administrative and financial support services to the Ministry.

The Directorate of Parks and Wildlife Management is responsible for the management of national parks and other declared conservation areas. The Directorate deals with parks management issues both inside and outside national parks. The latter includes issues relating to surrounding settlements and communities, namely of how parks and the animal wildlife impact upon these settlements/ communities, how these settlements/ communities can be involved in parks management, and how income from park fees can be shared with these settlements/ communities.

The Directorate of Scientific Services assesses and monitors the state and distribution of wildlife resources in Namibia, (through its Permit Office) administers Namibia’s environmental permitting system (issuing permits for research, collection, harvesting, export, etc, of biological resources generally and protected wild animal and plant species in particular), and monitors and enforces compliance with laws, regulations and permits for purposes of environmental protection.

The Directorate of Environmental Affairs is responsible for environmental policy, planning and coordination, both on the green side (natural resource management) and on the brown side (waste management and pollution control), including all matters pertaining to international environmental conventions and their implementation in Namibia. The Directorate is also in charge of coordinating the environmental impact assessment (EIA) process, working with other line ministries to evaluate and approve EIAs for projects falling under these line ministries’ thematic areas of jurisdiction. The DEA’s staff is all Windhoek-based, for which reason DEA

<sup>237</sup> *Coastal Profile of the Erongo Region*, Integrated Coastal Zone Management Project, Aug.1999, p.139.

relies on Department of Resource Management staff for field-based activities and information.

The Directorate of Tourism is in charge of tourism policy, planning, and management.

MET (through the Directorate of Tourism) oversees two parastatal companies – the Namibia Tourism Board and National Wildlife Resorts. The Namibia Tourism Board coordinates and regulates the Namibian tourism industry and promotes Namibian tourism internationally. Namibia Wildlife Resorts runs a chain of tourism lodges across Namibia.

### 5.1.2 Conclusions and recommendations

Issue of concern	Recommended solution	Comments
Inadequate environmental awareness	<ul style="list-style-type: none"> <li>• Improve awareness amongst high-level decision makers (within MET) about the fragility of Namibia's various habitats (especially the coastline) and the need for them to be consistent in their decision making</li> <li>• MET, in turn, needs to sensitise other GRN institutions and the private sector about the importance of the environment and its link to livelihoods and the economy.</li> <li>• Due to inadequate capacity, MET needs to be more proactive and supportive of civil society organisations that are or could be valuable partners in environmental awareness building.</li> </ul>	<p>Alarming statements are made by high level decision makers, including Members of Parliament, about the need to 'fast track' development and bypass onerous environmental safeguards.</p> <p>Ignorance appears to be widespread – this is probably the root cause of complacency regarding environmental conservation in Namibia.</p>
Inadequate legislation	<ul style="list-style-type: none"> <li>• Enact the following ASAP: <ul style="list-style-type: none"> <li>• Environmental Assessment and Management Bill,</li> <li>• Pollution and Waste Management Bill</li> <li>• Parks and Wildlife Management Bill.</li> </ul> </li> <li>• Operationalise the Environmental Investment Fund.</li> </ul>	There is widespread frustration amongst stakeholders about the fact that preparation of these instruments has dragged on for too long.
Jurisdictional overlaps between MET and MFMR (intertidal zone)	<ul style="list-style-type: none"> <li>• Improve communication between MET and MFMR so that law enforcement is more effective</li> <li>• Align MET and MFMR legislation</li> <li>• Create ICZM legislation.</li> </ul>	
Escalating habitat destruction from prospecting and mining.	<ul style="list-style-type: none"> <li>• MET needs to reassert itself at high level so that MME improves its governance in awarding of concessions.</li> <li>• MET HQ needs to involve field staff more pro-actively in considering concession applications and in setting conditions.</li> <li>• MET must work with MME to identify important conservation areas/sensitive areas so that they can be excluded from prospecting and mining activities.</li> <li>• Use independent experts to help evaluate EIAs</li> <li>• Improve post-implementation monitoring.</li> </ul>	Improve presence in interministerial committee on prospecting and mining
Jurisdictional overlaps between MET, Local Authority and MWTC (WB enclave area)	<ul style="list-style-type: none"> <li>• Proclaim dune area into the NWCRA and develop new regulations to control land use</li> <li>• Create ICZM legislation and a 'Coastal Management Agency.</li> </ul>	
Sensitive and ecologically important areas inadequately protected	<ul style="list-style-type: none"> <li>• Proclaim Sperrgebiet and Walvis Bay Nature Reserve</li> <li>• Apply legally-binding zonation (e.g. strict protection) of important areas (e.g. Cunene mouth).</li> <li>• MET should be supportive of civil society groups (e.g. CETN) that provide a range of voluntary services aimed at conserving important conservation areas (e.g. Walvis Bay lagoon).</li> </ul>	Preparation for proclamations were prepared many years ago – appears to be inertia in MET.
Inadequate capacity in MET to enforce existing and emerging legislation	<ul style="list-style-type: none"> <li>• MET HQ needs to involve field staff more pro-actively in considering concession applications and in setting conditions.</li> <li>• Use independent experts to help evaluate EIAs</li> <li>• Improve post-implementation monitoring (could use independent experts to help with this task)</li> </ul>	

	<ul style="list-style-type: none"> <li>• Form partnerships with Civil Society – they can help MET to undertake a variety of tasks. The idea of 'Honorary Coastal Wardens' merits consideration – or simply re-activate the existing idea of Honorary Conservators.</li> <li>• Create opportunities for the general public to be more involved in coastal conservation – perhaps through a 'Coastal Public Forum' – that could be open or a committee that represents the public. The committee could have some representatives that attend government-level meetings related to coastal management (similar to basin-wide forums for various river basins – e.g. the Kuiseb)</li> <li>• Appoint staff who have a genuine interest in coastal conservation and provide career-development training for them.</li> </ul>	
Inadequate capacity by MET to guide tourism	<ul style="list-style-type: none"> <li>• MET needs to develop a coherent tourism policy – in consultation with the industry (evidently this is underway). The policy needs to be 'sold' to the Regional and Local Authorities so that they can mirror it in their policies, programmes and plans. Consistency will reduce the types of ad-hoc tourism and urban development that are currently occurring along the coast. It will also reduce opportunism, which is on the increase in this sector.</li> <li>• NACOMA needs to interact closely with the tourism component of the SPAN project, which is about to launch a tourism support project.</li> </ul>	The Tourism Directorate has provided generally poor leadership to the industry since Independence and the industry has largely developed in an ad-hoc way. This has led to the vacuum that results in inappropriate tourism along the west coast.
Inadequate budgets for Regional Councils	RCs complain that budgetary constraints limit the amount of work they can do, and thus their effectiveness.	

## 5.2 Ministry of Fisheries and Marine Resources (MFMR)

The Ministry's mission is "to strengthen Namibia's position as a leading fish producing nation and contribute towards the achievement of our economic, social and conservation goals for the benefit of all Namibians".

MFMR is responsible for the management and development of capture fisheries and aquaculture.

The Ministry's overall objectives are to:

- Promote and regulate the responsible and sustainable utilization of living marine and freshwater resources and aquaculture within the context of environmental sustainability;
- Establish a conducive environment in which the fishing and fish processing industries can prosper and derive optimal income from marine resources;
- Further Namibia's interests within the international fishing sector;
- Provide professional, responsive and customer-focused services;
- Deliver our services efficiently and effectively providing best value for money;
- Continuously invest in human resource development so as to enhance Namibia's capacity to manage fisheries and marine resources, develop and participate in domestic fishing and fish processing, and play an effective role in regional and international fisheries affairs.

Through its mission and enabling legislation, The MFMR has jurisdiction over all living creatures in the marine environment. The Ministry assists with the evaluation of environmental impact assessments (EIAs) for activities in this environment.

### 5.2.1 Organizational structure

The Ministry organizes its work under the following four technical Directorates:

- Resource Management
- Operations and Surveillance
- Policy, Planning and Economics
- Aquaculture

A General Services Division provides administration and support services.

The main responsibilities of the Directorate of Resource Management are to:

- Provide advice on the state of commercially important marine fish stocks and recommendations on their appropriate yields;
- Take appropriate management measures in relation to species and fish size limitations, closed seasons, closed areas, and limitations on the types and effectiveness of fishing gear;
- Conduct research on fresh water fish resources in the interior of Namibia and provide advice on the conservation and management of those resources.

The main responsibilities of the Directorate of Operations and Surveillance are to:

- Regulate fishing operations within the Namibian Exclusive Economic Zone (EEZ)
- Monitor, control and carry out surveillance activities (by Fisheries Inspectors) both at sea and onshore through the operation of fisheries patrol vessels, cars for coastal inspection and fisheries patrol aircraft
- Enforce fisheries legislation

The main responsibilities of the Directorate of Policy, Planning and Economics are to:

- Coordinate the formulation and implementation of fisheries policies and legislation;
- Carry out continuous policy and economic research and analyses;
- Manage the information services of the Ministry
- Administer fishing rights and quotas
- Collect fees
- Compile, analyze and publish fisheries statistics
- Coordinate the Ministry's overall planning process

The main responsibilities of the Directorate of Aquaculture are to:

- Ensure the responsible and sustainable development of aquaculture to achieve socio-economic benefits and environmental sustainability
- Facilitate the development of an efficient, coordinated institutional framework for aquaculture
- Ensure that the genetic diversity and integrity of aquatic ecosystems are maintained
- Promote responsible aquaculture production practices

### 5.2.2 Conclusions and recommendations

Issue of concern	Recommended solution	Comments
Inadequate capacity at all levels within the MFMR	<ul style="list-style-type: none"> <li>• More targeted approach towards allocation of bursaries for undergraduate and postgraduate students</li> <li>• Intensify in-service training</li> <li>• Use of consultants to fill knowledge/capacity gaps</li> <li>• Reduce 'political' pressure on scientists</li> </ul>	General perception amongst stakeholders that quality (and quantity) of staff in the MFMR has declined significantly since independence
Inadequate conservation of	<ul style="list-style-type: none"> <li>• Improve survey methods, frequencies, data analysis and</li> </ul>	Given the fact that

fish stocks, leading to overexploitation and decline of commercially important species. This in turn leads to proliferation of low/no value species (e.g. jellyfish)	<p>communication of data to decision makers</p> <ul style="list-style-type: none"> <li>• Improve inspectorate (e.g. on boats. Also take steps to address bribery and corruption)</li> <li>• Improve law enforcement (especially at sea)</li> <li>• Improve governance over the allocation of quota's (e.g. be steadfast when assessment suggest low or no quota)</li> <li>• Make use of external experts at times when in-house capacity is inadequate – this is good for scientific rigour and governance.</li> </ul>	fish quotas are a highly lucrative asset, MFMR is under huge pressure to cave in to demands.
jurisdictional overlaps between MET and MFMR (intertidal zone)	<ul style="list-style-type: none"> <li>• Improve communication between MET and MFMR so that law enforcement is more effective</li> <li>• Align MET and MFMR legislation</li> <li>• Create ICZM legislation</li> </ul>	
jurisdictional overlaps between MFMR, DWA and MWTC (water quality)	<ul style="list-style-type: none"> <li>• Improve communication between MFMR, DWA and MWTC (especially Namport) regarding the implementation of water quality standards, the allocation and monitoring of water discharge permits and the disposal of waste into the marine environment</li> <li>• Clarify mandates so that overlaps are reduced or eliminated</li> <li>• Create ICZM legislation</li> </ul>	
Important marine areas inadequately protected	<ul style="list-style-type: none"> <li>• Proclaim Marine Reserves in areas previously identified as worthy of such status</li> <li>• Apply legally-binding zonation (e.g. strict protection) of particularly sensitive areas in these reserves (e.g. marine species breeding localities, seabird colonies)</li> </ul>	Should be better cooperation between MET and MFMR in this regard
Important marine species inadequately protected	<ul style="list-style-type: none"> <li>• Develop demand and capacity in MFMR to address conservation concerns for 'non-commercial' species (e.g. seabirds such as penguins, gannets and albatross, turtles, cetaceans). Some of these species might be accurate indicators of the health of fish stocks and thus the health of the ecosystem.</li> </ul>	There is a perception amongst a wide range of stakeholders that MFMR are not serious about species that are not of commercial interest.
Inadequate capacity in MFMR to enforce existing and emerging legislation	<ul style="list-style-type: none"> <li>• In addition to points raised regarding enforcement of commercial fishing contraventions, MFMR needs to form partnerships with Civil Society – they can help MFMR to undertake a variety of tasks. The idea of 'Honorary Coastal Wardens' merits consideration.</li> </ul>	Anglers along the coast generally perceive fisheries officials to be unenthusiastic about their work
Improve information delivery to the public – especially on the state of fish stocks	<ul style="list-style-type: none"> <li>• MFMR needs to ensure that the public receive accessible information regarding fish stocks. These are public resources and the public has a right to know how they are being managed.</li> <li>• Related to the above, MFMR needs to cultivate a feeling of ownership amongst the public regarding fish stocks. This will instil more awareness amongst Namibians about the fact that these resources are precious – this might lead to greater 'community policing' and private/public partnerships. This feeling is currently absent.</li> </ul>	This consultancy found that various groups of stakeholder believe that the governments withholds 'bad news' information from them, or 'sanitises' information. This is unacceptable if true.

### 5.3 Ministry of Mines and Energy (MME)

The Ministry's mission statement is as follows:

“The Ministry of Mines and Energy, as the custodian of Namibia's rich endowment of mineral, geological and energy resources, facilitates and regulates the responsible development and sustainable utilization of these resources for the benefit of all Namibians.”

The Ministry's objectives are to:

- Promote investment in the mineral and energy sectors;
- Ensure the sustainable contribution of geological and energy resources to the socio-economic development of Namibia;
- Create a conducive environment for the mineral and energy sectors;

- Regulate and monitor the exploration and exploitation of mineral and energy resources;
- Minimize the impact of exploitation of mineral and energy resources on the environment;
- Provide professional and customer focused services.

The MME issues prospecting and mining licences as well as exploration and production licences for petroleum, and is responsible for ensuring that mining activities in Namibia are environmentally sustainable,.

A new draft Pollution and Waste Management Bill has the potential to dramatically enhance control over environmental pollution by the petroleum and mining industry, but has not yet been submitted to Parliament.

Notwithstanding these legal deficiencies, the Ministry of Mines and Energy has developed EIA requirements for each stage of petroleum industry activities, which are required prior to the authorisation of such activities, as well as regular reporting on quantity and quality of waste discharges.

### **5.3.1 Organizational structure**

The Ministry organizes its work under the following four technical Directorates:

- Geological Survey
- Mines
- Diamond Affairs
- Energy

These technical Directorates are supported by the Directorate of Administration and Finance.

The Geological Survey of Namibia (GS) is the national institution for Earth Sciences and Geological Resources, rendering services to mineral investors, government agencies and the general public. Through scientific research GS facilitates the search for mineral resources, geological engineering, land-use planning and sustainable development taking into account environmental considerations.

One of the stated objectives of the GS is “to guide land-use decisions to ensure the availability and sustainability of resources for the current and future welfare of our society”.<sup>238</sup> In order to meet this objective, the GS carries out environmental monitoring of Namibia’s active mining operations, focusing on the 15 biggest mines as well as the small scale mining operations. In addition, for proposed mining projects, such as the Langer Heinrich Uranium Mine, Environmental Assessment Reports are prepared and evaluated.

The Directorate of Mines promotes the optimal exploitation of Namibia’s mineral resources and integrate the mining industry with other sectors of the economy for the socio-economic development of the country.

Two of the Directorate’s stated objectives<sup>239</sup> are to ensure that:

<sup>238</sup> MME, Annual Report 2005-2006, pp.8-10.

<sup>239</sup> MME, Annual Report 2005-2006, p.12.

- The mineral resources are exploited in a safe, responsible and sustainable manner; and
- A vibrant and sustainable small-scale mining sector is in place.

Mining sites are visited and monitored on a regular basis to ensure the mining operations meet statutory safety, health and environmental regulations. EIA studies are carried out, and most of the larger mines have environmental management plans (EMPs) in place. However, operating mines generally lack closure/ decommissioning plans, and some mines have been reluctant to establish environmental trust funds to cover costs of environmental monitoring and rehabilitation.

Namibia's Mineral Policy includes guidelines on small-scale mining (SSM). However, implementation procedures are still being developed. This is taking some time, given the complexities involved in striking a balance between promoting SSM for its (potential) socio-economic contribution while regulating SSM operations to circumscribe and monitor SSM practices and minimize their adverse health and environmental impacts. The Mineral Development Fund (MDF) has provided limited financial assistance to medium-scale miners on the basis of viable business plans and some level of collateral security for their mining projects.

In the Erongo Region, small-scale miners have (re-)organized themselves in the form of associations and/or cooperatives, and a regional body of small-scale miners, the Erongo Small Scale Miners Association (ERSMA), has been formed. However, there is a lack of funds to assist ERSMA financially, technically and materially, and the MDF does not fund SSM projects, for which there is inadequate collateral.

Responsibilities for SSM have been fragmented between different directorates and divisions, although it should mainly be the domain of the Controlled Minerals Development Division of the Directorate of Mines.<sup>240</sup>

The Directorate of Diamond Affairs controls the handling and transporting of rough diamonds in Namibia, promotes the growth and stability of the Namibian downstream industry, ensures that the valuation and sale of Namibian diamonds meet international acceptable standards, and generally upholds the image of the Namibian diamond industry. The issue of coordinating seabed mining operations with other ministries (notably MFMR) and minimizing the environmental impact of seabed mining does not seem to be the responsibility of this Directorate, and it is unclear which Directorate is in charge of this issue.

The Directorate of Energy is responsible for ensuring adequate and affordable supply of energy and the equitable distribution of energy in a competitive market, facilitates and promotes the development of energy resources, and promotes greater energy efficiency.

Adequate and affordable supply of petroleum fuels is being pursued through further liberalization of the petroleum fuel supply sector. This entails the licensing of increasing numbers of private petroleum outlets as well as progressive price deregulation. Principles and provisions underlying the liberalization of the fuels market are set forth in the White Paper on Energy Policy of May 1998, and details of how the process of liberalization is to unfold are spelled out in the Petroleum Product Regulations of 2000.

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<sup>240</sup> MME, Annual Report 2005-2006, p.14.

At the same time, in keeping with international best practice and standards on fuel emissions, Namibia is phasing out the supply of leaded petrol and introducing lead replacement petrol (LRP) 93. This LRP 93 petrol as well as the 95 Octane unleaded petrol and an environmentally more acceptable diesel (with an order of magnitude – and eventually no – sulphur) constitute the current range of environmentally more friendly transportation fuels.

### 5.3.2 Conclusions and recommendations

Issue of concern	Recommended solution	Comments
Injudicious allocation of prospecting and mining rights, leading to irresponsible practices in coastal protected areas.	<ul style="list-style-type: none"> <li>MME must take more responsibility towards ensuring that proper safeguards are in place before prospecting and mining rights are issued. In some cases, it appears as though allocations are made following a 'fast track' process. Some stakeholders suggest that this is for political expediency. If this is the case, then it must be stopped before corruption is entrenched.</li> <li>MME cannot hide behind inadequate capacity in MET as an excuse for poor safeguards being applied in some cases. MME has environmental clauses in its legislation and it must enforce these properly.</li> <li>MME should use external expertise to assist them in properly evaluating applications and for guiding and reviewing EIAs</li> <li>MME must use its discretion better in allocating licenses. Prospecting and mining in ecologically sensitive areas / important conservation areas should not be done by inexperienced companies. The political requirement for equity or BEE in the mining industry is understood and acceptable because of Namibia's past history, but the environment must also be regarded by MME as an important part of Namibia's long term future.</li> </ul>	<p>MME contends that MET performs poorly on their joint committee that assesses mineral rights applications.</p> <p>Some stakeholders expressed concern that licenses are given to 'fly-by-night' companies that have no track record or commitment to the environment or even Namibia</p>
Inadequate differentiation between prospecting and mining	<ul style="list-style-type: none"> <li>Define this better in legislation. Given that legislation reform takes time, at least be clear in the licences granted what in fact is permitted in prospecting and what is Allowed in mining</li> </ul>	The inadequate clarity causes much confusion and abuse by mineral rights holders.
Inadequate monitoring and enforcement, causing prospecting and mining proponents to ignore set environmental safeguards and thus cause negative impacts	<ul style="list-style-type: none"> <li>MME must work more closely with MET to improve monitoring and enforcement.</li> <li>In the context of diamond prospecting and mining, MME, the Namibian Police and MET need to come to a more sensible arrangement regarding the rights of MET staff to inspect diamond operations along the coast. It is untenable that MET staff in (for example) the Skeleton Coast Park are prevented from inspecting the workings of mines in the park which they are expected to manage.</li> <li>MME should consider using external experts to assist them with monitoring (inspections) – the mining/prospecting companies should be expected to pay for this.</li> </ul>	

## 5.4 Ministry of Agriculture, Water and Forestry (MAWF)

The Ministry of Agriculture, Water and Forestry (MAWF) exists to:

- promote and facilitate environmentally sustainable development; and
- manage agricultural resources and the utilization of water resources to achieve sound socio-economic development together with all citizens.

The Ministry is committed to:

- facilitating the empowerment of communities to manage their agricultural and water resources in a sustainable way;
- ensuring progressive improvement in household food security and nutrition;
- ensuring access to a reliable water supply of an appropriate standard for household and economic uses;

- continuously improving the capacity of the Ministry to serve its customers efficiently and effectively;
- assisting and advising on the land reform process;
- improving agricultural income; and
- negotiating a trade environment favourable for the agricultural sector.

The Department of Water Affairs (DWA) is responsible for controlling pollution of the land environment in Namibia through the Water Act, 54 of 1956.

The Directorate of Resource Management within the Department of Water Affairs (DWA) at the MAWF is currently the lead agency responsible for management of marine pollution that originates on land. Management and prevention of water pollution is based on a permit system administered by the DWA. The Department grants exemptions allowing businesses and other institutions such as local authorities to discharge effluent into the surroundings. These exemptions allow institutions to discharge effluent that is not in compliance with the standards set in the 1962 Water Quality Guidelines.<sup>241</sup>

Water pollution licences are required by any mining company wishing to discharge effluent to the environment. This includes the disposal of fines material (plumes) generated by the diamond mining industry that is discharged to sea from shore-based processing plants. The area of responsibility does not include the large number of mining vessels operating in the offshore concession areas. The draft Pollution and Waste Management Bill has the potential to dramatically enhance control over environmental pollution by the mining industry, if it is enacted.

#### **5.4.1 Organizational structure**

The Ministry organizes its work under two Departments (Agriculture and Water Affairs & Forestry) and seven Directorates. One Directorate – Planning -- is directly linked to the Permanent Secretary's Office. The other six Directorates fall under the two Departments – three Directorates each:

##### Agriculture:

- Extension and Engineering Services
- Research and Training
- Veterinary Services

##### Water Affairs & Forestry

- Rural water supply services
- Water resource management
- Forestry

#### **5.4.2 Conclusions and recommendations**

<b>Issue of concern</b>	<b>Recommended solution</b>	<b>Comments</b>
Water quality standards not current	<ul style="list-style-type: none"> <li>• DWA needs to update water quality standards</li> </ul>	Process already underway in DWA, but needs to be completed
Inadequate capacity in DWA to carry out	<ul style="list-style-type: none"> <li>• Increase technical capacity in DWA to carry out inspections</li> </ul>	DWA and other stakeholders are

<sup>241</sup> DWA are in the process of developing new water quality guidelines.

monitoring of pollution and enforcement of laws and regulations	<ul style="list-style-type: none"> <li>• Create partnerships between DWA and other organisations (e.g. MET, MFMR, etc.) so that the inspectorate role is shared between many organisations</li> <li>• Use consultants to fill capacity gaps (short term)</li> </ul>	somewhat frustrated by the fact that MET has apparently not responded to requests that it play a role (as it should) on river basin committees. The Kuiseb Basin Management Committee is an example.
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## 5.5 Ministry of Works, Transport and Communication (MWTC)

The Ministry is dedicated to ensuring the availability and quality of transport infrastructure and specialized services, as well as functional and assigned accommodation to the satisfaction of the customers and the Government.

The Directorate of Maritime Affairs (DMA) in the MWTC plays a role with respect to management and prevention of pollution of the maritime environment, being responsible for marine oil pollution that arises from shipping activities. Its activities in this respect are administered through the Prevention and Combating of Pollution of the Sea by Oil Act, 6 of 1991. The DMA is responsible for oil pollution prevention and control.

The National Response Team (NRT) of the National Oil Spill Contingency Organisation (NOSCO), situated within the MWTC, is listed as the responsible agency for managing and co-ordinating national response to an oil spill in Namibia in the latest National Oil Spill Contingency Plan prepared with the aid of the International Maritime Organisation. Roles and responsibilities for this and other state, parastatal and non-government organisations in Namibia are defined within this document, which was approved in 2007.

### 5.5.1 Organizational structure

MWTC's functions and activities of direct relevance to coastal planning, environmental issues and natural resource management are concentrated within the Directorate of Maritime Affairs (DMA) of the Department of Transport and Communications (one of four Departments of MWTC). MWTC oversees the state-owned Namibian Ports Authority (NAMPORT), which operates Namibia's two ports – in Walvis Bay and Lüderitz.

**NAMPORT**, a parastatal accountable to MWTC, is the overall authority in relation to the Ports of Namibia. Among others, NAMPORT is in charge of all environmental control in relation to the ports. This includes combating oil spills, handling solid waste disposal from ships and wastewater disposal from the fishing industry.<sup>242</sup>

There may be a potential overlap (and area of uncertainty) of responsibilities for controlling marine pollution in/ around ports between NAMPORT, MFMR and MAWF, since MFMR is responsible for all living marine resources and MAWF has responsibility for water quality and marine pollution from land-based resources.

**DMA** consists of three Divisions and a Sub-division:

<sup>242</sup> Waste water effluent control on the landward side is the responsibility of the Department of water Affairs (DNA) of MAWF.

- Surveys and Inspections
- Pollution Control
- Legal Affairs
- Administration (sub-division).

MWTC has at least two distinct policy / legal mandates of relevance to coastal planning and environmental management: a) administration of all state land (other than communal land); and b) regulation of maritime transport regarding safety aspects (both people and property) and marine pollution caused by ships.

#### **Administration of state land**

MWTC has general responsibility for administering state land (other than communal land) and plays a role in regulating use of government-owned land. However, the ministry does not on a regular basis conduct any sort of land-use planning for areas under its administration. Rather, it is consulted by other authorities when these wish to dispose of a certain piece of state land. State land can be found within areas under the jurisdiction of local or regional authorities, MET (e.g. game parks and nature reserves), or other government bodies. As a rule, local authorities cannot decide (alone) on the use of state land within their areas of jurisdiction, not even within proclaimed urban areas. Some state land is subject to special regulations, viz. game parks and nature reserves.<sup>243</sup>

The dual status of state land – being administered by MWTC while at the same time being located within areas under the jurisdiction of other government entities – causes considerable confusion and often a regulatory vacuum in terms of environmental protection. For instance, this is the case for the state land under the jurisdiction of the Walvis Bay Municipality.<sup>244</sup>

#### **Maritime transport (safety and pollution aspects)**

MWTC has a legal / policy mandate for maritime transport that is of relevance to coastal planning, environmental issues and natural resource management.

The MWTC also has a mandate to:

- ensure safety of life and property at sea; and
- prevent and combat pollution of the marine environment by ships.

In terms of preventing and combating pollution of the sea by ships, the National Response Team (NRT) of the National Oil Spill Contingency Organization (NOSCO), situated within DMA / MWTC, is the responsible agency for managing and coordinating the national response to an oil spill in Namibia.

There are plans to develop a new integrated policy framework for the development of multi-modal transport in order to enable the country's domestic and external trade to benefit from improved and efficient door-to-door cargo transport services. The port of Walvis Bay is a key transport node from Namibia and the SADC countries to world markets. This port and the port of Lüderitz, the local export processing zone, the completion of the Trans-Kalahari and Trans-Caprivi Highways and the establishment of the Walvis Bay Corridor Initiative are viewed as elements of a multi-modal

<sup>243</sup> *Coastal Profile of the Erongo Region*, Integrated Coastal Zone Management Project, Aug.1999, pp. 134 and 142.

<sup>244</sup> *Coastal Profile of the Erongo Region*, op.cit., p.142.

infrastructure network that progressively combines and integrates the different modes and national networks.

The Ministry promotes Namibian interests within the international shipping community and encourages shipping lines to serve the Namibian and regional market as best as possible. Namibia's ability to attract shipping to its ports is an important factor in determining the future development of the maritime transport sector. The upgrading of port facilities --such as the recent completion and deepening of Walvis Bay Port in July 2000 – and the accession to remaining International Maritime Organization (IMO) conventions are necessary conditions for attracting more shipping to its ports.

DMA has been going through a process of institutional restructuring and reform, in connection with the MWTC2000 Project, which is aimed at improving effectiveness and efficiency in the maritime sub-sector – on the basis of a feasibility study (completed around 2000) on alternative organizational arrangements that would result in increased efficiency, improved maritime safety and quality of service to the maritime industry, and sustainability of operations through a more business-oriented approach and appropriate user charging. Reforms include: separation of regulatory and operational functions, new institutional arrangements more suitable for improving operational efficiency, and improving sustainability through user charging.

As of the end of FY 2003-2004 (March 2004), DMA had a total of 24 approved positions, of which 22 were filled.

DMA faces significant capacity constraints due to the competition for scarce professional resources in maritime affairs (in maritime technical, safety, marine environment and administration). This capacity constraint threatens the sustainability of DMA's services and needs to be addressed.

### 5.5.2 Conclusions and recommendations

Issue of concern	Recommended solution	Comments
Some aspects of MWTCs mandate are inappropriate given the nature of the organisation	<ul style="list-style-type: none"> <li>Reconsider the responsibility for unproclaimed State Land being given to MWTC. There seems little logic in this ministry being responsible (for example) for the dune area between Walvis Bay and Swakopmund.</li> <li>In light of the above – consider reallocating responsibility for this area to MET.</li> </ul>	As is the case with other GRN institutions, capacity in MWTC is inadequate. However, it seems a waste of resources to build land-management capacity in a ministry that has a different core function.

### 5.6 Ministry of Lands and Resettlement (MLR)

The Ministry will “conscientiously administer Namibia's land policy and land resources to facilitate affordable access and efficient use of land and services to all stakeholders, citizens and residents, such that the exploitation and utilization are optimally shared by every Namibian citizen”.

Consequently, the MLR will serve its stakeholders by providing:

- Enlightened land policies, efficient land management systems and affordable support services;
- Effective land use planning, responsible oversight and timely land reform;

- Citizens' access to land and empowering eligible beneficiaries with skills and capacity to meaningfully engage the land;
- An integrated service to resettled citizens and disabled beneficiaries and essential skills for them to participate in the mainstream economy.

### **5.6.1 Organizational structure**

The Ministry organizes its work under two Departments:

- Land Reform and Resettlement
- Land Management and Administration

Because this Ministry has virtually no active role in the management of the coastal areas, only those relevant aspects are included in this report.

The Department of Land Management and Administration<sup>245</sup> supports the land management through land surveys, production of maps, aerial photos, valuation of land, and administration of the land registration system.

### **5.6.2 Conclusions and recommendations**

MLR has a relatively small role in the management of coastal and marine resources or the environment. For this reason, it receives minimal attention in this report.

## **5.7 Ministry of Local and Regional Government, Housing and Rural Development (MLRGHRD)**

The Ministry's mission is to provide support to Regional Councils and Local Authorities to ensure effective and efficient provision of shelter, physical town planning and municipal services in order to improve social and living conditions in general and of low-income groups [in particular] within the concepts of sustainable human settlements development.

### **5.7.1 Organizational structure**

The Ministry organizes its work under the following Directorates: (please note that functions not directly related to coastal management have been omitted or are only discussed briefly):

The Directorate for Decentralization Policy Coordination deals *inter alia* with:

- Developing and implementing a strategic Plan for Decentralization – this includes facilitating the submission of Decentralization Action Plans by line ministries<sup>246</sup> and building capacity in Regional Councils (RCs)<sup>247</sup>;

The Directorate for Housing, Habitat, Planning and Technical Services Coordination deals *inter alia* with:

<sup>245</sup> MLRR, Annual Report 2004-2005, pp. 19-28.

<sup>246</sup> By the end of FY 2005-2006, five out of nine line ministries had submitted their decentralization action plans.

<sup>247</sup> The Policy Guidelines were approved in July 2005 by the Decentralization Policy Implementation Committee (chaired by the Secretary to Cabinet).

Servicing and convening the Namibia Planning Advisory Board (NAMPAB). NAMPAB operates at the national level, considering spatial/ land use planning related applications from RCs and LAs and making recommendations on these applications. Township Boards operate at the regional level, dealing with matters at the levels of erven (e.g. proposed subdivision or consolidation of erven) and townships (e.g. proposed extension of township boundaries or layout plans for towns to be newly proclaimed).

The Directorate of Regional and Local Government and Traditional Authority Coordination primarily assists Local Authorities but is not directly involved in coastal management issues. Neither is the Directorate for Rural Development Coordination.

Because decentralisation is such an important aspect of the mandate of this Ministry, and because it is central to the discussion on integrated coastal management, this report deals with this issue in some detail.

Decentralisation seeks to transfer political, administrative, legislative, financial and planning authority from the centre to regional and local authority councils. It strives to promote participatory democracy, empower the local population to make their own decisions and to determine their own destiny. It also aims to improve public sector management so that, in the long run, there will be closer linkages between taxes paid and the quality of services provided.

The intention is clearly to create the institutions in support of decentralisation and to delegate the necessary functions to the RC's to deal with the implications of participatory democracy at regional level. This all must be done within the policy and monitoring frameworks as determined by the centre at line ministry level. The Regional Planning and Development Policy clearly supports the decentralisation drive and states that "the significance of regional planning and development is to realise a sustainable shift from a centre-driven and dependent development approach to a more people centered and participatory spatial type of development. However, the institutional structures alone do not ensure good and effective development planning. Strategic development decisions are required to guide development in a desired direction. A balance must be struck between the needs of citizens to have their specific service provision needs satisfied on the one hand, and the need to direct development expenditure to support certain development objectives on the other. Development expenditure must be targeted in those areas where it would yield the best value for money and provide the maximum contribution to sustainability.

When the Regional Councils Act (22 of 1992) and the Local Authorities Act (23 of 1992) were enacted soon after independence they did not have required effect of fostering decentralisation. In order to achieve this objective, the Decentralisation Policy was formulated and approved by Cabinet in 1996. The National Assembly adopted it as a national policy in 1997 and the effective commencement date was 1 April 1998. The policy envisaged a step by step process, starting with the delegation of functions from the line ministries to RCs and LAs, who then act as agents, and ending with full devolution of decision making and budgetary control.

Relevant line ministries (nine ministries in total) have been asked to submit Decentralization Action Plans (DAPs) to spell out priorities and plans for decentralizing line functions. This process has been facilitated by MRLGHRD. By the end of FY 2005-2006 (March 2006), five of the nine line ministries had submitted their DAPs. However, the exercise has been hampered by a lack of facilitation, capacity and commitment on the part of the line ministries.

Judging from the mid-term review of the Project Finnish Support to the Decentralisation Process there are a number of preconditions for successful decentralisation as well as a number of shortcomings which need to be addressed to conclude the process successfully. The preconditions are:

- capacitated RC's and LA's with the necessary human, institutional and physical resource base to initially "receive" delegated functions and thereafter take over full responsibility for these functions during the devolution phase.
- Committed line ministries who are prepared to devolve some of their power base to the regional and local levels.
- excellent dissemination of information to all stakeholders including line ministry staff in order to clarify mandates, roles, responsibilities and powers and to allay fears that career paths of line ministry staff will not be jeopardised through the decentralisation process.
- strong champions to drive and steer the complicated political process of decentralisation.
- strong coordination and guidance of all the role players to achieve an integrated process within which all line ministries and other stakeholders understand and discharge their respective duties.

Fortunately, the DDC has improved its capacity to make significant progress with the implementation of the decentralisation process. Instead of all staff working in all regions, staff members have been reassigned to be responsible for providing guidance to specific regions. Criteria to determine the readiness of regional councils to receive decentralised functions have been compiled and all RC's have been assessed to determine the level of readiness in terms of the set criteria. Six regional councils were found to be ready while others were found to be at various levels of readiness. This evaluation also enable the DDC to determine the areas where more effort is required and will assist them in focusing their capacity building efforts to where it is needed most. However, despite the readiness of some RCs, no line ministry has delegated any functions and RCs are anxious about this.

The provision of guidance, assistance and coordination to line ministries is however, more problematic. The 2005-06 Annual Report on Decentralisation cited in the Mid Term Review of the Project Finnish Support to the Namibian Decentralisation Process (2006:19) cautions that *"notwithstanding the readiness shown by at least two ministries to delegate functions during 2006-07, and some regions readiness to take on those functions, it should be noted that that there is some resistance amongst line ministries to take the process ahead."* During consultations with some line ministries, officials acknowledged that there is indeed some staff that are openly against decentralisation and they ascribed this to fear of the unknown. They also felt that the political office bearers in the ministries do not champion decentralisation strongly enough and staff then follow this example. Various views on what decentralisation entails are pertaining and this does not provide for fertile ground upon which to grow commitment and consensus about the implementation of decentralisation.

#### 5.7.1.1 Regional councils

In terms of Chapter 12 of the Constitution of the Republic of Namibia, each unit of regional government was to be governed by a RC.

The first Delimitation Commission (1991) proposed 13 regions for Namibia of which four (Karas, Hardap, Erongo and Kunene) incorporated the coastal areas of the country.

The mandate of RCs are as follows:

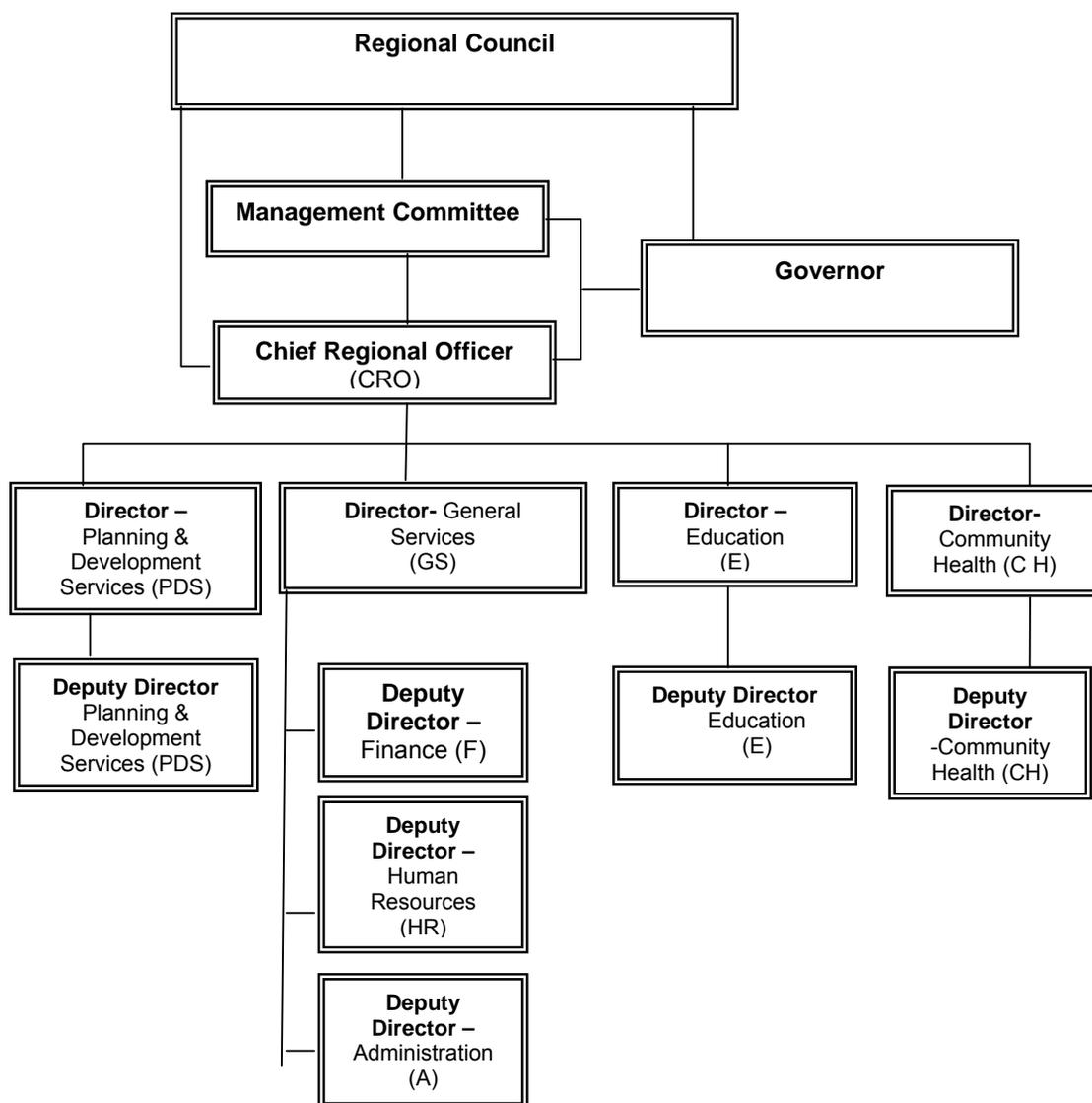
- to undertake the planning and development of the region (with due regard to the powers, duties and functions of the National Planning Commission) with a view to:
  - the physical, social and economic characteristics of the region.
  - the distribution, increase, movement and urbanisation of the population.
  - the natural and other resources and the economic development potential of the region.
  - the existing and planned infrastructure.
  - the general land utilisation pattern.
  - the sensitivity of the natural environment.
- to establish, manage and control settlement areas.
- to assist any local authority in the exercise or performance of its powers, duties and functions.
- to exercise any power assigned to regional councils by the laws governing communal land.
- to exercise in connection with its region such powers, and to perform the duties and functions connected with such powers, as may be delegated by the president to the regional council in terms of section 29.
- to exercise any power assigned to regional council by the law governing land which vests in the government of Namibia by virtue of the processions of Schedule 5 to the Namibian Constitution, or any other power so assigned by or in terms of any other law.

As regards their responsibility towards coastal planning, environmental issues and natural resource management, “the natural development potential of the region “and “the sensitivity of the natural environment “ are most relevant. However, there are clearly broad responsibilities and functions for planning and development within the regions with powers to advise and act as agent for central government. A regional council currently has no power of its own (except in settlement areas) to provide services for its inhabitants equivalent to those confirmed on local authorities.

#### 5.7.1.1 Institutional structure

In order to be in a position to support proposed soon to be delegated functions in terms of the Decentralisation Policy, the MRLGHRG instituted the organisational structure for RCs shown in figure 2, below.

**Figure 2: Organisation Structure of Regional Councils (management cadre)**



The rationale was to expand the structure in order to accommodate those functions to be delegated first, namely education and community health. It is noteworthy that the structure makes no provision for an 'Environmental Officer' – perhaps illustrating the fact that environment enjoys relatively low priority in the MRLGH. The idea was also to fully capacitate the RC to do regional planning and development. The key positions regarding integrated regional planning and development through decentralisation are shown in Table 1, below.

KEY PORTFOLIO	ERONGO	HARDAP	KARAS	KUNENE
Director Planning and Development	√	√		
Deputy Director Planning and Development				
Director Education		√	√	√

Deputy Director Education				
Director Community Health				
Deputy Director Community Health				

Following discussions with RC Staff the resources key personnel situation in each of these key posts is as follows:

#### **Erongo Regional Council.**

The directorates of education and community health are still not capacitated, although both are seen as being in the pipeline. The position of Director of Planning and Development Services has been filled for some time. Three deputy posts are envisaged, one each for: Rural Services, Technical Services and Development Planning. At this stage, only the latter post is filled, but the others are expected to be filled soon. Ultimately, it is staffed by a chief planner, economic planner and development planner in support of the Deputy Director. In addition to the staff at the regional office level each of seven constituency offices are staffed by clerks and labourers.

#### **Hardap, Karas and Kunene Regional Councils**

All of the above RCs have a Director of Education in place and are therefore prepared for delegation in this sector. In all three cases, however, their Planning and Development Functions are not as well developed as Erongo, with only Hardap having employed their Director. Ultimately, however, the structure of all three councils will be identical to that of Erongo.

#### 5.7.1.1.2 Comments on strengths and weaknesses

A study carried out in March 2007 for the Planning Commission assessed the shortcomings of the regional development planning process and the capacity of the RCs to fulfil their mandate. This study concludes that the process has largely failed to achieve integrated development at regional level. Although RCs are mandated to undertake development planning and environmental management, in practice, development planning continues to be undertaken by line ministries from a national perspective with very little regional integration between sectoral master plans.

Related to the **levels of decision making and coordination**, the key shortcomings are:

- The top down domination of project identification and approval by line ministries with very few projects initiated at grass-roots level being included for funding.
- Poor integration of master and development plans and poor coordination between the RCs and the line ministries which result in preference being given to the sectoral master plans because these are closer to the decision makers in the line ministries to whom the budgets are allocated and because of superior technical capacity in the ministries.
- Decentralisation is not taken seriously by the line ministries. This causes problems at regional level in the sense that cooperation is poor and that RCs are getting impatient because they have been prepared for delegation, yet no action is taken to put that in place.

Related to the **meaningful participation** of beneficiary communities in the development planning process, the key findings are that:

- The system of public participation does not work effectively because the institutional structures such as VDC's, LDC's and CDC's are not functioning optimally. This is mainly due to an inability to formulate projects in a meaningful way at the lower levels (because of capacity deficits) and constraints related to a lack of transport and equipment for these institutions to function optimally. This in turn leads to difficulties in consulting with village level people and to incorporate their needs and concerns into the planning process.
- The history of non performance (projects being identified and put forward for funding but with nothing happening thereafter nor receipt of any feedback) leads to both councillors and communities losing confidence in the process. This has already caused a decrease in effort by the councillors and the committees to contribute to the planning process.
- The RDCC's are ineffective, mainly because line ministry representatives are too junior to influence central decisions or to take any meaningful decisions with regard to needs and priorities to be supported at line ministry level.
- Feedback is either poor or non existent. Once projects are put forward for funding and it goes into the system, neither the RCs nor the communities receive feedback with regard to the approval or non approval of the projects or with regard to the reasons why the project(s) were rejected.

Related to the **allocation of funds to the regions**, the current process causes great frustration:

- The split between development planning and budget decisions cause plans to be made and expectations to be created at regional and local level only to be frustrated once budget decisions are taken at central level.
- The linkage between planning and budgeting is fundamental. Planning cannot be done without knowing that the funding for implementation will be available. Projects are currently put forward in the hope that funding will be made available, something that seldom happens.

Related to the **human capacity** at regional level, the findings suggest that:

- Human capacity at regional level is lacking, both within the RC as well as within the institutional structures that must support a popular development planning process. Particular shortcomings are related to a lack of skills to do integrated and strategic development planning, the inability at the community levels to formulate projects which are more than wish lists and the inability to use planning tools such as GIS and suitably disaggregated statistics to determine areas of most need and to focus interventions in those areas and sectors.
- Administrative and communication systems are not effective and this compounds the normal problems with bureaucracy even further.

Related to the **use of planning tools**, it became clear that planning tools are only used to a limited extent to inform development planning.

- Geographically based information systems which could provide a spatial idea of levels of development and could assist with identifying the areas of most need, both nationally and regionally are seldom used and where these are used centrally, the information is not available to the regions.
- Sectoral master plans run in parallel and often in conflict with regional development plans. More often than not, RC staff and councillors are not even aware of these plans and therefore don't use them in their planning activities.

Related to the **availability of information to inform development planning**, the situation is discouraging.

- Planning information is seldom available at regional level. Although extracted from the regions, data bases and information systems are normally kept centrally and the regions have little access to them. This is not necessarily because it is not available to the regions but often because the regions don't know about its existence or do not have the software and skills to access and use this data.
- Policy frameworks and regulatory regimes are also not adequately known in the regions. Information dissemination is poor and it was found that many key policies are simply not known to key staff in the RCs.

#### 5.7.1.1.3 Conclusion and recommendations

There is a stated intention by government (though not yet a visible commitment) to fully implement the Decentralisation Process. This includes delegation to devolution and transfer of administrative decision making and budgetary control to the RCs. When this happens it will be possible to conduct all planning and development at regional level, including coastal planning, dealing with environmental issues and natural resource management. The problem is that this status is unlikely to be achieved for a number of years.

The harsh reality in the Namibian context is that there is declining technical and management capacity even at central level (in the line ministries), so it is hard to imagine that all 13 RCs, as well as 13 (or more) line ministries have adequate capacity to (a) fulfil their own mandates and (b) to interact meaningfully with each other and civil society for the purposes of integration and coordination. Moreover, there is doubt about the wisdom of having four RCs each managing a component of a contiguous coastline where ecological systems require a unified management approach. Given current trends, it is more realistic to recommend a close working relationship between the RCs and sector ministries, with the RCs perhaps being in the chair and coordinating position.

#### 5.7.1.2 Local Authorities

The Local Authorities Act 1992 (No 23 of 1992) establishes the system of local Government in Namibia and defines the powers, duties and functions of local authority councils. In terms of this Act, three types of local authority council may be established.

- a municipality ( Walvis Bay, Swakopmund);
- a town ( Luderitz, Hentiesbaai) ;or
- a village

As noted earlier, the Act does not impose any specific obligation on local authorities to address environmental conservation in the coastal and marine areas or to promote sustainable development. This is unlike the Regional Councils Act which specifically confers the responsibility to undertake the planning and development of the region. However, it does grant certain powers that can be used for these purposes. For example, a local authority may, after consultation with the Minister, make regulations in the Gazette concerning "... the restriction, regulation and control of the used of common pasture and town land...".

All scheduled local authorities (including Walvis Bay, Swakopmund, Luderitz and Hentiesbaai) are required, in terms of the Ordinance, to prepare a Town Planning Scheme for their area of jurisdiction.

Town planning schemes are documents containing a comprehensive policy statement serving as a framework and foundation for zonation (e.g. residential areas, business areas, industrial areas and public spaces). It is a statutory document enforceable by law consisting of a set of maps and relevant scheme clauses indicating the permissible land uses and restrictions relating to each specific zone. A scheme shall contain such provisions as may be deemed necessary for regulating, restricting or prohibiting the development of the area to which the scheme applies and generally for carrying out any of the objects for which the scheme is made.

Although a town planning scheme is binding, it is flexible and can be changed as the need may arise by means of the amendment of this scheme. The compilation and amendment of a town planning scheme is done by the Namibia Planning Advisory Board (NAMPAB) in accordance with the Town Planning Ordinance. Town planning schemes are approved by way of a notice in the Gazette.

The “zones” applied in Schemes and the corresponding classes which determine how the land may be used are flexible and a number of more recent schemes, including Walvis Bay, Hentiesbaai and Swakopmund have specialist zones to control the development of sensitive areas. Swakopmund and Hentiesbaai employ a “Beach Area “ zone along the entire sea frontage which reserves the area for public beach activities. Buildings may only be erected here with the consent of council. In the case of Walvis Bay, they have a “Conservation Area Zone’ in their Town Planning Scheme. This is designed to protect the area from normal urban development and the only buildings permitted are those directly related to the “maintenance” of the area.

There is no reason why these conservation/protection zones could not be very specifically tailored to any objectives which the NACOMA programme may wish to promote within the boundaries of the local authority. In this sense, a Town Planning Scheme is potentially a very powerful planning and governance mechanism. The vulnerability, however, is that council has the power to propose amendments to the Scheme and also, in some circumstances, to allow specified categories of development on merit. In this way, the honest administration of the Scheme is subject to decision makers who may have political or other agendas not perfectly aligned with the Scheme intentions. Fortunately, the final decision on Scheme amendments (rezonings) rests with the Minister, thereby providing an additional level of governance. In addition, most local authorities have begun to require that all major development applications are accompanied by an EIA prepared by a competent environmental consultant. Whilst this is consistent with Namibia’s Environmental Assessment Policy, governance in this regard is variable and often inadequate.

#### 5.7.1.2.1 Institutional structure

##### **Walvis Bay**

Walvis Bay is a grade 1 Municipality and is fully self financing. It operates with seven departments, each headed by a general manager.

As far as structure, finances and human resources are concerned, Walvis Bay is by far the best resourced coastal settlement. It is one of only three local authorities to employ qualified town planners and probably the only town outside Windhoek to employ dedicated environmental officers.

The Council’s Town Planner is located within the Department of Roads and Building Control and she is assisted by a Town Planning Officer. They are responsible for

statutory and structure planning and for the processing of all development applications which are submitted to Council for approval. The three Environmental Officers are located in the Department of Water Waste and Environmental Management. Their primary function is to advise council on environmental policies, plans and projects and to generally raise awareness on environmental matters among the stakeholders of Walvis Bay.

Although they are located in separate departments, the planners and environmental officers work closely together as a matter of routine. Between them they have the following main tools to work with:

- *Town Planning Scheme*  
The Walvis Bay Scheme boundary covers the whole of the former enclave: As far as can be ascertained, the boundary follows the high water mark and the northern bank of the Swakop River. Although the Swakop river, dunes and area north of Long Beach development is state land, it falls under the “Conservation Area” in terms of the Scheme.
- *Structure Plan*  
This provides a long term development vision for the municipal area of Walvis Bay. In the process of developing the plan, considerable analyses of social, economic, natural environmental and spatial conditions associated with the town were undertaken. The plan emphasises the need to incorporate aesthetic and other environmental issues in urban design and planning.
- *Dune Belt Management Plan* – The dune area between Swakopmund and Walvis Bay represents the only coastal dunes in Namibia that are easily accessible to the public. As a result, this area is immensely popular as a recreation area for residents and visitors to the area, particularly for off road vehicle such as 4x4's, quad bike and motor bikes. The area has also become a popular venue for film shoots.
- *Coastal Area Strategy and Action Plan* – The Coastal Area Strategy and Action Plan is made up of the Walvis Bay Lagoon (declared a Ramsar Site in 1995) and associated environs. The strategy and plan was developed to create a technical understanding and practical means by which the coastal area might be safeguarded and managed as a long term asset for all the town's citizens.
- *Walvis Bay Nature Reserve Management Plan* – The Walvis Bay Nature Reserve comprises the Walvis Bay Lagoon and the dune area east of Walvis Bay, the Kuiseb Delta and the Kuiseb River, south to the boundary of the Namib-Naukluft Park. The Ramsar Site is regarded as one of the richest coastal wetlands in southern Africa in terms of birdlife, while the inland dune areas and the ephemeral Kuiseb Delta support significant ecological and cultural resources that are highly valued by the indigenous Topnaar community. This plan will only come into effect once the area has been proclaimed a nature reserve.

### **Swakopmund**

Swakopmund is also a Grade 1 Municipality with six departments including the office of the CEO. The municipality does not have a dedicated town planner. The officer who performs this function is also responsible for the supervision of works and building control, statutory and structure planning and for the processing of all development applications.

The council does not have dedicated environmental staff and responsibility for environmental issues lies with the Health Department. The main focus of this department is solid waste management and the monitoring and control of town dump sites (which are privatised). Council operates an Environmental Committee which meets every second month under the chairmanship of the General Manager Health. Their main focus is the beautification of the town and the conservation and upgrading of the Swakop river mouth. The committee also oversees all EIA studies undertaken within the local authority area.

Swakopmund has a Town Planning Scheme and Structure Plan which place special emphasis on the urban design of the beachfront. There do not appear to be environmental management plans for the town.

### **Hentiesbaai**

Hentiesbaai is classified as a Town with three departments - Corporate Services, Economic Development and Urban Management. The latter has eight Divisions of which one is Town Planning, Control and Property Administration and one is Health and Sanitation.

The town planning and control section is staffed by a clerk who is responsible for the processing of development applications. The Health and Sanitation Division is managed by the Environmental Health Officer, but the primary task of the division is solid waste management and town cleaning. There is no capability to undertake environmental planning and management.

Hentiesbaai has had a Town Planning Scheme for some years and is in the process of preparing a Structure Plan for the area under its jurisdiction. There are no environmental management plans in place.

### **Luderitz**

Luderitz is a town with three departments - Technical, Finance and Human Resources Corporate Affairs. Although there is a section for "properties" under the Technical Department, there is no post or staff member responsible for town planning. This is because the council employs town planning consultants for all aspects of town planning and development control. These consultants report to Corporate Affairs.

Although the council runs an "Environmental Health" Section, which deals with town cleaning and solid waste management and generally with natural resource management.

The town has a Town Planning Scheme, but no Structure Plan to provide a policy background for the Scheme.

### **Oranjemund**

Oranjemund is a private town owned and operated by Namdeb. For several years, Namdeb mine management has been investigating the merits of proclaiming Oranjemund into a formal open town. To this end, land use studies and a town plan have been drawn up by consultants. An accompanying strategy is in place to establish a caretaker development company (the Oranjemund Development Corporation – ODC) which will operate as a local authority independently of Namdeb.

The strategy has two components: -

- complete all legal procedures necessary to proclaim the town, including town planning approval, land survey and deeds office registration: and
- build capacity in local governance by establishing the ODC. This will initially be wholly owned by Namdeb but would be allowed to operate as an independent local authority.

In this way, final proclamation of the town can be implanted at short notice, but can be withheld by Namdeb until such time as it makes social, economic and administrative sense. Recently, Namdeb employed a permanent officer to administer the ODC and to manage the transformation process. This officer is a qualified town planner who will also be responsible for preparing tools for urban development control such as a Town Planning Scheme and Structure Plan. These do not exist at present. Namdeb has a permanent Environmental Officer who has wide duties to oversee the environmental management aspects of the diamond mining operation as well as the urban areas occupied by the town. A number of EIAs and EMPs have been prepared by and for the mine, but these all lie outside the probable boundary of the future town.

### **Wlotskasbaken**

Wlotskasbaken is neither a municipality, town or village. It is actually a settlement Area, declared in terms of the Regional Councils Act and managed by the Regional Council with advice from a local elected committee. In this sense it is not autonomous and is reliant on Regional Council resources for any coastal planning and environmental management inputs. It has no Town Planning Scheme nor a Structure Plan.

Before Namibia's Independence, the community of Wlotskasbaken were administered as a village under a statutory body which no longer exists – the Peri Urban Development Board. Minimal services were provided and the community were happy to be left to their own devices. This community is now in conflict with the Erongo Regional Council who wish to “formalise” service provision and to open and enlarge the town. Under these ‘political’ circumstances, coastal planning and environmental management have a low priority.

#### 5.7.1.2.2 Comments on strengths and weaknesses

Walvis Bay and, to a lesser extent, Swakopmund have the structure and resources to be able to carry out responsible coastal planning within their areas of jurisdiction and to manage environmental issues and natural resources. Walvis Bay takes this responsibility and allocates resources wherever requested and required in order to contribute to integrated environmental management. It is prepared to initiate such programmes. Swakopmund has fewer resources and consequently participates more selectively.

Luderitz does not have a town planning or environmental management capacity. It relies totally on consultants to perform these functions.

The smaller settlements of Hentiesbaai and Wlotskasbaken contribute minimally towards coastal planning and environmental management, although it is assumed that the consultants who will prepare Hentiesbaai's structure plan will seek to prepare a well integrated long – term development vision for the town.

Oranjemund is well resourced but is not currently legally mandated to undertake formal planning in the public interest.

The impression gained by the consultants during their discussions with stakeholders and field visits, is that none of the LAs along the coast are performing adequately with respect to the application of environmental safeguards, including the use of tools such as Impact Assessment. The poorly planned developments between Swakopmund and Walvis Bay (and the poor enforcement of agreed conditions) and the fact that developments in Swakopmund are allowed to be established within metres of the High Water Mark, are testimony to the fact that these LAs have neither the technical capacity nor the political will to apply existing national policies and emerging legislation. This is cause for concern and a challenge to be met by the NACOMA project.

#### 5.7.1.2.3 Recommendations

Under the aegis of the MRLGHRD, a major revision of planning is in process in the form of the Draft Urban and Regional Planning Bill. Most importantly, this will provide for the establishment of statutory structure plans at the national, regional and urban level. The role and format of the existing Town Planning Scheme will be retained, but will be couched within a higher level of legally binding guidelines and policy.

As stated earlier in this report, from an integrated coastal management perspective the Bill and the regulations made under it are limited in their scope in that they are designed to regulate the use of land and could be used to control any activities in the sea. In any event, this instrument could not be used by a municipality in an area beyond its area of jurisdiction (e.g. in the sea).

Coastal management objectives and policies could be included in the national structure plan and possibly also in regional structure plans. (The latter depends on whether or not the area of jurisdiction of the regions includes the seashore and coastal waters). However, it is important to appreciate that even if appropriate provisions are included in a regional structure plan, the provisions of such a plan do not directly affect use rights. It will be necessary to amend existing town planning schemes or establish new zoning schemes which give effect to the policies established in the structure plan in order to create an effective legal mechanism for prohibiting inappropriate development.

Whilst new statutory Structure Plans do not confer or take away any use rights in respect of land and, whilst local authorities may be reluctant to use re-zonings to do this (because of the expense of compensation), the Bill is nevertheless a potentially powerful instrument to carry out effective and enforceable land use planning at all levels and sectors – including coastal planning and environmental management. Like all instruments, it requires genuine commitment and dedicated input from all stakeholders to make the new statutory plans effective. Most importantly, it requires the vision at national and regional level to see the opportunity which the new statutory plans present for integrated planning and management.

### 5.7.2 Overall conclusions and recommendations

Issue of concern	Recommended solution	Comments
Inadequate capacity of Regional Councils	<ul style="list-style-type: none"> <li>Establish a Coastal Zone Management Agency – chaired by one of the RCs (or by all in rotation), in which key line ministries, NGOs and industry representatives combine knowledge, skills and resources to guide and monitor all development in the coastal zone. This Agency should have statutory status and a well defined responsibility. At first, it could be a 'coalition of the willing' who cooperate with each other.</li> </ul>	This consultancy argues that it is unrealistic to expect that capacity can be built and sustained in the 4 RCs. This is why a more inclusive arrangement is

	<p>Eventually, the Agency might well take over strategic planning functions from various line ministries, and maybe even enforcement functions. The original line ministries will in such a case have reduced functions <i>along the coast</i>.</p> <ul style="list-style-type: none"> <li>• If government is serious about RCs eventually taking over the planning and management of the regions, then the entire structure of the RCS needs to be reconsidered. Substantially more skilled people will need to be allocated to the RCs (presumably on transfer from the line ministries). This will likely cause many difficulties and much more thought needs to go into this eventuality before creating more expectations or uncertainties.</li> </ul>	proposed.
Uncoordinated development/management between the 4 RCs – all of whom are managing a “contiguous” natural system	<ul style="list-style-type: none"> <li>• In the Agency model proposed above, there will be one “plan” and “strategy”, which will guide development and management in the various regions. This prevents uncoordinated development and management</li> </ul>	
Fast growing towns promote inappropriate and unsustainable development	<ul style="list-style-type: none"> <li>• Ensure LAs are included in the Agency</li> <li>• Promote the development of Structure Plans that each consider environmental/sustainable development considerations</li> <li>• Ensure good governance in the implementation of structure plans</li> <li>• LAs must promote civil society participation – reduce the current trend of secrecy and poor transparency</li> <li>• Ensure consistent use of Impact Assessment</li> </ul>	

## 5.8 Ministry of Trade and Industry (MTI)

The role of the MTI is to create an enabling environment for Namibia’s economic diversification and growth through the promotion of investment and industrialization and the expansion of export trade. Although the MTI has no land use planning or natural resource management mandate, its activities could significantly affect planning along the coast.

### 5.8.1 Organizational structure

MTI is comprised of the following four Directorates and two parastatal organizations:

- Industrial Development
- Internal Trade
- International Trade
- General Services
- Namibia Investment Centre (NIC)
- Offshore Development Company (ODC)

In consultation and cooperation with local and regional authorities, MTI spearheads the implementation of three major sector programmes:

- Industrial development programme
- Investment promotion programme
- Trade promotion programme

Various components of the Industrial Development Programme are implemented through the Namibia Development Corporation (NDC), a parastatal linked to MTI. It is the MTI’s policy to ensure that all industrial development projects are subjected to EIAs (though practice and policy are not always consistent!). A Special Industrialization Programme was launched in the early 2000s to fast-track the Industrial Development Programme by facilitating the setting up of targeted manufacturing plants, again subject to EIAs. The promotion of domestic and foreign

direct investment and foreign trade remain priorities of GRN. Trade and investment promotion is done by enhancing investors' confidence, providing for repatriation of profits, legal protection of investments, and creating a conducive business environment.

To the extent that Namibia's industrial development projects and trade and investment initiatives target and impact upon coastal land, they must be an integral part of physical, economic and environmental planning processes along the coast. Hence, they are of direct relevance to NACOMA.

One important initiative taken to create a conducive environment for foreign investment and trade was the Export Processing Zone (EPZ) Programme, which commenced in 1996, following the promulgation of the EPZ Act in 1995. The Act provides beneficiaries with exemption from all forms of taxation and allows for the holding of a foreign currency account. Furthermore, the EPZ Act provides for the establishment of the Offshore Development Company, which is mandated to administer and promote the EPZ regime, in conjunction with NIC. As of 2004, 75 enterprises had been granted EPZ status, of which 32 were fully operational.<sup>248</sup> The single largest EPZ project (representing more than 95% of all EPZ investments to date) is the Scorpion Zinc Mine.<sup>249</sup> An EPZ could be located anywhere in Namibia and several specially designated industrial zones and parks have been established, including one at Walvis Bay.<sup>250</sup>

Although the performance of the EPZ programme is generally considered to have been modest in terms of employment creation, the number of newly established EPZ enterprises has been growing. Single EPZ enterprises (and more so specially designated EPZ zones / parks like Walvis Bay where a number of EPZ enterprises are clustered together) do tend to have an economic growth stimulating (multiplier) effect on other businesses, infrastructure development, economic diversification and enhanced export activity.

The Offshore Development Company (ODC's) responsibilities and activities include investment promotion, development and management of industrial infrastructure, and special industrial projects.

Feedback from EPZ operators highlights various problems, including "delays and poor service from local authorities and service providers in terms of electricity, water and business land as well as extremely high rates and costs of services, especially in some least developed local authorities and regions".<sup>251</sup> It is likely that this excludes Walvis Bay where service provision tends to work relatively well.

ODC was tasked to develop industrial parks to provide affordable business premises for EPZ investors and other export-oriented activities. This includes the industrial EPZ at Walvis Bay. ODI helps to strengthen institutional infrastructure, but major drawbacks are a lack of trained labour and bureaucratic red tape.<sup>252</sup> ODC has a shared responsibility of administering and monitoring this EPZ – along with other line ministries (such as DWA/MAWF on water pollution and MET on environmental

<sup>248</sup> MTI, Annual Report, 2004, p. 35.

<sup>249</sup> NDP2, Chapter 19 (Trade and Industry), p.317.

<sup>250</sup> The other existing EPZ zones / parks are at Oshikango and Katima Mulilo, and a similar infrastructural development is planned for the Katwitwi outpost on the border with Angola.

<sup>251</sup> MTI, Annual Report, 2005, p. 82.

<sup>252</sup> *Coastal Profile of the Erongo Region*, Integrated Coastal Zone Management Project, August 1999, p.127.

monitoring), in consultation and cooperation with the local authority (Walvis Bay Municipality).

In addition to its core responsibilities, the ODC has been entrusted with the management of the personnel and capital projects of MTI's Sites & Premises Development Programme, taking over from the NDC. This new function applies throughout Namibia, including the coast.

### 5.8.2 Conclusion and recommendations

Issue of concern	Recommended solution	Comments
Inadequate knowledge of environmental issues in MTI, resulting in failure to guide investors appropriately	<ul style="list-style-type: none"> <li>• Sensitise MTI staff about environmental issues and the sensitivity of the environment. Whilst the Foreign Investment Act has a discretionary clause that could be used by the Minister (of MTI) to ensure that an Impact Assessment is conducted for certain projects, it is thought not to have been used to date. MTI needs to be more consistent so that it does not cause intersectoral tensions by not fully disclosing national requirements to investors.</li> <li>• MTI should be more pro-active in commissioning Strategic Environmental Assessments for, inter alia, EPZs that will contain a number of different industries that might result in cumulative impacts.</li> <li>• MTI must be more pro-active in seeking the advice of appropriate line ministries regarding the avoidance/mitigation of environmental impacts resulting from projects that it facilitates. Interaction between MTI, MET, MFMR and DWA are insufficient at present.</li> </ul>	There are many examples of foreign investors being brought into Namibia without the necessary environmental safeguards being implemented.

## 6. SUMMARY EVALUATION OF LEGAL AND INSTITUTIONAL FRAMEWORK

The main findings of the evaluation of the legal framework from an ICM perspective are set out below.

### Rights and duties in respect of the coast

1. The legal status of the seashore (i.e. the area between the high-water and low-water marks) is not defined in legislation although section 100 of the Constitution (quoted in section 0) suggests that it is owned by the State. Under Roman law the seashore was regarded as the common property of everyone (*res omnium communes*) and could not be privately owned. During the Roman Dutch period the state began to exert control over the seashore which was regarded as a public asset under the custodianship of the state (*res publicae*). Given the adoption of South Africa common law in Namibia it is likely that a court would regard the seashore in Namibia as being vested in the state as custodian on behalf of the people (i.e. as *res publicae*). However the precise legal status of the seashore is unclear and considerable historical and legal research may be required to clarify this issue.
2. The rights of the public to use the seashore and coastal waters, to gain access to the coast and to move along it, are not specified in legislation and are unclear. It appears that the public have a common law right to use and enjoy the seashore but it is unlikely that they have any legal right to gain access to the seashore over public or private land situated inland of the high water mark or to move along the seashore where doing so requires moving inland of the high water mark.
3. The responsibilities of the state to conserve and protect the seashore and coastal waters on behalf of the inhabitants of Namibia are not defined in legislation and

are ill-defined at common law. Consequently it would be difficult for any member of the public to institute legal proceedings to ensure that such areas are protected and to prevent the on-going degradation of coastal areas, particularly in the absence of environmental legislation granting members of the public legal standing to institute such actions.

4. There is no legislation which provides for the leasing of land or the granting of concessions to use land within the seashore or coastal waters, other than for the purposes of aquaculture or mining.
5. There is no legislation providing for the establishment of a coastal protection zone inland of the high-water mark both for the purposes of restricting activities in order to ensure that the seashore itself can be properly managed and for the protection of human life and property. The need to demarcate such an area is particularly important in view of the increasing threat posed by sea level rise and the requirements of the United Nations Framework Convention on Climate Change to develop national response strategies.
6. Existing public and private rights to own and build on land up to the high water mark are not conducive to protecting environmental quality, maintaining the natural character of the coast or the promotion of sustainable coastal development. These rights should be restricted by appropriate zonings, building set-back lines, and other measures to establish an effective buffer zone inland of the high-water mark.

### **Coastal planning**

7. There is no body that has a legal mandate to prepare or develop coastal management plans and to establish coastal management objectives, priorities and principles to guide all decision-makers that make decisions that affect the coastal environment.
8. Existing statutory spatial plans (namely town planning schemes established under the Town Planning Ordinance) do not provide an appropriate legal basis for implementing and enforcing integrated coastal management plans and measures for a variety of reasons. For example:
  - a. it is unlikely that town planning schemes could be applied below the high water mark,<sup>253</sup>
  - b. some departments of the national government reportedly take the view that municipal town planning schemes do not restrict activities on state land;
  - c. many of the restrictions and other provisions which it would be desirable to include in a coastal management programme fall outside of the scope of the Town Planning Ordinance and if enforced as part of a town planning scheme could be set aside by a court on the basis that responsible authority had exceeded the powers granted to it by the Ordinance (i.e. it had acted *ultra vires*);

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<sup>253</sup> On the basis of the information available to us it appears unlikely that municipalities and regional councils have jurisdiction below the high water mark but further research regarding the delimitation of the seaward boundaries of the regions by the Delimitation Commission under Article 103 of the Constitution, and of the seaward boundaries of municipalities is required to settle this issue..

- d. restrictions imposed in town planning schemes in order to protect the coastal environment may give rise to obligations to pay compensation which could make the cost of implementing coastal management plans prohibitively expensive;
  - e. local authorities only have powers to make plans within their areas of jurisdiction and while regional councils may exercise similar powers outside of local authority areas, there is no mechanism for ensuring that such plans are consistent with one another.
9. If the draft Urban and Regional Planning Bill and regulations are enacted it will improve the situation by establishing mechanisms for integrated strategic planning for land (through a hierarchy of structure plans) and for applying these strategic plans via zoning schemes. Although many coastal management objectives could be included in regional and municipal structure plans, structure plans and zoning schemes could not extend to marine areas unless these areas fall within the region or municipal area. If they do not, the value of structure plans as a planning mechanism for achieving ICM would be limited. Furthermore, enacting this legislation will have little impact on existing land uses (some of which are undesirable from an ICM perspective) and restrictions imposed in zoning schemes in order to protect the coastal environment are likely to give rise to obligations to pay compensation.
10. Even if comprehensive coastal plans were prepared there is no institution with a clear legal mandate and powers to co-ordinate the implementation of those plans by different government agencies, nor would there be any legal mechanism to resolve conflicts between different sectoral plans and the coastal plans or programmes. However, the roles of the Regional Councils and the National Planning Commission could probably be developed to achieve this.

### **Protection of the coastal environment**

11. There are significant gaps in the legal framework for the protection of the environment in general<sup>254</sup> and much existing legislation is outdated and prescribe penalties that are no longer adequate deterrents.
12. The situation would be significantly improved if the Draft Environmental Management Bill, draft Pollution Control and Waste Management Bill and the draft Parks and Wildlife Bill were finalised and enacted in order to establish effective mechanisms to protect the environment, require the conduct of EIAs, to prevent and manage pollution and waste, and to protect biodiversity and ecosystems. However this legislation would not be sufficient to establish an appropriate legal basis for ICM as it does not deal with legal concepts, principles and rules that are of specific application to coastal areas.
13. Notwithstanding the above constraints, government institutions responsible for various aspects of coastal management show inadequate commitment to implementing existing safeguard instruments. In particular, governance regarding the awarding of concessions for prospecting and mining as well as expansion of urban areas is cause for concern. Also, the use of tools such as SEA and EIA is inconsistent. Also, there have apparently been incidences where officials from

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<sup>254</sup> For example, there is inadequate legislation to control the use of vehicles such as quad bikes and four wheel drive vehicles in coastal areas.

government run tourism facilities allegedly facilitate illegal angling by tourists in protected areas (e.g. Skeleton Coast Park). This alarming situation is made worse by the allegation that fisheries inspectors have colluded in these activities. This is cause for grave concern.

14. The use of sustainable development tools such as SEA and EIA is inconsistent and inadequate. There is considerable scope for SEA along the coast (e.g. the development of the Walvis Bay-Swakopmund strip, aquaculture development in the Luderitz and Walvis Bay areas, uranium prospecting and development in the central Namib and tourism development in the northern, central and southern Namib). Project level EIAs are more commonly undertaken, but the perception by many stakeholders is that the process followed and the quality of the EIAs is often poor.
15. There appears to be resistance by government to enter into meaningful partnerships with civil society regarding protection of the coastal environment – this is self defeating given the Constitutional obligations of government, the enormity of the collective mandate of various line ministries and the inadequate capacity within government to meet its obligations.

#### **Mechanisms to promote integrated coastal management**

16. While there are provisions in legislation which require consultation between ministries on specific issues, there are no legally prescribed procedures, institutions or other mechanisms to ensure adequate consultation and co-ordination between different public authorities with a view to ensuring effective and integrated coastal management on an on-going basis.
17. We were unable to identify any statutory incentives that could be used to encourage public and private parties to take measure to promote the attainment of ICM objectives but if the Environmental Investment Fund of Namibia Act 13 of 2001 were brought into force it could be used as a mechanism to fund projects that were consistent with national or regional coastal management objectives.
18. Enforcement of the legislation that exists is reported to be inadequate and is complicated by a lack of clarity regarding which government agency is responsible for enforcing key provisions and in some cases by inadequate legal mandates.<sup>255</sup>
19. Namibia has committed itself under various binding treaties (e.g. UNCLOS and the SADC Fisheries Protocol) through its endorsement of other non-binding international instruments (e.g. the FAO Code of Conduct for Responsible Fishing and the Johannesburg Plan of Implementation) and its participation in the BCLME Programme, to take a range of measures to conserve its marine and coastal environment and to implement the ecosystem approach. It has also committed itself to co-operating with other states in the region in doing so in a range of ways (see Annex 2). The establishment of an effective ICM programme and institutions with the necessary legal mandates and capacity to implement the programme is necessary for the fulfilment by Namibia of these obligations.

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<sup>255</sup> For example the MET apparently does not have a mandate to deal with aspects of the marine environment (including seabirds and turtles) which do not fall within the mandate of the MFMLR.

20. Despite the absence of legislation designed to facilitate the implementation of ICM, existing legislation could be used to implement some aspects of an ICM regime. In particular:
- some protected areas could be established using the Nature Conservation Ordinance, the National Heritage Act and the Forests Act;
  - the establishment of aquaculture development areas under the Aquaculture Act could be used to achieve a number of ICM objectives; and
  - the practice of requiring EIAs to be conducted on the basis of a non-binding policy could be strengthened in some cases by requiring EIAs under the National Heritage Act or the Aquaculture Act.
21. From a legal perspective coastal management could become more integrated if a range of functions currently performed by different Ministries were coordinated by a 'coastal agency'. There are serious concerns about the capacity of the various RCs to successfully undertake ICM. Their capacity is currently glaringly inadequate. There is also doubt about the wisdom of having 4 authorities (1 per region) – one would be better. However, each Region could coordinate its activities within an overall national coastal strategy.

## **7. CONCLUSIONS AND RECOMMENDATIONS**

The main conclusions and recommendations of this report are set out below.

1. Namibia has a number of laws that regulate human activities within the coastal zone but the existing legal framework has significant gaps from the perspective of integrated coastal management and does not provide an adequate basis for the effective implementation of integrated coastal management. There is no legislation that has the preservation of the coastal environment as one of its objects.
2. The range of legal powers to implement effective coastal management would be greatly enhanced if the Water Resources Management Act, 2004 and the Environmental Investment Fund of Namibia Act, 2001 were brought into force and if the Draft Environmental Assessment and Management Bill, the draft Pollution Control and Waste Management Bill and the draft Parks and Wildlife Bill were finalised, enacted and implemented. (The latter will also require the making of regulations). We recommend that this be given urgent attention.
3. In addition we recommend that new coast-specific legislation should be enacted:
  - 3.1. to maintain, enhance and clarify the legal status of the seashore and coastal waters as the common property of all;
  - 3.2. to define the rights and obligations of both the public and the State in respect of the seashore, islands, tidal waters and adjacent areas;

- 3.3. to define areas within the coastal area to enable different control measures to be applied within different areas and to provide a legally defined coastal zone for the purpose of implementing ICM;
  - 3.4. to provide for the granting and supervision of leases and concessions to use areas of the seashore and coastal waters;
  - 3.5. to provide principles to guide-decision makers;
  - 3.6. to streamline the granting of authorisations for coastal activities that contribute to sustainable coastal development;
  - 3.7. to prohibit within coastal areas, activities that are particularly harmful to the coast and that can be undertaken elsewhere and to require environmental impact assessments for projects that may have a significant adverse impact on the coast or the BCLME (if this is not already provided for in other legislation);
  - 3.8. to establish a system for developing integrated and legally binding spatial plans and associated regulations for the purposes of implementing an ICM programme and for ensuring consistency between these and other sectoral plans;
  - 3.9. to clarify institutional mandates and enforcement powers; and
  - 3.10. to give effect to Namibia's obligations under international law.
4. We recommend that the Government of Namibia consider prioritising the enactment of new legislation that will enable integrated and effective planning of coastal and other areas (taking into account ecological considerations as well as human land use and development).
  - 5 We urge the relevant line ministries and LAs to significantly improve their governance regarding the allocation of various land and resource-use rights. These include prospecting and mining and urban expansion/development
  - 6 There needs to be significant improvements in terms of building the capacity of the institutions with major responsibilities for coastal management. Specifically we recommend:
    - 6.1 Establishing a 'Coastal Management Agency' – that is able to implement an ecosystems approach towards the management of the coastal areas (in contrast to the sectoral approach which has achieved little to date). Establishing such an agency could be done step-by-step: Initially, the various ministries could collaborate in a formally constituted 'Coastal Agency Forum' – perhaps chaired by one of the Regional Governors. This interim measure could last a few years, during which the structure, functions and enabling instruments of the Agency could be established.
    - 6.2 The 4 regions could each coordinate activities within their area of jurisdiction, with technical services provided by the respective line ministries and contracted NGOs and consultants. However, every region must act in accordance with the 'National Coastal Management Strategy'.

- 6.3 The Coastal Management Agency must be well resourced (perhaps through the Environmental Investment Fund or other mechanisms) so that it can hire professional staff (at least 5 full time dedicated officers) – preferably without being constrained by public service parameters. This core staff will assist the agency and the RCs to keep their ‘finger on the pulse’ and to facilitate consistent and sustained input from the line ministries and other partners. The RCs and LAs must be part of the agency in order to provide input and so that they can direct requests for assistance as and when required.
- 6.4 The establishment of meaningful partnerships between government (and the ‘Agency’) and civil society. This consultancy has found that there is an enormous amount of goodwill within the public to assist the authorities to conserve the coastline – but resistance from government to embrace civil society input. The establishment of ‘Honorary Coastal Wardens’ is strongly recommended. These carefully selected individuals could assist the authorities with monitoring, data collection, reporting of transgressions and conducting inspections. Some might even be sufficiently qualified to undertake law enforcement functions. In our opinion, it is incorrect for government to fear ‘losing control’ when civil society becomes increasingly involved in helping to implement a national vision. Namibia’s CBNRM programme and the contribution of farmers to game conservation are proof that a complimentary partnership can easily be achieved if there is enough confidence to give it a chance to succeed.
- 6.5 Using independent experts (e.g. consultants) to help the authorities to achieve more rigorous quality control in SEA and EIA studies and processes. A more consistent and professional approach is needed to ensure that these tools are applied properly.
- 6.6 Improving governance in development planning. This point is linked to many of the previous recommendations, but requires a specific statement in this summary. Simply stated, the current trend of inconsistent application of policies and laws must be reversed. Whilst it is perfectly acceptable for political objectives to be pursued for a range of valid socio-economic reasons, rules and procedures must still be adhered to. Circumvention of government policies cannot and must not be tolerated.
- 6.7 Improving capacity in LAs to apply sustainable development tools more effectively in town planning. Our opinion is that few LAs are serious about incorporating environmental issues in town planning – as evidenced by the inconsistent application of national policies (e.g. EIA). The current trend of inappropriate development (e.g. buildings too close to the beach, developments in environmentally sensitive areas, high-density developments in areas where a more aesthetically pleasing approach would be more appropriate, etc.) indicates greed and a short term vision regarding coastal development. Regular conflicts between LAs and developers vs. conservation agencies and civil society organisations indicate that the degree of prior consultation and governance are perhaps inadequate in some cases.

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## Annex 1 TERMS OF REFERENCE

### **Review of Existing Institutional Mandates and Support for Targeted Revisions and, review of Existing Policies and Laws and Support for Targeted Policy and Legal Revisions and/or Development**

#### **1. Introduction**

##### *1.1 The NACOMA Project*

The Namibian Coast Conservation and Management (NACOMA) Project's Global and Project Development Objective (GDO/PDO) is to *strengthen conservation, sustainable use and mainstreaming of biodiversity in coastal and marine ecosystems in Namibia.*

The Namibian Coast Conservation and Management (NACOMA) Project aims to enhance coastal and marine biodiversity conservation through the mainstreaming of biodiversity conservation and sustainable use into coastal policy, legislative framework, and institutional and technical capacity and by supporting targeted investments for biodiversity conservation in critical ecosystems on the coast. The project's four components are:

- Policy, Legal and Institutional Framework for Sustainable Ecosystem Management of the Namib Coast
- Targeted Capacity-Building for Coastal Zone Management and Biodiversity Conservation
- Targeted Investments in Critical Ecosystems for Biodiversity Conservation, Sustainable Use and Mainstreaming
- Project Management and Performance Monitoring

Component 1 focuses on the development of a highly participatory policy framework, the Namibian Coastal Management White Paper (NACOWP), which is regarded as a critical element for sustainable ecosystem management of the coast. The NACOWP process addresses five areas that the Government of Namibia recognizes as fundamental to development of an Integrated Coastal Zone Management (ICZM) framework:

- review and improvement of coast-related legal and policy frameworks;
- clarification of mandates and roles of different levels of government;
- decentralization of environmental mandates;
- development of a National Coastal Management Mechanism;
- financial sustainability for ICZM-related actions.

Specific considerations applicable to the Namibian context include:

- the rapidly-developing broader policy context for national and regional development planning, sector strategies and integrated water resource management;
- uncertainties and opportunities associated with the ongoing decentralization process, which will significantly increase the role of coastal regions in coastal development planning and management;
- the relative isolation of Namibians from their coast, with access and development opportunities unevenly focused on a small number of rapidly-developing coastal towns.

Structured engagement underpins the NACOWP process, consistent with the Project Participation and Communication Plan (PCP). The views, priorities and experience of individuals, communities, businesses, non-governmental organisations and other bodies concerned with coastal issues will be collected and pooled with inputs from national, regional and local government and key sectoral stakeholders.

In its own right, this process of developing strategy in an inclusive manner, taking account of sector needs, can help to shape a consensus to support improved coastal management. Enhanced awareness contributes to changed attitudes among coastal stakeholders, based on better understanding of coastal biodiversity assets, the need for their protection and opportunities for their sustainable use.

The NACOWP Manual, developed during project preparation and approved by the Steering Committee of NACOMA, outlines objectives, principles and approaches for the NACOWP process and sets out a step-by-step description and a five-year 'road map' of the whole process. This detailed Action Plan shows how other Project activities (from components 2 and 3) feed into NACOWP development and how NACOWP outputs will contribute to broader NACOMA implementation. The aim is to maximize synergies and provide a "one-stop" reference for the NACOWP development process.

Lessons learnt from integrated planning processes in the African region (e.g. South Africa, Tanzania, Ghana) and elsewhere in the world (Australia, Asia, European Union, Mediterranean, Baltic) have been taken into account in preparing this Manual.

### *1.2 Project implementation and stakeholders*

NACOMA's design is based on a flexible and adaptable approach to institutional arrangements. The project's implementation is guided by a *Steering Committee (SC)* which builds coordination, cooperation and communication between key sectors at the national level and between national and regional governments. The SC members have legal powers and duties which allows for more effective coordination, project implementation and, targeting at the coastal zone. The *Project Coordinating Office (PCO)* is responsible for implementation of NACOMA and reports directly to the SC. The PCO is hosted by the Erongo Regional Council offices and has four full time staff members re: a Project Coordinator, a Senior Technical Advisor, an Accounting and Procurement Officer and an Administrative Assistant. The team is complemented by a part-time Monitoring and Evaluation Specialist. The *Integrated Coastal Zone Management Committee (ICZMC)* serves as an advisory body to the Project, and its membership liaises with the SC on all aspects of Project implementation. The *Scientific Group (SG) on coastal biodiversity and ICZM* guides NACOMA's implementation and facilitate access to, and use of relevant data through BENEFIT, BCLME, MFMR and MET as well as other line Ministries own biodiversity knowledge and monitoring bases. The SG will draw on national expertise through formal and informal organizations.

The NACOMA Project has a very diverse stakeholder base inclusive of line ministries (LMs), Regional Councils (RCs), Local Authorities (LAs), civil society, sectoral stakeholders (e.g. aquaculture, tourism, mining, etc) and support organisations (i.e. academic institutions and donor projects). The PCP has been developed to engage the above stakeholders through activities, methods and tools for communication and participation. The CAS and Action Plan will build on these activities, methods and tools to ensure the engagement of the above mentioned stakeholders, during project implementation and, particularly during the review of existing Institutional Mandates and existing Policies and Laws consultancy.

## 2. Background to this tasks

There is currently no clearly defined policy framework for Coastal Zone Management (CZM) or overall coastal zone development and sustainable resource use in Namibia. Existing policies and legislation, from which respective ordinances derive mandates (roles and responsibilities of line ministries (LMs)) and, set regulations for coast-relevant activities, result in an overlap, ambiguities and contradictions in the jurisdictional remits of key line ministries. These key LMs include MET, MME, MFMR, MRLGHRD and MAWF, and other regional and local stakeholders (RCs, LAs, etc.). The few environmental management and natural resources laws and polices available are not consistent in delivering the three facets of sustainable development of the coastal area, namely ecological protection, economic development and social upliftment. In addition, roles and mandates of key stakeholders with regard to management and conservation of coastal resources/ biodiversity and sustainable development of the Namibian coast, at various levels are not very clear. This has lead in many cases to conflict between stakeholders with regard to responsibilities and access as well as, the lack of action due to hazily defined institutional mandates.

The two reviews and consequent outcomes are thus crucial steps in the development of Namibia's Coastal Management White Paper (NACOWP). The one task will support a review of- and appropriate amendments to relevant legislation and policies to ensure their consistency with principles of ICZM. The other task will provide technical analysis and input to review, clarify, revise and harmonize the current roles and mandates of key stakeholders with regard to management and conservation of coastal resources/ biodiversity and sustainable development of the Namibian coast, at various levels. It supports in particular a shift from centralized to regional and local management of biodiversity and coastal resources through their mainstreaming into the ongoing decentralization process (in particular decentralization of MET's environmental management functions). The clarification and harmonization of institutional mandates will be particularly relevant for the streamlining of decision-making processes at regional and local level to facilitate mainstreaming of coastal biodiversity considerations into sector policies and actions by the time of closing of the Project<sup>256</sup>.

These reviews are clearly crucial for Namibia's development of a Coastal Management White Paper. The outcomes of these reviews and, actions taken based on recommendations, will feed into the White Paper as an integrated framework for coastal biodiversity management and sustainable use.

## 3. Objective of this tasks

The NACOMA Project seeks to contract an qualified and registered environmental and or legal consultng firm which should appoint consultants to review existing institutional mandates and provide technical support for targeted revisions and, to review existing policies and laws and provide technical support for targeted policy and legal revisions and/or development

## 4. Specific Tasks

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<sup>256</sup> A key lesson learned from the closed Erongo Region ICZM Project is that without institutionalized coordination, fragmentation occurs. Therefore, institutional arrangements that are sustainable and survive any Project arrangements (e.g. ICZMC as broad-based consultative forum and the potential future National Coastal Management Mechanism) need to be supported.

#### *4.1 Review of Existing Policies and Laws and Support for Targeted Policy and Legal Revisions and/or Development*

- a. Review current and draft legislation (Acts, Ordinances, Bills, international conventions to which Namibia is signatory and policies) pertaining to the coastal zone environment, and assess gaps in coastal environmental legislation, overlaps, inconsistencies across sectors and ambiguities regarding enforceability.
- b. Analyse the current status on enforcement of the laws, and identify the constraints (such as lack of regulations and capacity) related to the implementation of laws and the enforcement thereof.
- c. Analyse in details, the current role of the Regional Councils with regard to the enforcement of laws and adherence to policies pertaining to the coastal zone environment. The consultant, in close collaboration with consultants reviewing the different institutional stakeholders' mandates and roles in coastal zone management, must come up with concrete recommendations and guidelines on how identified constraints should be addressed.
- d. Through a consultative and participatory process, facilitate the agreement on recommended amendments or development of new legislation based on prioritised policy and legal aspects pertaining to the conservation and management of the coastal zone
- e. Cooperate and collaborate with consultants undertaking the NACOMA's coastal SEA study in order to share, integrate information and findings for end products harmonisation purposes.

#### *4.2 Review of Existing Institutional Mandates and Support for Targeted Revisions*

- a. Review mandates and responsibilities of LMs, RCs, LAs, RDCCs related to conservation and sustainable use of coastal biodiversity<sup>257</sup>
- b. Develop and undertake a consultative process (workshops, targeted stakeholder consultation meetings) to clarify and harmonize roles and responsibilities of institutional stakeholders with regard to conservation and sustainable use of coastal biodiversity, based on recommendations from stakeholders.
- c. Review and make concrete recommendations on RCs organisational structure to facilitate the creation of environmental planning sections under the Directorate of Planning in the RCs.
- d. Develop and publish option papers on new or revised institutional functions including job descriptions of environmental planners at RC level.
- e. Through the consultative process, define functions and procedures related to transfer of environmental management responsibilities from MET to environmental planners in the RCs by year 5 of NACOMA.

## **5. Expected outputs**

### *5.1 Review of Existing Policies and Laws and Support for Targeted Policy and Legal Revisions and/or Development*

- a. A detailed inception, note relaying the Consultants' understanding of the requirements of the task, and a work programme for the consultancy submitted to the PCO;
- b. A report highlighting reviewed laws and accompanying regulations with an analysis of the current status of implementation and enforcement. The report must, with great

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<sup>257</sup> Higher level roles and mandates should be reviewed along with comparison of service delivery mandates of LM's extension/field-based staff.

- clarity and detail, feature reasons for current implementation and enforcement status and should clearly show the gaps, overlaps, inconsistencies, ambiguities, and disadvantaging sector-based approaches. This report must indicate specific constraints followed by realistic recommendations. This process must bear evidence of adequate stakeholder consultation;
- c. Option paper on various coastal related policies and legislations concretely recommending a way forward for amending current legislation and/or developing new legislation with potential implications. This paper should include the agreed Namibian coastal zone definition and details how existing laws, legislations and or new legislation should apply to the defined coastal zone (this option paper must be disseminated widely to incorporate all the stakeholders inputs);
  - d. A report stemming from in depth consultations with all RCs, detailing specific reasons for the ability or inability to enforce regulations and ensure adherence to policies. Recommendations, also resulting from the consultative process, must be concrete with financial and other resource implications;
  - e. Proceedings from a workshop and a comprehensive approach paper that outlines a clear way forward for the implementation of recommendations to amend current legislation and/or to develop new legislation. The aim of the workshop will be to create a platform for dialogue among all line ministries and other key stakeholders to reach consensus in the best interest of coast conservation and management.

## 5.2 *Review of Existing Institutional Mandates and Support for Targeted Revisions*

- a. A detailed inception note, relaying the Consultants' understanding of the requirements of the task, and a work programme for the consultancy submitted to the PCO;
- b. A report detailing stakeholders' current roles and mandates in relation to coast conservation and sustainable use of coastal biodiversity;
- c. Proceedings of a consultative workshop detailing the process toward clarification and harmonisation of roles and responsibilities of stakeholders with regard to coastal conservation and sustainable use of biodiversity. Clear recommendations for clarification and harmonisation must form part of the proceedings;
- d. A report detailing the current organisational structures of RCs and clear recommendations for the creation of decentralised Environmental Planning Division within the Directorate of Planning. This report must bear evidence of collaboration and consultation with the French-funded decentralisation support project in the MLRR;
- e. A strategy paper with clear, achievable and practical steps for the decentralisation of environmental management functions from MET to Environmental Planners in RCs.

## 6. **Duration and remuneration**

The firm will be paid in tranches on delivery of outputs at the end of each suggested time period per task as in the agreed work programme, from the date of effectiveness of a contract.

The below table is indicative of the duration of tasks while it is highly recommended that the firm plan tasks in such a manner to capitalise on stakeholder consultations, workshops and work travel. Developing a work programme that is agreed upon by the PCO, the NACOWP General Facilitator and the firm is thus an essential part of the 2-day inception.

Output	Duration for	Tranche in
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<b>Review of Existing Policies and Laws</b>	<b>Review of Existing Institutional Mandates</b>	<b>delivery of output</b>	<b>%<sup>258</sup></b>
a. Inception note and work programme		2 days	5%
b. Report on detailed policy and legislation review related to the coast	Report on detailed roles and mandates review or RCs related to coastal biodiversity management and sustainable use	25 days	40%
c. Report on detailed review of current regulations and implementation and enforcement situation	Proceedings of a consultative workshop detailing the process toward clarification and harmonisation of roles and responsibilities of stakeholders	10 days	15%
d. Report based on findings of c and consultations with RCs (and other relevant stakeholders) on the ability or inability to enforce legislation e. Option paper on various coastal related policies and legislations	A report detailing the current organisational structures of RCs and clear recommendations for the creation of decentralised Environmental Planning Division within the Directorate of Planning.	14 days	25%
f. Workshop proceedings and agreed next steps for policy/legislation adjustments	A strategy paper with clear, achievable and practical steps for the decentralisation of environmental management functions from MET to Environmental Planners in RCs.	10 days	10%
g. Final report in collaboration with the roles and mandates review consultants	Final report in collaboration with the roles and mandates review consultants	3 days	5%
<b>Total duration</b>		<b>70 days (≈ 3.5 months)</b>	<b>100%</b>

## 7. Logistical and other support

- NACOMA will facilitate communication between the Consultants and key project stakeholders for meetings and consultations.
- NACOMA will bear the cost of meetings and workshops agreed upon in the work programme and, relevant travel and accommodation cost directly related to these task.
- The Consultants bear the responsibility to make arrangements for travelling, accommodation, meetings and workshops.

<sup>258</sup> The payment of tranches will be done only upon satisfactory review and clearance of the outputs by the PCO and Steering Committee.

- The Consultants bear the responsibility to produce high quality work and deliver reports comparable to regional and international standards for assignments of this nature.
- The Consultants bear the responsibility to collaborate with the Consultant providing technical assistance support to the Ministry of Fisheries and Marine Resources for the declaration of Marine Protected Areas (MPAs). A legal review was conducted in light of declaring MPAs that will be beneficial to the review of legislation and policies.

## **8. Reporting**

- a. The firm will report to the Project Coordinator via the General Facilitator (GF), appointed by NACOMA who will also oversee the execution of this consultancy. The GF will report on progress of this task during meetings with the PCO and/or the Steering Committee;
- b. The Project Steering Committee and the ICZMC will review reports and in a timely manner submit comments/ suggestions via the PCO;
- c. The Consultants will produce reports as indicated below at scheduled deadlines indicating in their approve work programme;

## **9. Existing relevant studies and basic data**

- Coastal Zone Management White Paper – South Africa
- NACOMA’s Project Appraisal Document (PAD)
- Participation and Communication Plan (PCP)
- NACOWP Manual and Road map
- Analysis of the institutional capacity in the Namibia coastal Regional Councils in relation to the Namibian decenstralisation process: Recommendations for institutional strengtehning and capacity building (EcoAfrica Environmental Consulttants 2004)
- Rapid assessment of the development plans, biodiversity conservation projects and socio-economic situation of the Namib Coastal Regions (EcoAfrica Environmental Consulttants 2004)
- Review of policy and legislation pertaining to Coastal Zone Management (Glazewski and Kauvee 2004)
- Terms of References for i) the “Development of a Communication and Awareness Strategy and Action Plan” and ii) Coastal Strategic Environmental Assessment (SEA) for the northern Namibian Coast.

## **10. Suggested profiles for the consulting firm**

The consulting firm must be a formal registered firm with more that five years of professional practice in environmental law and or organisation and development / restructuring related fields. It must have excellent track record of delivering high quality products. Experience in ICZM field will be advantageous. The consultants to be appointed by the firm should possess at least the following characteristics

### *10.1 Environmental Law Expert*

- a. A post graduate qualification in environmental law or related field;
- b. Demonstrated experience in carrying out similar assignments pertaining to legislative review, legislation/ policy development, drafting of regulations, stakeholder consultations and recommending amendments to existing legislation;
- c. Demonstrated experience in adequately facilitating stakeholder/ public participation/ consultation;
- d. Knowledge and understanding of the Namibian policy development history, and operating environment is essential;

- e. Knowledge of the coastal zone and natural resources is preferred;
- f. Strong self motivation and ability to work independently.

#### *10.2 Organisational Review and Development Expert*

- a. A post graduate qualification in organizational development/ restructuring or related field;
- b. An educational qualification and or experience in political/ development studies/field with an emphasis on government organizational development and/or decentralisation is highly valuable;
- c. Demonstrated professional experience in roles and responsibility review of organisations, stakeholder consultations and recommending amendments to current roles and mandates;
- d. Demonstrated experience in adequately facilitating stakeholder/ public participation/ consultation;
- e. Knowledge and good understanding of Namibia's coastal stakeholders, central government structures and procedures, and the decentralization process pertaining to the coast essential;
- f. Knowledge and/ or work experience related to the coastal zone and natural resources an advantage;
- g. Strong self motivation and ability to work independently.

#### *10.3 Political Science Expert*

- a. A post graduate qualification in political science or related field;
- b. Demonstrated professional experience in decentralization and restructuring;
- c. Demonstrated experience in adequately facilitating stakeholder/ public participation/ consultation;
- d. Knowledge and a good understanding of Namibia's central government operations and decentralization objectives essential;
- e. Knowledge and/ or work experience in capacity building and development of decentralised structures (e.g.RCs, LAs) essential;
- f. Strong self motivation and ability to work independently.

#### *10.4 Environmental Science/Coastal Zone Expert*

- a. A post graduate qualification in environmental science/ coastal zone management or related fields;
- b. Demonstrated work experience in identifying roles and responsibilities for decentralized environmental planning functions or, other relevant experience;
- c. Demonstrated experience in adequately facilitating stakeholder/ public participation/ consultation;
- d. Knowledge and a good understanding of Namibia's central government operations and decentralization objectives is an advantage;
- e. Knowledge of the coastal zone and natural resources in the context of decentralisation and institutional development is an advantage;
- f. Strong self motivation and ability to work independently.

## Annex 2 INTERNATIONAL AND NAMIBIAN LEGAL RESPONSES TO COASTAL ISSUES

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
1. Coastal management and protection of marine environment	(Note: most impacts identified at stakeholder workshop)			
1.1. Defining the coast	<p>Integrated coastal management can only be introduced if the geographical extent of the coastal area to which the management regime applies, has been defined.</p> <p>Enforcement by the public of common law rights to use seashore and coastal waters and to require the State to take measures to protect the integrity of the coast will be difficult or impossible if rights and responsibilities in respect of coastal areas are not clearly defined in legislation.</p>	Adjacent states to agree on delimitation of EEZ and CS (UNCLOS, Art 73 and 83)	<p>Walvis Bay and Offshore Islands Act, 1994</p> <p>Territorial Sea and Exclusive Zones of Namibia Act, 1990</p> <p>Sea Shore Ordinance, 1958</p>	<p>Southern maritime boundary with South Africa disputed. Legal status of seashore unclear, assumed to be vested in state as custodian for the public under common law (<i>res publicae</i>). Obligations of state in relation to seashore and coastal waters undefined. No right of access to and along seashore. No effective legal basis for establishing coastal protection or buffer zone inland of high water mark. Require legal definitions of coastal areas, preferably in new Coastal Act.</p>
1.2. Maintaining the integrity of the coastal environment	Maintaining the integrity of the coastal environment requires comprehensive and well-enforced legislation that protects both the terrestrial and marine aspects of the marine environment from all significant threats posed by human activities.	<p>Coastal states to co-operate in facilitating sustainable use of coastal resources and conservation of environment (FAO Code Art 10.3.1)</p> <p>To co-operate globally and regionally (directly or through competent international organisations) in relation to conservation of marine environment, promotion of studies and scientific research programmes, exchange of information, implementation of existing</p>	<p>National Heritage Act, 2004</p> <p>Aquaculture Act, 2002</p> <p>Forest Act, 2001</p> <p>Marine Resources Act, 2000</p> <p>Namibian Ports Authority Act, 1994</p>	<p>Current legislation inadequate and no legislation which has preservation of coastal environment as its object/ purpose. Bring Water Resources Management Act, 2004 into force. Enact and implement Environmental Management Bill and ensure that EIAs take</p>

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
		<p>laws (UNCLOS Art 197 to 201 and 235)            To co-operate at sub-regional, regional and global levels to ensure responsible fishing, effective conservation and protection of aquatic living resources (FAO Code Art 6.12)            To protect the aquatic environment in co-operation with SADC institutions and relevant international agencies that protect endangered aquatic species and habitats (SADC FP Art 14(4))            To conserve aquatic ecosystems (FAO Code Art 6.1)            To conserve genetic diversity and maintain integrity of aquatic communities and ecosystems by appropriate management (FAO Code Art 9.3.1)</p>	Soil Conservation Act, 1969	<p>account of implications for the BCLME.            Enact and implement Pollution and Waste Management Bill and Parks and Wildlife Bill.            Enact and implement Urban and Regional Planning Bill and regulations.</p>
1.3. Coastal planning	Without an integrated plan for the coast management intervention are typically reactive and uncoordinated.	<p>To consider international declarations and agreements in the preparation of plans, policies, programmes on fisheries and integrated coastal zone management (SADC FP Art 14(5))            To address coastal zone issues in planning activities with regard to aquatic ecosystems, taking account of the need to ensure the health of such systems (SADC FP Article 14(6))            To develop appropriate legal and institutional frameworks to address coastal zone issues in planning activities for aquatic ecosystems (SADC FP Art 14(6))</p>	<p>Aquaculture Act, 2002            Town Planning Ordinance, 1954            Township and Division of Land Ordinance, 1963</p>	<p>There is no comprehensive ICM plan that all government agencies are obliged to implement and no legal obligation to develop one.            No institutional mechanism to co-ordinate implementation of government policies in the coastal zone and to resolve conflict.            No statutory basis for the implementation of legally binding spatial planning to achieve ICM objectives.            Existing town planning schemes inadequately enforced.            Enact and implement Urban and Regional Planning Bill and regulations.</p>

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
1.5 Public participation in coastal management	Effective implementation of ICM requires active participation by stakeholders in the development and implementation of coastal programmes.	To make public the rationale for and determination of TAC, quota allocations, permits and other rights (SADC FP Art 18)	Marine Resources Act, 2000	No adequate legal basis for public participation in coastal management (e.g. via local coastal committees, in formulation of coastal policies, programmes and plans, and in EIA processes.
1.6 Impact assessment	<ul style="list-style-type: none"> <li>Assessing the environmental, heritage and social impacts of proposed projects (EIAs) and of relevant policies, programmes and plans (SEAs) are indispensable for proactive and effective coastal management.</li> </ul>	To evaluate and report on potential effects of activities that may cause pollution or substantial changes to the marine environment (UNCLOS Art 205) Member States to encourage a regional approach in conducting environmental impact assessments especially in relation to shared systems and cross border environmental effects. (SADC MP, Art 8(2))	National Heritage Act, 2004 Aquaculture Act, 2002 Petroleum (Exploration and Production) Act	Bring Water Resources Management Act, 2004 into force. Pass and implement Environmental Assessment and Management Bill. Define activities with require an EIA if conducted in defined coastal areas.
1.7 Regional Cooperation		To co-operate at sub-regional and regional levels to improve coastal area management (FAO Code Art 10.3.3) To share information essential for achieving objectives of SADC Fisheries Protocol (SADC FP, Art 17(1)) To promote transfer of marine science and technology through international co-operation as well as establishment of standards and guidelines for transfer on bilateral basis (UNCLOS Article 266 and 271) To prioritise bilateral and multilateral co-operation in recognition of the transboundary nature of ecosystems (FAO Code Art 6.4)		Ensure that agreements and information derived from participation in the BCLME programme and the BCC are communicated to, and take into account by all relevant decision makers.
1.8 Dispute resolution	<ul style="list-style-type: none"> <li>Competition and conflicts between coastal users results in sub-optimal uses of coastal areas.</li> </ul>	To refer disputes regarding whether a resource is shared to the Integrated		Establish alternative dispute resolution procedures for

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
		Committee of Ministers for determination (SADC FP, Art 7(1)). To co-operate to prevent disputes (FAO Code Art 6.15)		resolving disputes arising from competing uses of coastal areas.
<b>POLLUTION</b>				
<b>1.9 Marine pollution from ships</b> Increased trade and marine transport (particularly the transportation of oil and hazardous substances) together with increased offshore oil and gas activities has increased the potential risk from this source.	<ul style="list-style-type: none"> <li>Oil spills often have chronic impacts on wildlife and their habitats, particularly sea birds, and may have more subtle long-term effects.</li> </ul>	Marpol 73/78, London Dumping Convention 1972 and 1996 protocol.  To develop contingency plans for pollution incidents jointly with other states (UNCLOS Art 196)	Prevention and Combatting of Pollution of the Sea by Oil Act	
<b>1.10 Marine pollution from land-based sources</b> These may arise from a variety of point sources (e.g. factories) and diffuse sources (e.g. run-off from fields). Sources include hazardous substances from industry, pesticides, and effluent from fish processing, etc.	<ul style="list-style-type: none"> <li>Human health; e.g. from eating contaminated seafoods or bathing in polluted waters.</li> <li>Nutrient loading and eutrophication of coastal waters, particularly from elevated levels of nitrogen and phosphates. Socio-economic impacts on fisheries, aquaculture and tourism industries.</li> <li>Ecosystem impacts, e.g. mortalities from oxygen depletion, mortalities caused by litter and bio-accumulation of hazardous substances.</li> <li>Unpleasantness due to beach litter.</li> <li>Habitat and marine life destruction through various forms of pollution, including dumping at sea.</li> <li>Deteriorating quality of coastal (marine) water quality because of land-based pollution.</li> <li>Disturbance of the peace by quad bikes primarily, but also low flying aircraft and to a lesser extent 4x4s.</li> </ul>	1972 London Dumping Convention and 1996 Protocol. 1989 BASEL Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal. 1995 Global Programme of Action for the Protection of the Marine Environment from land-based activities. To harmonise policies for prevention of occurrence and spread of pollution with other states (UNCLOS Art 194) To harmonise domestic laws regulating polluting activities at a regional level with objective of establishing regional (and global) rules and standards to prevent and reduce pollution To adopt domestic laws regulating land and sea-based polluting activities impacting on the marine environment (UNCLOS Art 207 to 212) To adopt legislative and administrative measures to prevent the pollution of	Aquaculture Act, 2002	Enact and implement Draft Pollution and Waste Management Bill.  Declare aquaculture development zones and make regulations to control water quality.  New legislation required to zone coastal areas and provide adequate legal basis for controlling quad biking and other activities.

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
		waters (SADC FP Art 14(8)) To institute domestic measures for responsible usage, compliance control and sustainable utilisation of aquatic resources (SADC FP Art 5)		
<b>1.11. Increased atmospheric emissions</b> These arise from a number of sources, including emissions from power plants and industries, and vehicles.	<ul style="list-style-type: none"> <li>Oxygen depletion in marine waters</li> <li>Global warming and climate change.</li> <li>Human health impacts</li> <li>Deteriorating air quality because of atmospheric emissions (e.g. fish factories).</li> </ul>	UN Framework Convention on Climate Change.	Atmospheric Pollution Prevention Ordinance, 11 of 1976	Pass, implement and enforce Waste Management and Pollution Bill
<b>1.12. Global climate change</b> This is being caused primarily by excessive emissions of CO <sub>2</sub> due to the fact that industrialised and post-industrial economies rely heavily on oil, gas and coal for energy.	<ul style="list-style-type: none"> <li>Resulting in flooding, salination of agricultural lands and freshwater supplies and consequential population displacement and loss of habitats;</li> <li>Increases in storms, floods and natural disturbances.</li> </ul>	United Nations Framework Convention on Climate Change.	Atmospheric Pollution Prevention Ordinance, 11 of 1976	Pass, implement and enforce Waste Management and Pollution Bill. Develop strategies and laws to deal with sea level rise, including imposing set-back lines to prevent construction too close to high water mark.
<b>2. Physical alteration and destruction of habitats</b>				
<b>2.1. Infrastructural development in coastal areas</b> Increases in coastal populations, urbanisation, industrialisation, and tourism are creating intense pressures to change physical land forms in coastal areas and build infrastructure.	<ul style="list-style-type: none"> <li>Loss of habitats for indigenous.</li> <li>Increased or altered flows of sediment.</li> <li>Decreases in sediment exacerbate coastal erosion.</li> <li>Habitat loss due to urban encroachment into the desert and along the coastline. This has consequential impacts on biodiversity, livelihoods and tourism and reduces future (perhaps more sustainable) development options.</li> <li>Unsustainable resource use (especially water) to support building and other forms of development.</li> <li>Social tensions, as local people, especially the poor, are denied access to the coast or are squeezed into the worst areas</li> <li>Coastal instability (and also increased vulnerability to</li> </ul>		National Heritage Act  Town Planning Ordinance, 1954  Township and Division of Land Ordinance, 1963	Review existing zonation and enforce Town Planning Schemes. Enact and implement Draft Pollution and Waste Management Bill. Enact new legislation to enable integrated spatial planning incorporating ICM considerations. Enact and implement Urban and Regional Planning Bill and regulations.

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
	<p>sea level rise) because of poorly planned development (e.g. building too close to the waterline) or placing structures such that they interfere with natural processes (e.g. sediment movement).</p> <ul style="list-style-type: none"> <li>Increased pollution resulting from new coastal development (residential, industries, harbours, etc.)</li> </ul>			
2.2. Mining	<ul style="list-style-type: none"> <li>Land-use conflicts between mining and conservation, with mining enjoying precedence. The result is often reduced options for other land use, either during or post-mining.</li> <li>Degradation of the bio-physical environment, resulting in habitat and biodiversity loss.</li> <li>Changes to the socio-cultural fabric +values, as mining is often foreign dominated and there is a perception that it robs local communities of their sense of ownership</li> <li>Depletion of critical resources for short term profits (e.g. water) and thus reduced options for long term development</li> <li>Unchecked impacts because of certain types of mining that are not effectively regulated (e.g. sand mining and small scale mining)</li> </ul>	<p>Member States shall encourage the development of internationally acceptable national and regional standards. (SADC MP, Art 5(1))</p> <p>Member States to collaborate in the development of programmes to train environmental scientists in fields related to the mining sector. (SADC MP, Art 8(3))</p> <p>Member States to share information on environmental protection and environmental rehabilitation. (SADC MP, Art 8(4))</p>	<p>Minerals (Prospecting and Mining) Act</p> <p>Petroleum (Exploration and Production) Act</p>	<p>Improve enforcement</p> <p>Enact and implement Urban and Regional Planning Bill and regulations and zone coastal areas</p>
<p>2.2. Physical alteration of coastal water sheds</p> <p>This typically arises from deforestation, mining, intensive agriculture or infrastructural developments that affect the flow, sediment load or water quality of rivers.</p>	<ul style="list-style-type: none"> <li>Excessive consumption of fresh water reduces river flows to coastal areas resulting in increased estuary salinity, decreased fish yields, decreased sedimentation, salt water intrusion into groundwater, etc.</li> <li>Pollution of the coastal and marine environments because of aquaculture, agriculture and industries in catchment areas.</li> <li>Deterioration of water quality because of poor upstream management practices.</li> <li>Inadequate water flow down perennial and ephemeral rivers because of upstream abstraction and damming.</li> <li>Increase in the occurrence of invasive and harmful species that have been introduced into catchments.</li> </ul>	<p>1997 UN Convention on the Law of International Watercourses</p> <p>Recommendation of the World Commission on Dams.</p> <p>Africa SADC Protocol on Shared Watercourses</p>	<p>Aquaculture Act, 2002</p> <p>Water Act, 1956</p> <p>Mountain Catchment Areas Act 63 of 1970</p>	<p>Bring Water Resources Management Act, 2004 into force and develop catchment plans.</p>
3. Over-exploitation of	<ul style="list-style-type: none"> <li>Long term and sometimes irreversible decline in fish</li> </ul>	UNCLOS 1982	Marine Resources Act, 2000	Improve enforcement

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
living resources	<p>stocks with associated impacts on ecosystems and fishing communities</p> <ul style="list-style-type: none"> <li>• Depletion of marine resources which could be compromising ecosystem functioning.</li> <li>• Degradation of shoreline because of shore-based angling.</li> <li>• Pollution and litter caused by those involved in fishing.</li> <li>• Habitat destruction as a result of harmful fishing methods.</li> <li>• Wastefulness because of by-catch.</li> </ul>	<p>Coastal states to promote optimum utilisation of MLR by: determining TAC, protecting against over-exploitation and restoring MLR to levels for maximum sustainable yield (UNCLOS, Art 61)</p> <p>To promote responsible and sustainable use of living aquatic resources (SADC FP Art 3).</p> <p>To ensure that fisheries management relates to the whole stock unit over its entire area of distribution (FAO Code Art 7.3.1)</p> <p>To establish a Committee to oversee the implementation of the SADC FP (SADC FP Art 19)</p> <p>To establish bilateral, sub-regional or regional fisheries organisations to ensure effective conservation and protection of aquatic resources (FAO Code Art 7.1.3).</p> <p>Coastal states to exchange scientific data on MLR including in relation to TAC (UNCLOS Art 61)</p> <p>To provide information (to the SEAFO Commission) regarding activities in its territory that relate to straddling stocks (SEAFO Conv Art 13(2))</p> <p>To share scientific data, information, &amp; research knowledge about the marine environment (UNCLOS, Art 197-201, 266)</p> <p>1995 UN Fish Stocks Agreement: Affected coastal states to co-operate in the conservation of migratory, shared/associated stocks, anadromous and catadromous species (UNCLOS, Art 63-67)</p> <p>To ensure that conservation and</p>	Inland Fisheries Resource Act, 2003.	

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
		<p>management measures in respect of transboundary, straddling, highly migratory and high stocks are compatible throughout their ranges (FAO Code Art 7.3.2)</p> <p>1993 FAO Compliance Agreement; 1995 FAO Code of Conduct for Responsible Fisheries; International Plans of Action to: (a) reduce incidental catch of sea birds in long line fisheries; (b) conserve and manage sharks; (c) to manage fishing capacity; and (d) to prevent, deter and eliminate illegal, unreported and unregulated fishing;</p>		
4. Aquaculture	<ul style="list-style-type: none"> <li>• Conflicts between sectors because of more areas being required for mariculture projects. This can result in negative socio-economic impacts.</li> <li>• Generation of waste.</li> <li>• Proliferation of pathogens and invasive species.</li> <li>• Unsightly and/or inappropriate infrastructure.</li> <li>• Increase in fishing pressure (local fish/organisms may be used as food for aquaculture species), resulting in depletion of local species.</li> </ul>	<p>To co-operate in the promotion of sustainable aquaculture practices (FAO Code Art 9.2.1)</p> <p>To protect aquatic ecosystems by supporting responsible aquaculture practices within national jurisdictions (FAO Code Art 9.2.1)</p> <p>To ensure responsible choice of species, siting and management of aquaculture activities that could affect transboundary ecosystems (FAO Code Art 9.2.2)</p> <p>To facilitate co-operation for aquaculture development at the national, sub-regional, regional and global levels by establishing mechanisms for collection, sharing and dissemination of data relating to aquaculture activities (FAO Code Art 9.2.4)</p> <p>To co-operate in the development of mechanisms for monitoring the impact of inputs used in aquaculture (FAO Code Art 9.2.5)</p>	Aquaculture Act, 2002	<ul style="list-style-type: none"> <li>• Pass and implement Waste Management and Pollution Bill</li> <li>• Mandatory EIAs</li> <li>• Establish enforceable coastal plans (informed by SEAs) and and zones (new coastal legislation desirable)</li> <li>• Monitor and enforce aquaculture permit conditions</li> </ul>

ISSUE	IMPLICATIONS AND IMPACTS	NAMIBIA'S INTERNATIONAL LAW OBLIGATIONS	NAMIBIAN LEGAL RESPONSES	KEY LEGAL ISSUES
		To consult with neighbouring states prior to introduction of non-indigenous species into transboundary aquatic ecosystems (FAO Code Art 9.3.2)		
<p><b>6. Introduction of exotic species</b> This occurs particularly due to ships' transport-ing ballast water and sediments around the world and the rapid increase in aquaculture.</p>	<ul style="list-style-type: none"> <li>• Degradation of ecosystems by alien invasive species. Human health impacts from pathogens (e.g. cholera). Consequential socio-economic impacts, e.g. from reduction in fisheries.</li> <li>• Alien invasive species enter natural environment (e.g. through ship ballast water release) and compete with natural resources, causing biodiversity loss.</li> <li>• Genetically modified organisms proliferate, thus threatening local species.</li> <li>• Humans introduce alien organisms through spread of human-based diseases.</li> </ul>	<p>Convention on Biological Diversity and Cartagena Protocol on Biosafety; International Convention for the Control and Management of Ships' Ballast Water and Sediments</p> <p>To conserve genetic diversity and maintain integrity of aquatic communities and ecosystems by appropriate management (FAO Code Art 9.3.1)</p> <p>To ensure responsible choice of species, siting and management of aquaculture activities that could affect transboundary ecosystems (FAO Code Art 9.2.2)</p> <p>To consult with neighbouring states prior to introduction of non-indigenous species into transboundary aquatic ecosystems (FAO Code Art 9.3.2)</p>	<p>Inland Fisheries Resource Act, 2003.</p> <p>Aquaculture Act, 2002</p>	<p>Introduce mandatory ballast water practices</p> <p>Establish aquaculture development zones and appropriate regulations.</p>
<p><b>7. Tourism</b></p>	<ul style="list-style-type: none"> <li>• Habitat destruction, leading to biodiversity loss, aesthetic deterioration and reduced visitor satisfaction.</li> <li>• Inappropriate development, or too many establishments in a confined area (e.g. mass tourism or unsightly infrastructure).</li> <li>• Pollution of the environment, either physical pollution, noise or other.</li> <li>• Tourism remains an "elite industry", causing alienation of local people and thus resentment.</li> </ul>		<p>Accommodation and Tourism Ordinance, 1973</p>	<p>New legislation to zone coastal areas</p> <p>Enforceable coastal plans based on SEAs</p> <p>Improve law enforcement</p>

### **Annex 3: Workshop proceedings**

#### **Proceedings of the consultative workshop held in Swakopmund, Namibia, from 12-13 October 2006**

##### **Introduction**

The purpose of this workshop was four-fold:

- To encourage broad based public participation in decision making for the management and sustainable development of Namibia's coastal and marine areas;
- To provide input into the design of the Strategic Environmental Assessment and White Paper that will be undertaken as part of the NACOMA project;
- To identify key threats to Namibia's coastal and marine biodiversity and environments; and
- To consider ways of avoiding or significantly reducing negative environmental impacts, either through the development or improvement of policies and laws, improved functioning of institutions involved in the management and development of the area, public awareness raising and other strategies.

Since integrated management requires issues and options to be considered in an integrated way, the methodology adopted for the workshop encouraged participants to think creatively on a number of different levels at the same time. In spite of the fact that the workshop served as input into two different programmes (NACOMA and BENEFIT), it was felt that the issues are sufficiently similar to justify their discussion at a single forum. Moreover, the coordinators of both NACOMA and BENEFIT recognize that stakeholders have limited time and resources, and that holding many different workshops to discuss similar issues would be counter productive.

The structure of the workshop was a combination of presentations (to set the scene), discussions of clarification, group work and plenary feedback. The use of cards as a method of generating ideas provided all participants with an equal opportunity to contribute, thus reducing the possibility of influential persons dominating proceedings and pursuing personal/sectoral agendas. It also enabled the generation of many ideas in a relatively short time. Participation throughout the two days was lively and constructive and it is evident that stakeholders have a high feeling of ownership over both process and output.

Over 90 individuals/institutions, representing every sector with an interest in the management and development of the coastline, were invited to attend this workshop. It was very encouraging that approximately 70 persons attended and that attendance was consistent over the two day period.

## Workshop Agenda

Day 1: Thursday 12 October

#	TIME	ITEM	COMMENTS
	08h00	Registration	
1	08h30	Welcome and opening	Mayor of Swakopmund
2	08h45	Introductions	R.Braby
3	09h15	Objectives of the workshop	F.Odendal
4	09h30	Overview of NACOMA project	T.Mufeti
5	09h45	Overview of BCLME biodiversity programme	N.Sweijd
6	10h00	Introducing the SEA component of the NACOMA project	F. Stuer-Lauridsen
	10h30	<i>Tea</i>	
7	11h00	Road map for the White Paper Development	F.Odendal and J.Zeidler
8	11h20	Introduction to themes and discussion on workshop methodology	P.Tarr
9	11h30	Break into theme groups and workshop themes: <u>Threats</u> Group 1: Extractive marine living resource use Group 2: Pollution Group 3: Mining Group 4: Coastal development	Group leaders
	13h00	<i>lunch</i>	
10	14h00	Break into theme groups and workshop themes: <u>Threats</u> Group 5: Catchment issues Group 6: Tourism Group 7: Alien invasive species Group 8: Mariculture	Group leaders
	15h30	<i>Tea</i>	
11	16h00	Plenary report back Group 1: Extractive marine living resource use Group 2: Pollution Group 3: Mining Group 4: Coastal development	Group leaders
	17h00	Close of day 1	

Day 2: Friday 13 October

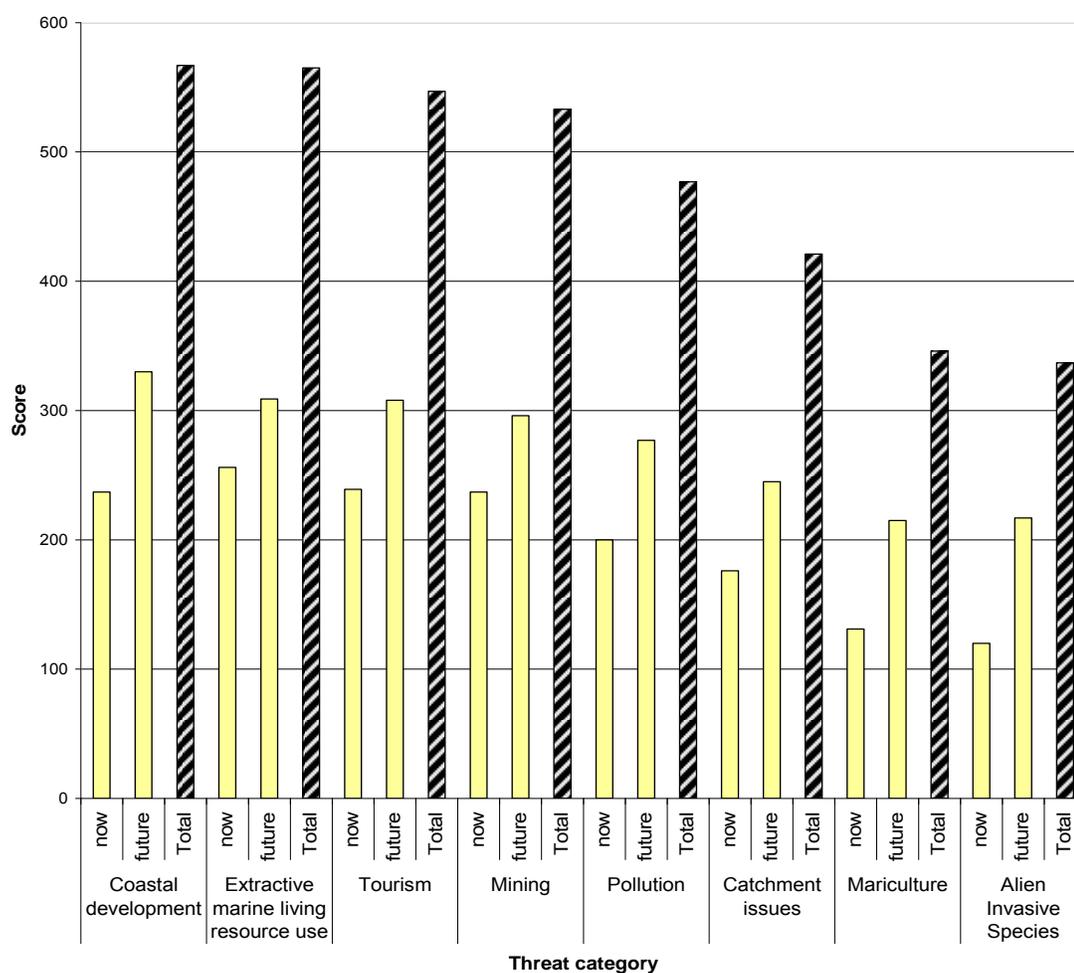
#	TIME	ITEM	COMMENTS
	08h00	Orientation for day 2	
12	08h15	Plenary report back Group 5: Catchment issues Group 6: Tourism Group 7: Alien invasive species Group 8: Mariculture	Group leaders
13	09h15	Introduction to SEA methodology	Henrik Skov
	10h00	<i>Tea</i>	
14	10h30	SEA group work 3 Groups	Henrik Skov
15	12h00	Break into theme groups and workshop themes: Group 9: Policies and laws	Group leaders

		Group 10: Institutional roles	
	13h30	Lunch	
16	14h30	Group report back to plenary Group 9: Policies and laws Group 10: Institutional roles	Group leaders
17	15h30	Next steps and closure	T.Mufeti and N Sweijd
	16h00	Closing tea	

## Workshop results

### Threats Assessment and strategies to achieve sustainable development

Participants were of the opinion that something needs to be done urgently to guide coastal development (urban expansion), the extraction of living marine resources (primarily fishing), tourism and mining (see figure 1). Similarly, pollution of the marine and coastal environments is cause for concern while the management of catchment areas (inland river systems), mariculture and alien invasive species appears to be of lesser concern.



**Figure 1: General perception of workshop participants of the key current and future threats to the Namibian coastline and marine environment (sample size: 51)**

The quantification of these threats was not scientific, relying instead on assessing (by allocating a score out of 10) current and perceived future threats based on participants current (in some cases limited) knowledge. Whilst this exercise is also being conducted much more precisely using experts to consider threats to specific biozones, it is nevertheless useful to gauge the opinion of a broad range of stakeholders. One might consider the results from this workshop as a “general stakeholder barometer”.

Based on the threats assessment and discussions at the workshop, it is clear that most participants are concerned that the development of the coastline (and to a lesser extent the

marine environment) is uncoordinated and ad hoc at present, resulting in seemingly arbitrary decisions being taken, often driven by the promise of short term economic benefit. The resultant polarization between “developers and environmentalists” is a clear indication that the bigger picture has not been properly articulated and that a broad-based policy and strategy needs to be developed to guide coastal development. Participants are concerned that “time is running out” and urge for swift action in this regard.

The depletion of Namibia’s marine resources attracted considerable attention at the workshop and participants are concerned that the combined impacts of unfavourable environmental conditions and overutilisation of resources will negate the seeming comparative advantages of the generally rich and productive Benguela system. Whilst fisheries and marine management are the domain of a small number of scientists and industry operators, other stakeholders are increasingly concerned that Namibia’s ability to sustainably develop this sector is undermined by inadequate human capacity and political interference in the setting of exploitation limits.

Similarly, there is renewed interest in minerals that occur in the coast and desert areas and prospecting and mining seems to have escalated recently. Environmentalists are concerned that many of these operations have failed to consider the fragility of the coast and the vulnerability of many of its resources and habitats. It is clear that better coordination between the various authorities is essential so that this issue can be addressed with the urgency it requires. Whilst there are examples of good practice by some mining companies operating in the area, others seems either ignorant or arrogant, the result being destruction of habitats and the foreclosing of future land use options.

Whilst tourism is often regarded as a “green industry”, many feel that the Namib coast is becoming a mass destination – contrary to the stated objective of “high quality, low impact”. This sector is still perceived as “elite” and foreign dominated – with the poorer sectors of Namibian society not necessarily enjoying the benefits. There is a need to expand ownership and involve local communities. There is also a need to promote the adoption of Namibia’s Eco-Award criteria which address issues such as aesthetic design, water and energy efficiency, benefit sharing and reducing on and off-site impacts. The latter are evidenced by the growing number of quad bikes and aircraft that result in escalating noise and other pollution. In spite of the concerns about this sector, tourism is regarded as being key to the sustainable development of the coast as the Namib is a unique destination with a number of comparative advantages. Similarly, fishing, mariculture and mining all need to be accommodated in order to promote the required multi-sector economic base.

A key to addressing the above and other concerns is adopting a common vision for the development of the coast and the implementation of carefully considered and well designed strategies and safeguards. These must be broad based, and the result of consensus building that avoids the current trend of polarization. The NACOMA process aims to achieve this through the SEA and White Paper. It is essential that this process be all-inclusive and transparent.

Sustainable development strategies identified during the workshop include zonation and sound development planning, the use of SEA and EIA tools so that decision making is consistent, and far greater cooperation between institutions than has been the case thus far. Whilst the legal framework is largely in place to enable this, glaring gaps are the Environmental Assessment and Management Bill, the Pollution and Waste management Bill and accompanying regulations. With the promulgation of these two key pieces of legislation, many (though not all) of the current weaknesses might be overcome. In addition, improvements need to be made to existing statutes (e.g. mining, nature conservation, water resources management and town and regional planning), while it is thought that an umbrella Coastal Zone Management Act would facilitate the required interdisciplinary and intersectoral

collaboration required for effective coastal zone management. NACOMA consultants will address these issues in the months ahead.

The following tables provide a summary of the identified threats to Namibia's coastline and marine environment, and the strategies that might reduce the threats and promote sustainable development.

### 1. Extractive Marine Living Resource Use

<b>Impact threat</b>	<b>Strategy to avoid or mitigate</b>
Depletion of marine resources which could be compromising ecosystem functioning	<p>Improve scientific rigour in setting of TACs – so that the stated limits have better credibility</p> <p>Improve mechanisms for all stakeholders to be part of TAC setting so that there is better ownership over the set limits and thus better adherence</p> <p>Reduce political influence on TAC setting – or at least ensure a more consistent approach</p> <p>Better governance in decision making – see above</p> <p>Improved awareness raising/education programmes so that decision makers at all levels appreciate the vulnerability of the resource and the need for a conservative approach towards management</p>
Degradation of shoreline because of shore-based angling	<p>Better enforcement of existing laws</p> <p>Set aside “closed areas” within angling areas so that important/threatened habitats have a chance to recover – these could be rotated</p>
Pollution and litter caused by those involved in fishing	<p>Ensure that the Oil Spill Contingency Plan is maintained and implemented</p> <p>Clarify roles and responsibilities of the various authorities so that everyone knows what is expected of them</p> <p>Improved awareness raising/education programmes so that decision makers at all levels, including the public, appreciate the vulnerability of the coastline and the need for its conservation</p>
Habitat destruction as a result of harmful fishing methods	<p>Better enforcement of existing laws</p> <p>Set aside “closed areas” within the fishing grounds so that important/threatened habitats have a chance to recover – these could be rotated</p> <p>Initiate a “gear study” and study the receiving environment to get a better idea of the impacts being caused</p>
Wastefulness because of by-catch	<p>Improve gear so that there is less by catch</p> <p>Improve research and monitoring</p> <p>Improve the quality of the observers on the fishing boats so that they are more effective in their work</p> <p>Improve implementation of existing laws</p>

### 2. Pollution

<b>Impact threat</b>	<b>Strategy to avoid or mitigate</b>
Unsightliness due to beach litter	<p>Better cleanup operations - e.g. community projects for the unemployed</p> <p>Improving awareness of the public, anglers and operators of fishing vessels</p> <p>Improved law enforcement, heavier fines, improved legislation</p>
Habitat and marine life	Improved law enforcement, heavier fines, improved legislation

destruction through various forms of pollution, including dumping at sea	<p>Improve surveillance of the ocean area so that ships guilty of dumping/pollution can be apprehended</p> <p>awareness campaigns on the economic value of marine life, food webs and ecosystem functioning</p> <p>Continuously update the National Oil Spill Contingency Plan and ensure preparedness amongst those responsible for its implementation</p> <p>Establish adequate oil disposal facilities (e.g. at the harbour) and provide incentives for their use</p>
Deteriorating quality of coastal (marine) water quality because of land-based pollution	<p>improved infrastructure, including the establishment of adequate oil disposal facilities</p> <p>Improved law enforcement, heavier fines, improved legislation</p> <p>awareness campaigns on the economic value of marine life, food webs and ecosystem functioning</p> <p>Ensure all potentially polluting industries have EIAs prior to their establishment and EMPs even if they were established in a previous era.</p>
Deteriorating air quality because of atmospheric emissions (e.g. fish factories)	<p>Law amendment – could be addressed in the Pollution and Waste Management Bill, or in regulations</p> <p>Law enforcement</p> <p>Introduce and promote cleaner production technology</p>
Disturbance of the peace by quad bikes primarily, but also low flying aircraft and to a lesser extent 4x4s	<p>Zonation – make sure that noisy vehicles are restricted to certain areas</p> <p>Improve law enforcement</p> <p>Raise awareness amongst users of such vehicles</p>

### 3. Mining

<b>Impact threat</b>	<b>Strategy to avoid or mitigate</b>
Land-use conflicts between mining and conservation, with mining enjoying precedence. The result is often reduced options for other land use, either during or post-mining.	<p>Revisit current legislation that allows mining in sensitive areas and national parks, with the aim of preventing or severely restricting prospecting and mining in such areas.</p> <p>Improve co-operation between the relevant institutions (MET and MME in particular)</p> <p>Improve capacity, especially in MET and MME to (a) ensure credible EIAs and (b) monitor compliance</p> <p>Develop alternative industries in rural areas that have a better economic and socio-economic return than mining</p> <p>Consider access to EPL and ML areas during the EIA phase</p>
Degradation of the bio-physical environment, resulting in habitat and biodiversity loss.	<p>As above, also, see below...</p> <p>Improved supervision of mining EMPs</p> <p>Creation of an Environmental Rehabilitation fund</p> <p>EA process needs to be improved, must be integrated into planning (not an afterthought) and must not be rushed</p> <p>Promulgate the Environmental Assessment and Management Bill</p> <p>Encourage pressure groups to be more active so that Civil Society can assist with monitoring and conducting baseline studies</p>
Changes to the socio-cultural fabric +values, as mining is often foreign dominated and there is a perception that it robs local communities	<p>Preference should be given to locals</p> <p>Social issues to be given more prominence in impact assessments</p> <p>EAs must be integrated into planning – not just an administrative action</p> <p>Strive for the diversification of jobs and value adding to mined products.</p>

of their sense of ownership	Mining operations must mainstream issues such as HIV/AIDS and gender Identify alternative land use and industries for period after closure
Depletion of critical resources for short term profits (e.g. water) and thus reduced options for long term development	Reinvest mining generated revenues into skills development or better management of other sectors (e.g. manufacturing, fisheries, etc.) Consider post mining development opportunities while the mine is running (or even during initial planning) so that closure and rehabilitation is planned well ahead of time. Develop awareness of international market trends that, whilst beyond our sphere of influence, could impact on mining in our country. Water extraction must take into account environmental reserves Determine the viability of the water resources before extraction begins – there should be a specialist study within the EIA (and EIAs must be mandatory for all mines) Water recycling must be practiced by all mines Precautionary Principle must be applied
High Impact activity harvesting a finite resource	Environmental cost benefit analyses needs to be done. Must consider no project option in EA
Unchecked impacts because of certain types of mining that are not effectively regulated (e.g. sand mining and small scale mining)	Revise mining legislation to ensure that both sand mining and small scale mining are adequately controlled Ensure adequate coordination between MME and local authorities to manage mining activities in municipal areas. Educate mining/extractive industries about the importance of conservation.

#### 4. Coastal Development

Impact threat	Strategy to avoid or mitigate
Habitat and biodiversity loss due to urban encroachment into the desert and along the coastline. This reduces future (perhaps more sustainable) development options.	Zonation is needed – with clear lines of what may be done where. Development guidelines (possibly following an SEA process) are needed to ensure that projects and/or activities are implemented within determined parameters. This includes setting Carrying Capacity or Limits of Acceptable Change. Clearer delineation of mandates of various institutions – both authorities and those who are involved in promoting best practice Improve law enforcement – laws mostly exist but implementation is poor. This might require capacity building (staff and other) Improved cooperation between the various authorities, and between the authorities and the developers Improve awareness (through education/information) amongst developers so that they adopt a more responsible attitude, and amongst the authorities so that they do not approve inappropriate projects.
Unsustainable resource use (especially water) to support building and other forms of development. This reduces future (perhaps more sustainable) development options.	Development guidelines are needed to ensure that projects and/or activities are implemented within determined parameters. Improved cooperation between the various authorities, and between the authorities and the developers Improve awareness (through education/information) amongst developers so that they adopt a more responsible attitude, and amongst the authorities so that they do not approve inappropriate projects. Resource-hungry projects must be subject to EIAs

	<p>EIAs must be a statutory requirement so that high-impact projects are subjected to the appropriate level of planning. The promulgation of the Environmental Assessment and Management Act is a top priority in this regard.</p> <p>Together with the above, capacity to guide, review and monitor the implementation of EIAs is critical.</p>
<p>Social tensions, as local people, especially the poor, are denied access to the coast or are squeezed into the worst areas</p>	<p>Zonation is needed – with clear lines of what may be done where.</p> <p>EIAs must be mandatory for developments that are likely to require rezoning (especially from “public” to “other”) so that citizens rights are protected</p>
<p>Coastal instability (and also increased vulnerability to sea level rise) because of poorly planned development (e.g. building too close to the waterline) or placing structures such that they interfere with natural processes (e.g. sediment movement).</p>	<p>Zonation is needed – with clear lines of what may be done where.</p> <p>EIAs must be mandatory for developments that are to be located near the shoreline</p> <p>EIAs in such cases must include the required specialist studies – conducted by suitably qualified persons</p>
<p>Increased pollution resulting from new coastal development (residential, industries, harbours, etc.)</p>	<p>Development guidelines are needed to ensure that projects and/or activities are implemented within determined parameters and in areas zoned for such development.</p> <p>Improved cooperation between the various authorities, and between the authorities and the developers</p> <p>Improve awareness (through education/information) amongst developers so that they adopt a more responsible attitude, and amongst the authorities so that they do not approve inappropriate projects.</p> <p>Promote the adoption of Cleaner Production technologies</p>

## 5. Catchment Threats

<b>Impact threat</b>	<b>Strategy to avoid or mitigate</b>
<p>Pollution of the coastal and marine environments because of aquaculture, agriculture and industries in catchment areas</p>	<p>Raise awareness of the importance of good catchment management</p> <p>Improve the treatment of water runoff (especially from agriculture, mines and industries)</p> <p>Better policies and laws</p> <p>Ensure that all mines have appropriate and functioning EMPs</p> <p>Ensure EIA process for all development projects in catchment.</p>
<p>Deterioration of water quality because of poor upstream management practices</p>	<p>Better enforcement of existing policies and laws</p> <p>Improved modeling of ecosystems so that there is a better idea of changes and causes</p> <p>Integrated catchment management practices are needed</p> <p>Promote the use of SEA and EIA</p> <p>Establish environmental reserves</p>
<p>Inadequate water flow down perennial and</p>	<p>Better enforcement of existing policies and laws</p> <p>Improved modeling of river systems so that their dynamics are</p>

ephemeral rivers because of upstream abstraction and damming	better understood Research and monitoring Integrated catchment management practices are needed Promote the use of SEA and EIA Establish environmental reserves Create legislation to control the mining of sand – not currently catered for in the Mining Act. Apparently this issue will be dealt with in the regulations of the new Water Act.
Increase in the occurrence of invasive and harmful species that have been introduced into catchments	Better enforcement of existing policies and laws so that the introduction of aliens is prevented Research and monitoring Integrated catchment management practices are needed so that river-borne invasives (e.g. plants) are controlled Projects that will likely cause an influx/proliferation of aliens must be subjected to EIAs so that such impacts are completely avoided.

## 6. Tourism

<b>Impact threat</b>	<b>Strategy to avoid or mitigate</b>
Habitat destruction, leading to biodiversity loss, aesthetic deterioration and reduced visitor satisfaction	Zonation – with clear lines of what may be done where. Development guidelines (possibly following an SEA process) are needed to ensure that projects and/or activities are implemented within determined parameters. This includes setting Carrying Capacity or Limits of Acceptable Change. Clearer delineation of mandates of various institutions – both those that are authorities and those who are involved in promoting best practice in the industry Improve law enforcement – laws mostly exist but implementation is poor. This might require capacity building (staff and other) Improved cooperation between the various authorities, and between the authorities and the tourism industry Improve awareness (through education/information) amongst tourism operators so that they adopt a more responsible attitude, and amongst the authorities so that they do not approve inappropriate projects. Minimum qualifications – where operators must pass certain examinations before being allowed to operate in the Namib/coast/marine environment. Promote the adoption of Namibia's Eco-Award system.
Inappropriate development, or too many establishments in a confined area (e.g. mass tourism or unsightly infrastructure).	Zonation – with clear lines of what may be done where. Development guidelines to ensure that projects are established within determined parameters. This includes setting Carrying Capacity or Limits of Acceptable Change. Promote the adoption of Namibia's Eco-Award system. Improve awareness (through education/information) amongst tourism operators so that they adopt a more responsible attitude, and amongst the authorities so that they do not approve inappropriate projects.
Pollution of the environment, either	Promote the adoption of Namibia's Eco-Award system. Improve awareness (through education/information) amongst

physical pollution, noise or other	tourism operators so that they adopt a more responsible attitude. Improved law enforcement
Tourism remains an “elite industry”, causing alienation of local people and thus resentment	Promote Namibianisation Promote partnerships between operators and local communities (as is the case in the inland conservancies) Improve awareness about the multiplier effects of tourism

## 7. Alien Invasive Organisms

<b>Impact threat</b>	<b>Strategy to avoid or mitigate</b>
Alien invasive species enter natural environment (e.g. through ship ballast water release) and compete with natural resources, causing biodiversity loss	Establish the necessary legal framework and law enforcement procedures – to ensure implementation of the necessary safeguards Capacity building within the appropriate agencies Monitoring
Genetically modified organisms proliferate, thus threatening local species	Establish the necessary legal framework and law enforcement procedures – to ensure implementation of the necessary safeguards Capacity building within the appropriate agencies Monitoring
Humans introduce alien organisms through spread of human-based diseases	Monitoring

## 8. Mariculture

<b>Impact threat</b>	<b>Strategy to avoid or mitigate</b>
Conflicts between sectors because of more areas being required for mariculture projects. This can result in negative socio-economic impacts.	Improved planning and zonation – SEA approach would be useful in that it would propose which areas are suitable and/or appropriate with regards the establishment of mariculture projects Improved use of EIAs and EMPs Improve education and awareness amongst both the authorities, planners and proponents so that all are aware of the potential conflicts between mariculture and other forms of land use. Establish a conflict management system Ensure that social issues are adequately dealt with in EIAs – especially that local people’s rights are not compromised as a result of mariculture projects.
Generation of waste	Pass and then implement the Waste Management and Pollution Control Bill Improved use of EIAs and EMPs Monitoring and enforcement Apply the Polluter Pay’s Principle
Proliferation of pathogens and invasive species	Improved planning and zonation (see point 1) Improved use of EIAs and EMPs Monitoring and enforcement Apply the Polluter Pay’s Principle Establish the necessary quarantine facilities and procedures.
Unightly and/or	Improved planning and zonation

inappropriate infrastructure	Improved use of EIAs and EMPs Require thorough feasibility studies
Increase in fishing pressure (local fish/organisms may be used as food for aquaculture species), resulting in depletion of local species.	Careful planning (e.g. through the EIA) to reduce the chances of local resource depletion Monitoring

### Review of policies and laws

The workshop agreed that the legal framework is generally in place with regards to the management and development of sectoral issues, but that more is needed to address cross-sectoral concerns. Key legislation that is still needed is the Environmental Assessment and Management Act and the Pollution Control and Waste Management Act (both in prep.). Participants urged the Ministry of Environment and Tourism to intensify efforts to get both of these passed sooner rather than later. A representative of MET informed the meeting that both the above Bills are in an advanced stage of preparation and are expected to be promulgated in the first half of 2007.

Also, it was agreed that a Coastal Zone Management Act would provide the framework for improved collaboration and joint decision making by the various authorities involved in the coastal zone. An umbrella act of this nature is thought to be a better idea than trying to merge different sector legislation. However, there is still a need to harmonise individual components of many sector laws so that inconsistencies are removed and better collaboration is promoted. An example is the granting of fisheries inspection powers to nature conservation officials. Other examples include the mechanisms for declaring a protected area that might span both land and sea and the joint management of such an area, consolidation of discharge standards (e.g. into water and air), town planning (e.g. encroachment onto the coastline and wetlands). The NACOMA consultant dealing with legal issues is requested to provide clarity on these issues.

### Review of institutions

In attempting to address the concern about overlapping responsibilities between the various institutions at the coast, it was decided to structure the discussion around a number of predetermined questions – see table below. Participants were asked to discuss who they thought the relevant authorities should be and the extent to which they should seek input from others. It was clear from this discussion that there is considerable scope for improved collaboration between the various authorities and the current levels of sectoral territoriality are untenable. Moreover, there is a fundamental need for all levels of authority to consult the public on all issues that are of public concern. Thorough stakeholder engagement is a key to good governance and sustainable development.

However, cooperation does not necessarily require that organizations be merged (though this should not be ruled out). Rather, it merely requires a culture of working together for the realization of the bigger picture and the common good. No strong feelings were expressed about the idea of a Coastal Management Authority, though the idea of a Benguela Management Agency appears to be a logical development given the need for the adoption of an ecosystems approach towards the management of the Benguela. The Namibian government (through MFMR) has expressed its support of this approach on a number of occasions in the recent past.

The NACOMA consultants responsible for advising on the possible future role of institutions will take this issue further over the next few months.

## Results of workshop discussion:

<b>Responsibility</b>	<b>Lead agency</b>	<b>Support agencies</b>	<b>Comments on strategies &amp; partnerships</b>
<b>Managing fish stocks &amp; regulating commercial fishing</b>	<b>MFMR</b> NatMiRC UNAM BCC	<b>MET</b> Fishing industry DWAF Labour Unions	Partnership between MME inspectors, MET fisheries inspectors, Navy (compliance), Nampol (customs and compliance) and all those involved in the Fisheries Advisory Council.
<b>Guiding and regulating mariculture</b>	<b>MFMR</b>	DWAF/ Mariculture Assoc LA and RC Dept Health MET Trade & Industry Communal land boards UNAM (development)	Ministry of Justice is an obvious partner in the context of the drafting on new legislation
<b>Guiding and regulating marine transportation</b>	<b>MWTC</b>	NAMPORT Multi-stakeholder National oil spill contingency organisations	International (e.g. IMO)
<b>Guiding and regulating polluting industries (in catchments/on the coast)</b>	<b>DWAF</b> <b>MET</b> <b>MFMR</b>	MME Trade & Industry Multi-stakeholder National oil spill contingency organisations	Depends on locality On Land (MET;MAWF) At sea (MWTC;MFMR)
<b>Regulating mining and petroleum exploration</b>	<b>MME</b>	MFMR NAMCOR MET MTI NAMPOL Chamber of mines	
<b>Controlling coastal and sea based tourism</b>	<b>MET</b>	MFMR Geological Survey LAs and RAs NTB	FENATA NACOBTA CTAN MTAN
<b>Guiding development in proclaimed towns and managing all aspects of urban planning ( supply of services, land allocation, open spaces, by-laws)</b>	<b>MRLGH</b> <b>MET</b> (EIAs must be done) <b>MAWF</b>	LAs and RAs MiL	NAMPAB Rate payers Community representative General service providers (Namwater, Nampower, Roads authority, Home affairs)
<b>Managing aquifers</b>	<b>MAWF</b>	DWAF	NGOs

		LAs RAs Geological survey MET	Basin Management committees
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**Next steps**

The workshop concluded with a discussion on the way forward. Both NACOMA and BENEFIT have commissioned consultancies to further investigate the issues and options, taking into account the ideas generated at the workshop. Through these two programmes, all stakeholders are invited to continue participating in the programmes, either through attending future workshops or direct communication with the programme coordinators. (Mr Mufeti and Dr Sweijd respectively). Everyone was thanked for their attendance and contributions.

## Workshop methodology (Sessions 9-12)

### Groups 1 - 8

#### Threats and avoidance/mitigation strategies

**Extractive marine living resource use** (Commercial fishing from boats for fish and/or lobster, recreational angling, subsistence angling, seal harvesting, shellfish collecting, seaweed harvesting, etc.)

**Pollution** (from marine traffic, oil spills, land based, etc.)

**Mining** (offshore, on land, deep-sea, intertidal zone, petroleum exploration and production, salt mining)

**Coastal development** (town expansion, harbours, jetties, waterfronts, desalination plants, manufacturing industries, fish factories)

**Catchment issues** (upstream irrigation projects, dams and weirs for power and/or irrigation, industries in rivers, etc.)

**Non-extractive recreational activities** (beach driving, other off-road driving, boat tours, jet-ski's, windsurfing, surfing)

**Alien invasive species** (foreign mussels, etc.)

**Mariculture** (oyster farming, mussels, fish, seaweeds).

#### **PLENARY INTRODUCTION (P.Tarr)**

Introduce threat categories – (5 minutes)

Explain workshop methodology (5 minutes)

GROUPS GO TO BREAKAWAY ROOMS (5 minutes)

#### **1. THREAT CATEGORY**

Group coordinator will call the group together

Group will elect a chair, who will facilitate and report back to the plenary. The facilitator should be (1) knowledgeable about the subject (2) a good public speaker and (3) able to represent the group without personal bias. (5 minutes)

Brief introduction (by the coordinator)

Overview of the activity – make sure everyone knows what is meant by the title of the activity

Explanation of exercise methodology (5 minutes)

Brainstorm key impacts of the activity on the coastal and marine environments

everyone gets 3 cards, they list one key impact per card (10 mins). Facilitator collects cards, pins on zop board and clusters the cards if they form a consistent collection of ideas (15 minutes)

Facilitator describes each cluster in a sentence that s/he writes on a flip chart – everyone contributes to ensure that the sentence is clear – try not to argue too much over each word! – “Namlish” is good enough for now (10 minutes)

Group prioritises the most important impacts by “voting” – 3 dots per person stuck on the flip chart next to the chosen sentence. A person may allocate all his/her 3 dots to one impact or spread them amongst others as s/he sees fit (15 minutes)

Brainstorm on mitigation strategies – how to avoid or reduce the key impacts

Facilitator writes the impacts in column 1 of the brown paper sheet, in order of priority (5 minutes)

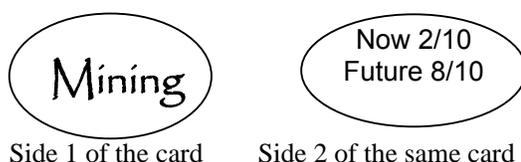
Group brainstorms strategies in the format below, and the facilitator completes the matrix: (25 minutes)

Impact	Strategy to avoid or mitigate


### PLENARY REPORT BACK

Each group reports from the matrix (10 minutes) and general discussion follows (5 minutes) – total 1 hour

Each participant (the whole plenary) then rates each of the 4 threat categories by scoring the threat out of 10, with 10/10 being severe and 0/10 being not severe. This is done by EACH PERSON writing scores on 4 cards (one for each of the 4 threat categories under discussion), with one side of the card being the name of the threat (e.g. mining). On the other side of the card, the person gives a score out of 10 for the severity of the current threat and, on the same side of the card, also gives a score out of 10 for what they think the threat will be in the future (e.g. in 10 -15 years time). The following diagram gives an example of what must be done.



The facilitator collects the cards and the workshop administrator tallies up the scores – these will be announced later

### **Workshop methodology (Sessions 14-end)**

#### **Session 14 – Hendrik Skov to explain**

#### **Session 15 (Groups 9 and 10)**

#### **Group 9: Policies and laws**

Question 1. Which new policies/laws do you think need to be developed or improved?

Methodology is as follows:

3 cards per person, one policy/law to be written on each card, facilitator collects the cards, clusters them on the zop board and describes each cluster in a succinct sentence in column 1 of the matrix shown below (35 minutes)

Prioritise using 3 dots per person (10 minutes)

Policy/law	Key weakness/gap	Suggested improvement

Question 2: Which policies/laws do you think need to be combined or harmonised with each other

3 cards per person, two or more policies/laws to be written on each card, facilitator collects the cards, clusters them on the zop board and describes each cluster in a succinct sentence in column 1 of the matrix shown below (35 minutes)

Prioritise using 3 dots per person (10 minutes)

Policy/laws to be	Reason for the combination or	Comments on implementation

<b>combined</b>	<b>harmonisation</b>	

### Group 10: Institutions – who should be responsible for what?

Question 1: Which institutions do you think should be responsible for the following key actions, and who should assist them (as collaborators) with their work? By responsible, we mean:

Setting policies and laws

Enforcing laws

Monitoring the “state of the environment” or development relating to the sector

Pro-actively facilitating involvement by others (potential helpers/partners)

Doing research (if applicable), publishing results/information

Advising the President!

**Methodology:** Brainstorm, try to reach consensus, list on matrix (90 minutes – about 8 mins per responsibility)

<b>Responsibility</b>	<b>Which institution should be the lead agency</b>	<b>Who should support them</b>	<b>Comments on strategies and partnerships</b>
Managing fish stocks and regulating commercial fishing			
Guiding and regulating mariculture			
Guiding and regulating marine transportation			
Guiding and regulating polluting industries (e.g. smelters, textiles) whether on the coast or in a river catchment			
Regulating offshore mining and petroleum exploration			
Controlling tourism on land and at sea			
Guiding development in proclaimed towns and managing all aspects of urban planning (e.g. supply of services, land allocation, open spaces, by-laws, harbours, etc.)			
Managing aquifers			
Managing protected areas (on land)			
Managing marine reserves			
Zonation of the coastline for various types of land use			
Ensuring EIAs are done and implemented			

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Urban Dynamics	Ted	Rudd	ted@uda.com.na	061240300	✓

#### Media

Namib Times	Adam	Hartmann	reports@iway.na	081 250 5966	✓
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#### Feedback Workshop – Windhoek, 28 June 2007

Once the draft report had been completed, it was circulated to all the stakeholders (and additional persons and institutions) that were invited to the first workshop, so that they could provide comments. NACOMA requested that a second workshop be held so that a smaller group of stakeholders could provide feedback.

The output from the workshop was suggestions on how to improve the document. Some participants said

The participants at the Windhoek workshop were as follows:

#### Participants

Institution	Name	Surname	email	Phone	Attended
<b>Private Sector and civil society</b>					
CETN	Keith	Wearne	cetn@iafrica.com.na	064-205057	✓
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<b>Government Institutions</b>					
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Kunene Regional Council	George	Kamseb	gpkamseb@iway.na	0811279733 Fax. 065 273077	✓

Municipality Walvis Bay	David	Uushona	duushona@walvisbaycc.org.n a	064214306 064214310	✓
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