

INTERIM AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF
ANGOLA**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
NAMIBIA**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

ON

**THE ESTABLISHMENT OF THE BENGUELA
CURRENT COMMISSION**

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PREAMBLE

The Government of the Republic of Angola, the Government of the Republic of Namibia and the Government of the Republic of South Africa (hereinafter referred to in the singular as a “Contracting Party” and in the plural as “Contracting Parties”):

Recognising the unique character of the Benguela Current Large Marine Ecosystem, the threats to it, and its significance for their socio-economic development and for the well-being of their people;

Conscious of their joint responsibility as custodians of this globally significant large marine ecosystem to conserve it for the benefit of present and future generations;

Recognising that effective long-term cooperation between them in implementing an ecosystem approach to the management of human activities affecting the Benguela Current Large Marine Ecosystem requires the establishment of stable institutional arrangements;

Recalling their common commitment recorded in the Strategic Action Programme adopted and signed by them between 10 November 1999 and 25 February 2000 to establish a Benguela Current Commission;

Have agreed as follows -

ARTICLE 1. USE OF TERMS

For the purposes of this Interim Agreement -

“Adverse impact”

- (a) includes any actual or potential detrimental effect on the Benguela Current Large Marine Ecosystem that results directly or indirectly from human conduct originating wholly or partly within the territory of a Contracting Party or from a vessel or aircraft under its jurisdiction or control; and
- (b) includes any actual or potential detrimental effect on legitimate uses of the Benguela Current Large Marine Ecosystem, on the health of people in the Contracting Parties or on their ability to provide for their health, safety and cultural and economic well-being, which occurs or may occur as a consequence of a detrimental effect referred to in (a); but
- (c) does not include any actual or potential detrimental effect that is negligible or which has been assessed and determined to be acceptable under this Interim Agreement;

“BCLME Programme” means the Benguela Current Large Marine Ecosystem Programme established in accordance with the United Nations Development Programme (“UNDP”) project document RAF/00/G32/A/IG/31 signed by representatives of the Governments of Angola, Namibia, and South Africa, and the UNDP in March 2000;

“Benguela Current Large Marine Ecosystem” means the relatively large marine ecosystem associated with the Benguela Current and characterised by distinct bathymetry, hydrography, productivity and trophically dependent populations, that is bounded by the high water mark along the coasts of South Africa, Namibia and Angola and:

- (a) to the North by the line of latitude 5° South;
- (b) to the South by a boundary 200 nautical miles South of the baseline along South Africa’s mainland from which the extent of South Africa’s territorial sea is

measured in accordance with the 1982 United Nations Convention on the Law of the Sea;

(c) to the East by the meridian 27° East; and

(d) to the West by the 0° meridian;

“Commission” means the Benguela Current Commission established by Article 5 and includes any committees, sub-committees or working groups established from time to time by an organ of the Commission in accordance with this Interim Agreement;

“Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

“Ecosystem Advisory Committee” means the Benguela Current Ecosystem Advisory Committee established by Article 5 and described in Article 9, and includes any sub-committees or working groups established by it in accordance with Article 9(4);

“Environment” includes, but is not limited to, the whole or any component of:

(a) nature, which includes air, water (including the sea), land (including soils and minerals), energy and living organisms other than humans;

(b) the interaction between the components of nature and between those components and humans; and

(c) physical, aesthetic and cultural qualities or conditions that affect the health and wellbeing of humans;

“Management Board” means the management board of the Contracting Parties described in Article 7, and includes any committees or working groups established by it in accordance with Article 7(10);

“Ministerial Conference” means the conference of the Ministers described in Article 6;

“Pollution” means the introduction by humans, directly or indirectly, of substances or energy into the Benguela Current Large Marine Ecosystem, which results or is likely to result, in hazards to human health, harm to living organisms and ecosystems, damage to amenities or interference with legitimate uses of the Benguela Current Large Marine Ecosystem, including fishing and navigation;

“Secretariat” means the secretariat of the Commission described in Article 8;

“Strategic Action Programme” means the Strategic Action Programme for the Benguela Current Large Marine Ecosystem adopted and signed during the period from 10 November 1999 to 25 February 2000 on behalf of the Republic of Angola by the Minister of Fisheries and Environment and the Minister of Petroleum; on behalf of the Republic of Namibia by the Minister of Fisheries and Marine Resources, the Minister of Environment and Tourism, and the Minister of Mines and Energy; and on behalf of the Republic of South Africa by the Minister of Environmental Affairs and Tourism and the Minister of Mineral and Energy Affairs, as revised from time to time by the Ministerial Conference; and

“Trans-boundary adverse impact” means an adverse impact that extends beyond the territory of the Contracting Party in which the physical origin of the adverse impact is situated.

ARTICLE 2. OBJECTIVE

1. The objective of this Interim Agreement is to give effect to the Strategic Action Programme by establishing a Benguela Current Commission in order –

- (a) to establish a formal institutional structure for cooperation between the Contracting Parties that will facilitate the understanding, protection, conservation and sustainable use of the Benguela Current Large Marine Ecosystem by the Contracting Parties; and

- (b) to further the objectives recorded in the Strategic Action Programme.

ARTICLE 3. JURISDICTIONAL SCOPE

This Interim Agreement applies to the area of the Benguela Current Large Marine Ecosystem to the extent that it falls within the internal waters, territorial seas or exclusive economic zones of the Contracting Parties, as well as to all human activities, aircraft and vessels under the jurisdiction or control of the Contracting Party to the extent that these activities, or the operation of such aircraft or vessels result, or are likely to result, in adverse impacts.

ARTICLE 4. COOPERATION

The Contracting Parties shall co-operate in good faith in the implementation of this Interim Agreement, including co-operating in –

- (a) building the capacity of the Management Board, the Secretariat, the Ecosystem Advisory Committee, and any other subsidiary bodies established in accordance with this Interim Agreement;
- (b) implementing the Strategic Action Programme; and
- (c) negotiating, agreeing, and bringing into force a more comprehensive legal instrument in accordance with Article 10.

ARTICLE 5. ESTABLISHMENT OF BENGUELA CURRENT COMMISSION

1. The Benguela Current Commission is hereby established.
2. The Commission has the following organs:

- (a) the Ministerial Conference referred to in Article 6;
 - (b) the Management Board referred to in Article 7;
 - (c) the Secretariat referred to in Article 8; and
 - (d) the Benguela Current Ecosystem Advisory Committee, referred to in Article 9.
3. The structure of the Commission is represented in the diagram in Annex 2 but if there is a conflict between the text of this Interim Agreement and Annex 2, the text of the Interim Agreement shall prevail.
4. The working languages of the Commission shall be English and Portuguese.

ARTICLE 6. MINISTERIAL CONFERENCE

1. The Ministerial Conference shall consist of national delegations from each Contracting Party, each led by a Minister authorised to represent that Contracting Party.
2. The Ministerial Conference shall evaluate the implementation of this Interim Agreement and in particular shall –
- (a) approve any changes to the Strategic Action Programme;
 - (b) mandate the taking of whatever action may be necessary or appropriate to facilitate the effective implementation of the Strategic Action Programme; and
 - (c) take all measures necessary to expedite the negotiation, conclusion, signature, ratification and implementation of the comprehensive legal instrument referred to in Article 10.

3. Meetings of the Ministerial Conference shall be chaired on a rotational basis by the heads of delegation of each of the Contracting Parties, proceeding in the order that the Contracting Parties notify each other in accordance with paragraph 1 of Article 16 that they are bound by this Interim Agreement.
4. Decisions of the Ministerial Conference shall be taken by consensus between the delegations of all the Contracting Parties except that in relation to any matter that only affects two Contracting Parties, the Interim Agreement of those Contracting Parties shall be sufficient for the Ministerial Conference to take a decision on that issue.
5. Meetings of the Ministerial Conference shall be convened by the Secretariat either in accordance with a decision of the Ministerial Conference, or at the written request of any Contracting Party.
6. Any State which is not a party to this Interim Agreement and any other body or agency, whether governmental or non-governmental, whose experience or expertise is relevant to the activities of the Commission, or any in relation to matters dealt with in the Strategic Action Programme, which has informed the Secretariat of its wish to be represented as an observer may be admitted to a meeting of the Ministerial Conference, unless one or more of the Contracting Parties present, object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Ministerial Conference.

ARTICLE 7. MANAGEMENT BOARD

1. The Management Board shall consist of national delegations from each Contracting Party, each led by a Director-General or Permanent Secretary, or his or her nominee.

2. The role of the Management Board is to promote a co-ordinated regional approach to dealing with management issues concerning the Benguela Current Large Marine Ecosystem, and its functions include –
 - (a) coordinating the implementation by the Contracting Parties of the Strategic Action Programme and this Interim Agreement; and
 - (b) advancing and representing the common interests of the Contracting Parties in matters concerning the Benguela Current Large Marine Ecosystem.
3. The first meeting of the Management Board shall be held within three months of this Interim Agreement entering into force in accordance with Article 16 and at that meeting the Management Board shall adopt rules and procedures for itself and determine the initial composition of the Ecosystem Advisory Committee and of the committees referred to in paragraph 10(a).
4. Unless the Management Board decides otherwise, each of its meetings shall be chaired by the head of a delegation on a rotational basis, proceeding in the order that the Contracting Parties notify each other under paragraph 1 of Article 16 that they are bound by this Interim Agreement.
5. Decisions of the Management Board shall be taken by consensus between the delegations of the Contracting Parties except that in relation to any matter that only affects two Contracting Parties, the Interim Agreement of those Contracting Parties shall be sufficient for the Management Board to take a decision on that matter.
6. Meetings of the Management Board shall be convened by the Secretariat, either in accordance with a decision of the Management Board, or at the written request of any Contracting Party.
7. The Management Board shall adopt rules and procedures for itself and for any committee or working group established by it under this Interim Agreement.
8. The Management Board shall -

- (a) interpret and apply the policy decisions of the Ministerial Conference;
 - (b) oversee and direct the activities of the Secretariat, the Ecosystem Advisory Committee, and any committee or working group established by it in accordance with paragraph 10;
 - (c) develop and approve budgets, action plans and work programmes for the Commission;
 - (d) integrate the recommendations of the Ecosystem Advisory Committee and any subsidiary bodies established in accordance with this Interim Agreement and resolve any conflicts between their recommendations;
 - (e) appoint and oversee the Executive Secretary of the Secretariat and appoint the Ecosystem Advisory Committee co-ordinator;
 - (f) co-ordinate the implementation of the Strategic Action Programme;
 - (g) review periodically the effectiveness of the implementation of the Strategic Action Programme and where necessary make recommendations to the Ministerial Conference concerning amendments to the Strategic Action Programme;
 - (h) establish mechanisms for interacting with the private sector, non-governmental organisations, and other stakeholders and communities;
 - (i) ensure that there is adequate consultation with stakeholders in relation to the development and amendment of the Strategic Action Programme and other action plans; and
 - (j) facilitate and support the process of negotiating and adopting a comprehensive legal instrument in accordance with Article 10.
9. The Management Board may make recommendations to the competent authorities of a Contracting Party, on management issues relating to the protection,

enhancement and ecologically sustainable use of the Benguela Current Large Marine Ecosystem and of any aspect of it, including recommendations in relation to any matter referred to in Annex 1.

10. The Management Board –

(a) shall at its first meeting establish the following committees which shall continue to exist until the Management Board decides otherwise:

(i) a minerals and petroleum committee;

(ii) a marine living resources committee; and

(iii) an ecosystem health committee; and

(b) may establish one or more additional committees or working groups to deal with specific issues of concern to two or more of the Contracting Parties.

11. Each committee or working group shall determine its own rules of procedure to the extent that these have not been determined by the Management Board.

12. Working groups may include any person with appropriate expertise or who represents a particular sector or group of people with an interest in the matter being dealt with by the working group.

ARTICLE 8. SECRETARIAT

1. The Management Board shall within nine months of the entry into force of this Interim Agreement, appoint an Executive Secretary of the Secretariat and a co-ordinator to co-ordinate the activities of the Ecosystem Advisory Committee.

2. The Executive Secretary shall:

(a) direct and manage the Secretariat;

- (b) supervise the co-ordinator of the Ecosystem Advisory Committee; and
 - (c) report to the Management Board.
3. Until the person appointed as Executive Secretary in accordance with paragraph 1 takes up that position, the Coordination Unit of the BCLME Programme shall perform the functions of the Secretariat of the Commission and the Chief Technical Adviser of the BCLME Programme shall perform the functions of the Executive Secretary of the Secretariat, but the consent of the Steering Committee of the BCLME Programme shall be required for this arrangement to be continued after 31 December 2007.
4. The functions of the Secretariat are:
- (a) to facilitate the implementation and effective monitoring of the Strategic Action Programme;
 - (b) to carry out the tasks assigned to it by the Management Board;
 - (c) to arrange and support meetings of the Ministerial Conference, the Management Board, the Ecosystem Advisory Committee, and other subsidiary bodies established under this Interim Agreement, including taking and keeping minutes of such meetings;
 - (d) to negotiate with donors interested in supporting the implementation of the Strategic Action Programme;
 - (e) to perform the financial and other administrative services required for the proper and efficient operation of the Commission;
 - (f) to formulate draft work programmes and prepare draft budgets for the Commission;
 - (g) to prepare plans, projects, assessments, reports and other documents required by the Commission and to assist the Ecosystem Advisory Committee and

subsidiary bodies established under the Interim Agreement to prepare such documents;

- (h) to obtain and update regularly information required by the Contracting Parties for the implementation of this Interim Agreement and of the Strategic Action Programme;
- (i) to facilitate the exchange of information in order to promote the objectives of this Interim Agreement, including by ensuring that up-to-date information relevant to the implementation of this Interim Agreement is disseminated to all Contracting Parties and to the public;
- (j) to prepare reports on its performance and on the performance of subsidiary bodies established in accordance with this Interim Agreement and to present them to the Management Board; and
- (k) to perform any other functions delegated to it by the Ministerial Conference or the Management Board.

ARTICLE 9. ECOSYSTEM ADVISORY COMMITTEE

1. The Ecosystem Advisory Committee shall consist of experts nominated by each of the Contracting Parties who shall be appointed and supervised by the Management Board.
2. The role of Ecosystem Advisory Committee is –
 - (a) to support decision-making by the Management Board, the Ministerial Conference and the Contracting Parties by providing them with the best available scientific, management, legal and other information, and expert advice concerning the conservation and ecologically sustainable use and development of the Benguela Current Large Marine Ecosystem; and

- (b) to build capacity within the Contracting Parties to generate and provide the information and expert advice referred to in (a) on a sustainable basis.
- 3. The Ecosystem Advisory Committee shall determine its rules of procedure to the extent that these have not been determined by the Management Board.
- 4. The Ecosystem Advisory Committee may establish working groups or subcommittees to assist it in the performance of its functions.
- 5. Working groups may include any person with appropriate expertise or who represents a particular sector or group of people with an interest in the matter being dealt with by the working group.
- 6. The Ecosystem Advisory Committee shall meet at least once annually and shall make decisions by consensus.
- 7. The Secretariat shall convene the first meeting of the Ecosystem Advisory Committee within three months of the first meeting of the Management Board convened in accordance with Article 7(3).
- 8. The Ecosystem Advisory Committee shall submit annually to the Management Board, a draft work plan and budget for the forthcoming two years and a draft annual report of its activities during the previous year.

ARTICLE 10. NEGOTIATION OF COMPREHENSIVE LEGAL INSTRUMENT

The Contracting Parties shall use their best endeavours to bring into force by no later than 31 December 2012, a binding legal instrument that will establish a comprehensive framework to facilitate the implementation by the Contracting Parties of an ecosystem approach to the conservation and development of the Benguela Current Large Marine Ecosystem.

ARTICLE 11. FINANCIAL RESOURCES

The Commission shall be funded from funds provided by the Contracting Parties and donors. Unless otherwise agreed, the Contracting Parties shall contribute in equal proportions to the budget of the Commission.

ARTICLE 12. SETTLEMENT OF DISPUTES

1. In the event of a dispute between Contracting Parties concerning the interpretation or implementation of this Interim Agreement, the Contracting Parties concerned shall seek a solution through negotiation.
2. If the Contracting Parties concerned cannot settle the dispute through negotiation they shall agree in good faith on a dispute resolution procedure which may include jointly seeking mediation by a third party (which may be a Contracting Party that is not involved in the dispute).

ARTICLE 13. MARITIME BOUNDARIES

The Contracting Parties have entered into this Interim Agreement without prejudice to any claims that they may have in relation to the delimitation of their maritime boundaries and nothing in this Interim Agreement or done pursuant to it, shall be construed or interpreted as conduct on the part of a Contracting Party signifying that it either consents to, or disputes, a particular maritime boundary.

**ARTICLE 14. RELATIONSHIP WITH OTHER INTERNATIONAL
AGREEMENTS**

1. The provisions of this Interim Agreement shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would threaten the health of the Benguela Current Large Marine Ecosystem or any part of it.
2. The Contracting Parties shall implement this Interim Agreement in a manner that is consistent with their rights and obligations under the international law of the sea.

ARTICLE 15. AMENDMENT OF THIS INTERIM AGREEMENT

Any Contracting Party may propose amendments to this Interim Agreement and all amendments to this Interim Agreement must be agreed to in writing by all the Contracting Parties.

ARTICLE 16. ENTRY INTO FORCE AND DURATION

1. This Interim Agreement shall enter into force on the thirtieth day after two or more Contracting Parties have notified the other Contracting Parties in writing of their consent to be bound by the provisions of this Interim Agreement.
2. Nothing in this Interim Agreement shall be interpreted or construed as requiring it to be ratified, accepted or approved by the legislatures of the Contracting Parties and each Contracting Party must determine the process to be followed under its law for this Interim Agreement to become binding.
3. Copies of the signed Interim Agreement, the notifications referred to in paragraph 1, and any instruments of ratification, approval or acceptance that may have been

required by the laws of the Contracting Parties, shall be deposited with the Executive Secretary of the Southern African Development Community.

4. Unless all the Contracting Parties agree otherwise in writing, this Interim Agreement terminates on 31 December 2012.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed the English and Portuguese texts of this Interim Agreement, both texts being equally authentic.

ANNEX 1**ADVISORY MANDATE OF THE COMMISSION****(Article 7(9))**

The Commission may, among other matters, consider and make recommendations, in accordance with national laws, to the Contracting Parties concerning –

- (a) the monitoring, control and surveillance of marine fisheries;
- (b) the determination of optimum levels of harvesting in respect of stocks which are known or suspected to be shared or straddling stocks, or where the harvesting of those stocks is likely to have significant impact on the Benguela Current Large Marine Ecosystem;
- (c) the conservation of the biological diversity of the Benguela Current Large Marine Ecosystem;
- (d) the implementation of integrated coastal management and of the ecosystem approach in accordance with international law and non-binding international undertakings made by the Contracting Parties;
- (e) the establishment of a system of marine protected areas;
- (f) the rehabilitation of environmentally degraded areas;
- (g) the coordination of regional efforts to conserve species such as sea birds which are not harvested;
- (h) the prevention of the introduction of harmful and invasive alien species (including the coordination of efforts to manage ballast water and sediment within the Benguela Current Large Marine Ecosystem);
- (i) responses to harmful algal blooms;

- (j) environmental impact assessment and other procedures for the planning and approval of new projects and activities which have the potential to impact on the Benguela Current Large Marine Ecosystem;
- (k) processes and standards for minimising and remediating the environmental impacts arising from marine prospecting, mining and dredging and from the exploration and development of oil and gas fields, including their associated pipelines;
- (l) contingency plans for dealing with extreme events and threats such as major oil spills;
- (m) the adoption and enforcement of harmonised regulatory frameworks for the discharge of sewage, pollutants, waste and other pollution control measures;
- (n) guidelines on water quality standards within the Benguela Current Large Marine Ecosystem;
- (o) maritime safety and related matters with the potential to impact on the Benguela Current Large Marine Ecosystem; and
- (p) the responsibilities, procedures and routines for the exchange of information and liaison between authorities in the different Contracting Parties.

ANNEX 2

(Article 5(3))

