

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 5774

24 January 2025

**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, Dr Dion Travers George, the Minister of Forestry, Fisheries and the Environment, hereby publish the draft Regulations relating to the entry of foreign fishing vessels into South African Waters (the Draft Regulations) for public comment. The proposed regulations will be made 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), and are set out in the schedule to this notice.

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 South African ports. The intention is—

- to provide certainty for those vessels as to the processes 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;
- to regulate transshipment at sea; and
- to minimise illegal, unreported and unregulated fishing.

The first draft of the regulations relating to the entry of foreign fishing vessels into South African waters was published on 19 January 2024. As a result of comments received during this process, it became necessary to revise the Draft Regulations. The changes made to the Draft Regulations include the following:

- Additional definitions have now specifically been included for clarity and to avoid the need to cross reference to the Marine Living Resources Act, 1998 (MLRA).
- A new definition of “associated activities” has been included to make it clear that storage and container vessels which support fishing are also covered.
- Although it is already stated in the MLRA General Regulations, for clarity it is now included in the Draft Regulations that transshipment at sea is prohibited unless a permit has been issued in terms of section 13 of the MLRA.
- The Minister’s power to refuse entry into South African waters based on a suspicion of IUU fishing (illegal, unreported or unregulated fishing) or an IUU listing has been removed in light of the UN Convention of the Law of the Sea which preserves the right of innocent passage through a country’s waters. While a vessel cannot be refused entry, restrictions can be placed on their passage through South African waters, which these draft regulations provide for. This includes notification of entry and stowage of all fishing gear on board while traversing South African waters.

- It has been made clear that a vessel that intends to enter port may enter South African waters on submission of its application but may not enter port unless or until the permit has been issued.
- The permit application procedure has been revised to also include criteria to be considered. It has been made clear that permits to enter port must be refused where there are reasonable grounds to believe the vessel has engaged in IUU fishing unless entry is required for purposes of inspection and enforcement. The Draft Regulations now also introduce an obligation to notify a flag state of that refusal.
- A requirement has been added prohibiting the deletion of tracking data for a specified period.

Members of the public are invited to submit written comments 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 manner:

Department of Forestry, Fisheries and the Environment

Attention: Aphiwe Nonkeneza
Private Bag X2
VLAEBERG
8018

By hand: 3rd 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 be disregarded.

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 their name, or the name of the represented company/organisation being made publicly available in the comments and responses report, that objection should be highlighted in bold as part of the comments submitted in response to this government notice.



DR DION TRAVERS GEORGE
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

ARRANGEMENT OF REGULATIONS

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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 made in terms of that Act;

“Agreement on Port State Measures” means the Agreement on Port State Measures to Prevent, Deter and Eliminate, Illegal, Unreported and Unregulated Fishing approved by the United Nation’s Food and Agriculture Organisation Conference at its Thirty-sixth Session through resolution number 12/2009 dated 22 November 2009;

“associated activities” means—

- (a) storing, buying, selling, transshipping, processing or transporting of fish or any fish product taken from South African waters or in the course of high seas fishing, up to the time it is first landed;
- (b) on-shore storing, buying, selling or processing of fish or any fish product from the time it is first landed;
- (c) refuelling or supplying foreign vessels, selling or supplying fishing equipment or performing any other act in support of fishing; or
- (d) exporting and importing fish or any fish product;

“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;

“Department” means the national Department responsible for fisheries;

“foreign vessel” means a foreign flagged vessel boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or associated activities, and includes all gear, equipment, stores, cargo and fuel on board that vessel;

“force majeure” means conditions beyond the control of the master of the vessel, such as hurricanes, typhoons, cyclones or war;

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

“Minister” means the Minister responsible for fisheries;

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

“**South African waters**” means the seashore, internal waters, territorial waters, the exclusive economic zone, and in relation to the sedentary species as defined in Article 77 of the United Nations Convention on the Law of the Sea, the continental shelf as defined in section 7 of the Maritime Zones Act, 1994, and such waters include tidal lagoons and tidal rivers in which a rise and fall of the water level takes place as a result of the tides;

“**these Regulations**” mean the Regulations for the Entry of Foreign Fishing Vessels into South African Waters, 2025; and.

“**transship**” means transferring fish or gear from one vessel to another.

2. **Application**

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

3. **Purpose**

The purposes of these Regulations are to—

- (a) regulate the passage of foreign vessels through South African waters;
- (b) regulate the entry of foreign vessels into a port;
- (c) prevent, deter and eliminate IUU fishing; and
- (d) to restrict transshipment at sea.

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 foreign vessel which intends to traverse South African waters, but which does not intend to enter a port, must notify the Minister of the intention to enter and traverse South African waters at least 24 hours prior to entry and that notification must include the following:
 - (a) estimated date, time and GPS position of entry into South African waters;
 - (b) estimated date, time of and GPS position of exit from South African waters;
 - (c) reason for entry; and
 - (d) description of the path to be traversed.
- (2) Notification in terms of sub-regulation (1) must be submitted by email to VMSops@dffe.gov.za.

5. Entry into port

- (1) The master of a foreign vessel may not enter a port without a permit issued in terms of regulation 6(3)(a).
- (2) Once an application in terms of regulation 6(1) has been submitted, the foreign vessel may enter South African waters but may not enter a port until a permit has been issued in terms of regulation 6(3)(a).

6. Permit application procedure and criteria

- (1) The master or a representative of the owner of a foreign vessel must apply to the Minister for a permit to enter port, five days before intending to do so.
- (2) The application must be made on the form obtainable from the Department and be accompanied by proof of payment of the application fee, if prescribed.
- (3) The Minister must decide to—
 - (a) issue the permit, with or without conditions; or
 - (b) refuse to issue the permit and provide reasons for the refusal,within four days of receipt of the application and communicate that decision to the master of the foreign vessel or the owner's representative immediately.

- (4) The Minister must, when considering the application, in addition to any other relevant criteria, have regard to whether there is information to demonstrate that the foreign vessel has engaged in IUU fishing or associated activities in support of IUU fishing.
- (5) The Minister—
 - (a) must refuse to issue a permit if the Minister on reasonable grounds, believes that the foreign vessel has engaged in IUU fishing or associated activities in support of IUU fishing;
 - (b) may issue a permit despite only for the purpose of inspecting the foreign vessel and taking appropriate enforcement action; and
 - (c) must notify the flag state if the Minister refuses to issue a permit.
- (6) Notwithstanding sub-regulations (1) and (3), the South African Maritime Safety Authority may authorise a foreign vessel to enter port for reasons of force majeure or distress, without a permit.
- (7) The master of a foreign vessel that obtains entry in terms of sub-regulation (6) must—
 - (a) notify the Minister in writing on 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) A foreign vessel which enters South African waters or a port must comply with the provisions of the Act and other relevant domestic legislation.
- (2) A foreign vessel within South African waters or a port may be boarded and inspected by an authorised official at any time.
- (3) The master of a foreign vessel must—
 - (a) accommodate the boarding and inspection of a foreign vessel by an authorised official at any time while in South African waters or a port; and
 - (b) comply with lawful instructions of an authorised official.

8. Stowage of fishing gear and transshipment

- (1) The master of a foreign 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 that 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 must 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 must 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 must be on board and tied down;
 - (f) in the case of any other nets including gillnets, cast nets and throw nets, nets must 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, that bait must remain packed away or placed into a bait well, where available.
- (3) No person may transship at sea unless authorised by a permit issued in terms of section 13 of the Act.

9. Vessel Automatic Information System

- (1) The master of a foreign vessel must ensure that the vessel's Automatic Information System (AIS) is functional and—
 - (a) regularly reports from at least 50 nautical miles prior to entering South African waters;
 - (b) reports while the vessel is located within South African waters without interruption; and
 - (b) regularly reports up until at least the vessel has reached 50 nautical miles outside of South African waters.
- (2) The master of a foreign vessel must—
 - (a) immediately report an interruption of the vessel's automatic information system's signal to the VMS Operations Centre where the interruption lasts longer than 20 minutes; and
 - (b) submit hourly reports to VMS Operations Centre until the vessel's automatic information system is functional and able to report.
- (3) The master's reports in sub-regulation (2) to the VMS Operations Centre must be sent by email to "VMSops@dffe.gov.za" and must include—
 - (a) the date and time (South African local time);
 - (b) the vessel's location by latitude and longitude degrees minutes and decimal minutes;
 - (c) the vessel's course; and
 - (d) speed in knots.
- (4) No person may delete any tracking data from a vessel's automatic information system recorded from the time of entry by the foreign vessel into South African waters for a period of seven calendar days after leaving South African waters.

CHAPTER 4 OFFENCES AND PENALTIES

10. Offences

In addition to any offence contained in section 58 of the Act, a person commits an offence if they contravene or fail to comply with—

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

11. Penalties

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

- (a) a maximum period of imprisonment of two years;
- (b) a maximum fine of two million Rand; or
- (c) both the fine and imprisonment.

12. Short title and commencement

These Regulations are called the Regulations for the Entry of Foreign Fishing Vessels into South African Waters, 2025 and commence on the date of its publication in the *Gazette*.