

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 4256

19 January 2024

**MARINE LIVING RESOURCES ACT, 1998
(ACT NO. 18 OF 1998)**

**CONSULTATION ON THE PROPOSED REGULATIONS RELATING TO THE ENTRY OF FOREIGN
FISHING VESSELS INTO SOUTH AFRICAN WATERS**

I, Barbara Dallas Creecy, the Minister of Forestry, Fisheries and the Environment, hereby publish for public comment, the draft Regulations relating to the entry of foreign fishing vessels into South African Waters in terms of sections 77(1), 77(2)(g), (j), (k), (o) and 42(4) of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), as set out in the schedule hereto.

The draft regulations seek to create a discreet notification and permitting procedure applicable to foreign fishing vessels that wish to traverse South African waters or enter into port and simultaneously to domesticate relevant aspects of the Agreement on Port State Measures, to which South Africa is a party. The intention is to provide certainty for such vessels, as to the process and procedures required prior to entering South African waters, to ensure that South Africa is aware of the presence of foreign fishing vessels in its waters at any given time, to ensure that if fishing gear is carried on board it is properly stowed and to minimise illegal, unreported and unregulated fishing.

Members of the public are invited to submit written comments or input, within 30 days from the date of the publication of this Notice in the *Government Gazette*, or the newspaper whichever is the later date, in the following manners:

Department of Forestry, Fisheries and the Environment

Attention: Aphiwe Nonkeneza
Private Bag X2
VLAEBERG
8018

By hand: 4th Floor Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town


By email: ffvregs@dffe.gov.za

Telephone queries: 021 402 3026 / 066 4711 451

Comments or input received after the closing date may not be considered.

The Department of Forestry, Fisheries and the Environment complies with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). Comments received and responses thereto are collated into a comments and response report which will be made available to the public as part of the consultation process. If a commenting party has any objection to his or her name, or the name of the represented

company/ organisation, being made publicly available in the comments and responses report, such objection should be highlighted in bold as part of the comments submitted in response to this Government Notice.

A handwritten signature in black ink, appearing to read 'B. Dallas Creecy', with a long horizontal flourish extending to the right.

BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

ARRANGEMENT OF REGULATIONS

CHAPTER 1 - DEFINITIONS AND PURPOSE

1. Definitions
2. Application
3. Purpose

CHAPTER 2 – PASSING THROUGH SOUTH AFRICAN WATERS AND ENTRY INTO AND USE OF PORTS

4. Notification of entry into South African waters
5. Entry into port
6. Permit application procedure

CHAPTER 3 – GENERAL

7. Compliance
8. Stowage of fishing gear
9. Vessel Automatic identification system

CHAPTER 4 – OFFENCES AND PENALTIES

10. Offences
11. Penalties
12. Short title and commencement

CHAPTER 1

DEFINITIONS AND PURPOSE

1. Definitions

In these regulations, unless the context indicates otherwise, a word or expression that is defined in the Act has the same meaning in these regulations, and in addition—

“Act” means the Marine Living Resources Act, 1998 (Act No. 18 of 1998) and includes any regulations published thereunder;

“Agreement on Port State Measures” means the Agreement on Port State Measures to Prevent, Deter and Eliminate, Illegal, Unreported and Unregulated Fishing adopted in 2009;

“authorised official” means a fishery control officer, or other authority authorised to implement legislation that regulates access and operations within ports including the inspection of vessels;

“IUU fishing” means illegal, unreported and unregulated fishing;

“port” has the meaning assigned to it in section 1 of the National Ports Act, 2005 (Act No. 12 of 2005);

“the Regulations” mean these Regulations Relating to the Entry of Foreign Fishing Vessels in South African Waters; and

“vessel” means a foreign fishing vessel.

2. Application

These Regulations apply to vessels that intend to enter South African waters.

3. Purpose

The purpose of these regulations is to—

- (a) regulate the passage of vessels through South African waters;
- (b) regulate the entry of vessels into a port;
- (c) prevent, deter and eliminate IUU fishing; and
- (d) domesticate into South African law, the Agreement on Port State Measures.

CHAPTER 2

PASSING THROUGH SOUTH AFRICAN WATERS AND ENTRY INTO AND USE OF PORTS

4. Notification of entry into South African waters

- (1) The master of a vessel which does not intend to enter a port, may not traverse South African waters unless the Minister has been notified of the intention to enter and traverse South African waters at least 24 hours prior to entry and such notification must include the following:
 - (a) Estimated time and point of entry into South African waters;
 - (b) estimated time of and point of exit from South African waters;
 - (c) reason for entry; and
 - (d) description of the path to be traversed.
- (2) Notification required in terms of sub-regulation (1) must be submitted by email to VMSops@dffe.gov.za.
- (3) The Minister may refuse a vessel entry into South African waters where the vessel is, on reasonable grounds, suspected of being involved in IUU fishing, or is listed on an IUU vessel list by any country or in terms of any international agreement.

5. Entry into port

No vessel may enter a port without a permit issued by the Minister.

6. Permit Application Procedure

- (1) The master or a representative of the owner of a vessel must, ten days before entering a port, apply to the Minister for a permit to enter port.
- (2) The application must be made in the form obtainable from the Department and be accompanied by the application fee if prescribed.
- (3) The Minister must within seven days of receipt of the application decide whether to:
 - (a) issue the permit subject to conditions; or
 - (b) refuse to issue the permit and provide reasons for such refusal.
- (4) Notwithstanding sub-regulations (1) and (3), the South African Maritime Safety Authority may authorise a vessel to enter a port for reasons of force majeure or distress, without a permit issued in terms of sub-regulation (3).
- (5) The master of a vessel that obtains entry in terms of sub regulation (4) must—

- (a) notify the Minister in writing in the form obtainable from the Department;
- (b) comply with regulations 7, 8 and 9; and
- (c) comply with any other direction which the Minister may impose.

CHAPTER 3

GENERAL

7. Compliance

- (1) Upon entering South African waters and a port, a vessel is required to comply with the provisions of the Act.
- (2) A vessel within South African waters or a port may, at any time, be boarded and inspected by an authorised official.
- (3) The master of a vessel must—
 - (a) accommodate the boarding and inspection of a vessel by an authorised official at any time while in South African waters and a port; and
 - (b) comply with lawful instructions of an authorised official.

8. Stowage of fishing gear

- (1) The master of a vessel must stow fishing gear in accordance with sub-regulation (2), before entering and when traversing South African waters and within a port.
- (2) Fishing gear must be stowed in the following manner:
 - (a) In the case of line fishing, all hooks, lures, sinkers and weights are disconnected from the line, all the line is reeled onto the reel or rolled up, and that rolled up line, hooks, lures, bait and weights on the vessel are packed away in a cabin, locker, hatch, wheel house or console of the vessel, or where that is not possible, place such gear on the deck of the vessel;
 - (b) in the case of purse-seine fishing, no gear may be in the water;
 - (c) in the case of trawl fishing, all nets, trawl boards and weights shall be stowed below deck or securely lashed to some part of the superstructure of the fishing vessel;
 - (d) in the case of rock lobster fishing, all traps, nets and ropes shall be on board and tied down; and all dinghies shall be on board and lashed to the fishing vessel;

- (e) in the case of fishing with traps, other than rock lobster traps, all traps shall be on board and tied down;
- (f) in the case of any other nets including gillnets, cast nets and throw nets, nets shall be on board and packed away in a console, locker or any other suitable container;
- (g) in the case of pole fishing, all poles will be secured above deck;
- (h) in the case of longline fishing, no branchline may be attached to the mainline and the entire mainline shall remain on the spool; and
- (i) in respect of all types of fishing where bait is used, such bait must remain packed away or placed into a bait well, where available.

9. Vessel Automatic Information System

- (1) The master of a vessel must ensure that the vessel automatic information system is functional and reporting 50 nautical miles prior to entering South African waters and whilst within South African waters without interruption.
- (2) The master of a vessel must immediately report an interruption of the signal of the vessel automatic information system for more than 20 minutes to the Fisheries operations room by email at VMSops@dffe.gov.za and submit hourly reports until the vessel automatic information system is functional.
- (3) The format of the report referred to in sub-regulation (2) must include the date, time (South African local time), latitude, longitude degrees minutes and decimal minutes, course and speed in knots.

CHAPTER 4

OFFENCES AND PENALTIES

10. Offences

In addition to any offence contained in section 58 of the Act, any person who contravenes or fails to comply with:

- (a) regulations 4(1), 5, 6(1), 6(5), 7(1), 7(3), 8(1), 8(2) or 9; or
- (b) a lawful instruction of an authorised officer,

is guilty of an offence.

11. Penalties

A person found guilty of an offence in terms of regulation 10 shall be liable on conviction to—

- (a) imprisonment for a period not exceeding two years;
- (b) a fine not exceeding two million Rand; or
- (c) to both such fine and such imprisonment.

12. Short title and commencement

These Regulations are called the Regulations Relating to the Entry of Foreign Fishing Vessels into South African Waters, 2023, and commence on the date of publication in the *Gazette*.