

GOVERNMENT NOTICE

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

No. R.

(Date)

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

REGULATIONS RELATING TO SMALL-SCALE FISHING

The Minister of Agriculture, Forestry and Fisheries has, under section 19 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), made the regulations set out in the Schedule.

MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES

SCHEDULE

REGULATIONS RELATING TO SMALL-SCALE FISHING

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Marine Living Resources Act, 1998 (Act No. 18 of 1998), bears that meaning and, unless the context otherwise indicates—

"**community**" means any group of persons or a part of such a group who share common interests, and who regard themselves as a community;

"**co-operative**" means a co-operative registered in terms of the Co-operatives Act, 2005, as a primary or secondary co-operative;

"**Co-operatives Act, 2005**" means the Co-operatives Act, 2005 (Act No. 14 of 2005);

"**de-commercialised species**" means fish species prescribed by the Minister that may be harvested for own consumption, the sale of which is prohibited;

"**multi-species approach**" means an arrangement where a pre-determined variety and quantity of marine living resources are allocated in terms of a small-scale fishing right, and "**basket of species**" must be interpreted accordingly;

"**near-shore**" means a zone directly adjacent to a shore, where marine resources can be accessed using traditional low technology or passive fishing gear;

"**primary co-operative**" means a co-operative formed by a minimum of five small-scale fishers whose object is to provide employment or services to its members and to facilitate community development;

"recognised" means recognised by the Minister in terms of these regulations;

"secondary co-operative" means a co-operative formed by two or more primary small-scale fisheries co-operatives to provide sectoral services such as processing and marketing to its members;

"the MLRA" means in the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

"traditional low technology or passive fishing gear" means relatively inexpensive gear that has been used traditionally by coastal communities to catch fish, such as line fishing gear and fish traps, but does not include trawl, longline, purse seine and lobster traps.

Purpose of regulations

2. The purpose of these regulations is to—

- (a) ensure equitable access to fish by small-scale fishing communities;
- (b) recognise a multi-species approach in the granting of rights to small scale fisheries;
- (c) transform the inequalities of the past fisheries system; and
- (d) address the high levels of abject poverty, socio-economic development and food insecurity in the small scale fishing communities.

Identification, verification, registration and recognition of small-scale fishers and small-scale fishing communities

3. (1) The Minister must identify, verify and register small-scale fishing communities and small-scale fishers within those communities before small scale fishing rights are allocated as provided for in these regulations.

(2) For the purposes of subregulation (1) the Minister must—

- (a) through the media and by notice in the *Gazette*, call on a community to submit an expression of interest to be recognised as a small-scale fishing community;
- (b) provide at least 30 calendar days for responses to be submitted in writing;
- (c) within six months of the closing date for submissions in terms of paragraph (b), consider whether a community constitutes a small-scale fishing community as defined in the MLRA and, where applicable, recognise a community as such;
- (d) register each person from the small-scale fishing community who wish to be considered for verification as a small-scale fisher;
- (e) verify, after consultation with the small-scale fishing community and by applying the criteria referred to in subregulation (3), that a person registered in terms of paragraph (d) is a small-scale fisher;
- (f) through the media, publish a provisional list of verified fishers and allow at least 30 days for comments to be submitted;
- (g) following the publication contemplated in paragraph (f) and the consideration of any submission made, through the media and in the *Gazette*, publish a notice setting out—

- (i) the communities that have been recognised as small-scale fishing communities;
- (ii) the names of persons who have been recognised as small-scale fishers;
- (iii) . subject to regulation 10, the areas or zones where small-scale fishers may fish.

(3) The criteria to be applied in determining whether a person is a small-scale fisher are that the person—

- (a) must be a South African citizen who associates with or resides in the relevant small-scale fishing community;
- (b) must be at least 18 years of age;
- (c) must historically have been involved in traditional fishing operations, which include catching, processing or marketing of fish for a cumulative period of at least 10 years; and
- (d) must derive the major part of his or her livelihood from traditional fishing operations and be able to show historical dependence on fish, either directly or in a household context, to meet food and basic livelihoods needs.

Co-operatives and the granting of fishing rights

4. (1) The Minister must determine the number of co-operatives that may be established in areas or zones where small-scale fishers may fish, based on marine resource availability and the promotion of responsible fishing practices.

(2) In order to be considered for the granting of fishing rights at least five recognised small-scale fishers from a small-scale fishing community are first required to successfully apply for registration as a primary co-operative in terms of the Co-operatives Act, 2005.

(3) The Minister shall only grant small-scale fishing rights to a co-operative within a small-scale fishing community—

- (a) that has been registered in terms of the Co-operatives Act, 2005, as a primary co-operative;
- (b) that meets the criteria referred to in subregulation (4); and
- (c) that has been recognised by the Minister as small-scale fisheries co-operative for the purposes of these regulations

(4) The criteria a co-operative within a small-scale fishing community must meet are the following:

- (a) Every member of the co-operative must be a recognised small-scale fisher;
- (b) no member of the co-operative may own commercial fishing rights;
- (c) the co-operative must have adopted a constitution that—
 - (i) contains the information referred to in regulation 7(1);
 - (ii) is in a form corresponding substantially with Annexure 1; and
 - (iii) must be approved by the Minister; and
- (d) the small-scale fisheries co-operative management plan must have been approved by the Minister.

(5) No small-scale fishing rights shall be allocated to any natural person or to a juristic person other than a primary co-operative.

(6) The Minister, when allocating a small-scale fishing right, shall determine the manner in which the fishing right is to be exercised, such as the basket of species in respect of which the co-operative has a right of access.

(7) A small-scale fishing right shall be allocated for a period not exceeding 15 years.

(8) A small-scale fishing right may not be transferred to any other small-scale fisheries co-operative, commercial fishing company, individual or any other person.

(9) No member of a primary small-scale fisheries co-operative shall, except on the authority of a permit, engage in any fishing activities.

Additional members of primary small-scale fisheries co-operatives

5. (1) A person may become a member of an existing primary small-scale fisheries co-operative only after three years of the small-scale fishing rights being granted to that co-operative, provided that—

- (a) the primary small-scale fisheries co-operative submits a written request to the Minister to approve the inclusion of the person as a member;
- (b) the primary small-scale fisheries co-operative verifies that the person meets the criteria of a small-scale fisher referred to in regulation 3(3);
- (c) the person associates with or resides in the relevant small-scale fishing community;
- (d) the person meets any requirements for membership contained in the primary small-scale fisheries co-operative's constitution; and

(e) the Minister approves the inclusion of the person as a member of the primary small-scale fisheries co-operative.

(2) (a) Notwithstanding subregulation (1), the Minister may on an annual basis consider and, where appropriate, approve a request from a primary small-scale fisheries co-operative to include a new member as a replacement for any co-operative member that has passed away or who no longer is willing or able to remain a member of the co-operative.

(b) The replacement member must be associated with or reside in the relevant small-scale fishing community and must either meet the criteria of a small-scale fisher contained in regulation 3(3) or must be a family member of the member being replaced.

(c) The primary small-scale fisheries co-operative must, for the purposes of paragraph (a)—

- (i) provide a death certificate of the deceased or an affidavit or declaration from the outgoing member stating the reason why the member is no longer willing or able to be a member, as the case may be;
- (ii) verify that the replacement member is associated with or resides in the relevant small-scale fishing community; and;
- (iii) verify that the replacement member meets the criteria of a small-scale fisher or is a family member of the deceased.

(3) A primary small-scale fisheries co-operative may only amend its membership documents once the Minister has given approval contemplated in subregulation (1) or (2).

Fish processing establishment rights and secondary co-operatives

6. (1) A primary small-scale fisheries co-operative shall not be eligible for a fish processing establishment right, except if the right is required for storage of fish.

(2) A co-operative that has been registered in terms of the Co-operatives Act, 2005, as a secondary co-operative and that is 100% owned by two or more primary small-scale fisheries co-operatives may apply for a fish processing establishment right.

(3) The Minister may grant a fish processing establishment right to a secondary small-scale fisheries co-operative provided that—

- (a) the constitution is approved by the Minister;
- (b) the small-scale fisheries co-operative management plan has been approved by the Minister; and
- (c) the secondary co-operative meets such reasonable requirements relevant to the application for a fish processing establishment as the Minister may require.

(4) Membership of a secondary small-scale fisheries co-operative is limited to primary small-scale fisheries co-operatives that supply the secondary co-operative with fish.

Constitution of small-scale fisheries co-operatives and management plan

7. (1) Apart from complying with the Co-operatives Act, 2005, the constitution of any primary or secondary small-scale fisheries co-operatives must specify—

- (a) the name of the of the co-operative;
- (b) elections procedures for the executive and term of office;
- (c) the membership and executive;
- (d) the decision making powers of the executive;
- (e) the membership contributions;
- (f) the partition of work;
- (g) the remuneration scales for work conducted;
- (h) payment of dividends;
- (i) procedures for ownership and transfer of assets;
- (j) procedures for acquiring additional rights;
- (k) conflict resolution mechanisms;
- (l) compliance measures;
- (m) expulsion procedures;
- (n) succession planning;
- (o) code of conduct;
- (p) auditing procedure;
- (q) involvement of women, youth, and disabled

(2) The management plan of any primary or secondary small-scale fisheries co-operative must specify—

- (a) harvesting plans;
- (b) reporting mechanisms;
- (c) training requirements;
- (d) developmental support needs;
- (e) measures to promote access for women, youth and persons with disability.

Certain powers and duties relating to small-scale fisheries co-operatives

8. (1) A primary small-scale fisheries co-operative that engages in the sale of fish must—

- (a) in the second season of the small-scale fishing right been granted, become a member of at least one secondary small-scale fisheries co-operative which has applied for or been granted a fish processing establishment right; and
- (b) after the second season of the small-scale fishing right been granted, only sell fish to secondary small-scale fisheries co-operatives in possession of valid fish processing establishment permits.

(2) The Minister may for a specified period exempt a primary small-scale fisheries co-operative from the requirement only to sell fish to a secondary small-scale fisheries co-operative, referred to in subregulation (1)(b), if there is a valid reason why the secondary small-scale fisheries co-operative is unable to process or market the product.

- (3) A primary or secondary small-scale fisheries co-operative may—
- (a) be a transferee of commercial fishing rights, subject to any term and condition attached to that right; and

- (b) employ the services of any person, if members of the co-operatives do not have the necessary skills.

Multi-species approach

9. (1) The Minister must, after consultation with the small-scale fishing community, approve the list and quantity of fish species to be allocated for commercial and own consumption purposes for each small-scale fisheries co-operative by considering the following criteria:

- (a) The request from the small-scale fishing community to fish for particular near-shore species found within the fishing area of that community;
- (b) fish occurring within the area established for small-scale fishing;
- (c) the number of co-operatives in the region competing for the same resources;
- (d) whether the marine species will be used by the co-operative for commercial purposes or for own consumption;
- (e) species that occur on the de-commercialised species list (Annexure 2) may be caught for own consumption, but not be sold;
- (f) species that occur on the prohibited species list (Annexure 3) may not be landed;
- (g) species the community requested to be used for commercial purposes may not be used for own consumption;
- (h) small-scale fisheries co-operatives shall not exploit organisms or fish in estuaries for commercial purposes, unless stated in the permit conditions;
- (i) species used for own consumption must be available for fishing to all members of co-operative;

- (j) catching of fish for own consumption must be limited to shore-based activities;
- (k) species used for own consumption must be aligned with control measures established for the recreational sector (bag limits, size limits, closed seasons etc);
- (l) the quantum of fish and number of licences and permits allocated shall be based on the total allowable catch and total applied effort determined by the Minister.

(2) (a) The Minister must set the annual total allowable catch and total applied effort for commercially exploited species per region for the small-scale fisheries sector.

(b) Resources must be allocated to small-scale fisheries co-operatives within these limits.

(3) (a) In the first year of the small-scale fisheries co-operatives being recognised by the Minister, co-operatives from the same small-scale fishing community must negotiate among themselves on the apportionment of the small-scale fisheries total allowable catch and total applied effort to be allocated to each co-operative.

(b) The initial proportions agreed upon as contemplated in paragraph (a), must thereafter be used by the Minister to apportion future annual small-scale fisheries total allowable catch and total applied effort allocated in a region.

(4) Should co-operatives not be able to agree on the apportionment of the total allowable catch and total applied effort allocated in the same region, the Minister must determine the apportionment, having regard to—

- (a) accessibility to the resource by the co-operative;

- (b) the historical involvement of the co-operative members in the utilisation of the resource; and
- (c) the overall economic feasibility of the exploitation of the available species.

(5) A small-scale fisheries co-operative may request the Minister to expand the basket of species allocated to that co-operative.

Small-scale fishing areas and zones

10. (1) When establishing areas or zones where small-scale fishers may fish, as contemplated in section 19(1)(a) of the MLRA, the Minister must act after consultation with the appropriate small-scale fishing community and must base the demarcation on any relevant factor, such as the mobility of each species in the allocated basket of species and the fact that species that are sessile require smaller demarcated fishing areas compared with nomadic and migratory species, which require larger areas.

(2) The Minister may establish multiple fishing areas where a primary small-scale fishing co-operative may fish.

Co-management structures

11. (1) The Minister must establish and appoint members to small-scale fisheries co-management committees at a local, regional and national level.

(2) The main purpose of co-management committees is to provide a method in terms of which Government and a small-scale fishing community or a group of small-scale fishing communities share the responsibility and authority for the management of a marine resource by that community or communities.

(3) Co-management committees must assist Government in determining appropriate management strategies and measures, as well as assist in implementing management decisions in small-scale fishing communities.

(4) Co-management committees must be composed of members of small-scale fishing communities, officials from Government, and any other party affected by the small-scale fishing activities.

(5) A co-management committee must elect the chairperson, deputy chairperson and a secretary, and are appointed for a period not exceeding three years.

(6) A co-management committee must determine the procedures to be followed at its meetings.

(7) The Minister may request a co-management committee to supply such information as the Minister may reasonably require for the purposes of administering the MLRA in relation to small-scale fishing and in administering these regulations.

Conflict resolution mechanisms

12. (1) (a) In the event of any internal dispute among the members of a small-scale fisheries co-operative the dispute resolution mechanisms provided for in the co-operative's constitution must be followed.

(b) The Minister shall not be responsible to resolve any dispute contemplated in paragraph (a).

(c) The dispute resolution mechanisms contemplated in paragraph (a) may not provide for any reporting or appeal to the Minister regarding the internal conflict.

(2) The Minister may, in order to resolve any conflict between a small-scale fishing co-operation and a third party, facilitate mediation and arbitration proceedings or cause the matter to be mediated or arbitrated.

Compliance

13. (1) The provisions of section 28 of the MLRA, in terms of which a right, licence or permit may be revoked, suspended, cancelled, altered or reduced, may at any time be invoked against a primary or secondary small-scale fisheries co-operative that acts as contemplated in subsection (1) of that section

(2) The constitution of a primary or secondary small-scale fisheries co-operative must specify the action the co-operative must take against a member of the co-operative who has contravened the provisions of the MLRA or these regulations.

(3) The Director-General must, without delay, be notified of any member of the co-operative who has contravened the provisions of the MLRA or these regulations or who has been found guilty of any offence in terms of the MLRA, and of any action taken by the co-operative against the member.

Short Title

14. These regulations are called the Regulations Relating to Small-scale Fishing, 2015.