

**Decree No. 94-112, establishing the general organization
of Maritime Fishing**

The Prime Minister and Head of Government,

Considering the Constitution,

Considering Act No. 66-007 of 6 July 1966 establishing the Maritime Code and, in particular, book V on maritime fishing,

Considering Act No. 85-013 of 11 December 1985 determining the limits of the maritime zones (territorial sea, continental shelf and exclusive economic zone),

Considering Ordinance No. 93-022 of 4 May 1993 regulating fishing and aquaculture,

Considering Decree No. 93-466 of 26 August 1993 concerning the designation of the Prime Minister, Head of Government, and Minister of National Defence responsible for the maintenance of order and public safety,

Considering Decree No. 93-468 of 26 August 1993, supplemented by Decree No. 93-547 of 1 October 1993 and amended by Decree No. 93-629 of 13 October 1993, appointing the members of the Cabinet of Ministers,

Considering Decree No. 93-499 of 10 September 1993 establishing the functions of the Minister of State for Agriculture and Rural Development and the general organization of his Ministry,

With the concurrence of the Cabinet of Ministers,

Hereby Decrees:

TITLE I
GENERAL PROVISIONS

Article 1

The aim of this Decree is to define and specify the principles and policies set out in general terms in Ordinance No. 93-022 of 4 May 1993 regulating fishing and aquaculture (hereinafter referred to as Ordinance No. 93-022).

Article 2

The provisions of this Decree shall apply to all fishing in maritime waters as defined in article 1 of Ordinance No. 93-022.

Article 3

The Minister of Fisheries and Aquaculture shall be responsible for enforcing and supplementing by further decree the provisions of this Decree.

TITLE II

CATEGORIES OF FISHING AND CLASSES OF VESSELS

Section 1

Categories of fishing

Article 4

Subsistence fishing is fishing which is conducted on foot or from a non-motorized pirogue and does not result in the sale of the products.

Article 5

Commercial fishing is subdivided into:

- Traditional fishing, conducted on foot or from a pirogue. The use of a pirogue with an outboard motor is included in this category of fishing;
- Small-scale fishing, involving the use of a boat having a motor of 50 horsepower or less;
- Industrial fishing, involving the use of a boat having a motor of over 50 horsepower. For shrimp fishing, the maximum allowable propulsive force is 500 horsepower.

Article 6

Recreational fishing is fishing which is conducted on foot or from a motorized or non-motorized boat and does not result in the sale of the catch. This type of fishing is often connected with tourist activities.

Article 7

Scientific fishing is subdivided into:

- Research fishing, a non-profit activity not generally resulting in the sale of the catch;
- Prospecting, the aim of which is to develop new fishing grounds with a view to possible commercial exploitation.

Section 2

Classes of vessels

Article 8

1. The vessels in class I, entitled Malagasy fishing or support vessels, are: vessels which are State property or belong to Malagasy nationals or Malagasy companies and which land all their catch in Madagascar.

2. The vessels in class II, entitled fishing or support vessels chartered by Malagasies, are: vessels which are so defined in the Maritime Code, in particular in box IX, chapters IV, V, VI, VII and VIII, and in title III, chapter IX, and which land all their catch in Madagascar. The charter-party involved shall be subject to prior certification by the Minister of the Merchant Marine, the Minister of Fisheries and Aquaculture and the Minister of Finance.
3. The vessels in class III, entitled foreign fishing or support vessels based in Madagascar, are: foreign fishing vessels whose activities, authorized by the Minister of Fisheries and Aquaculture, are conducted from Madagascar and which land all their catch in Madagascar.

Article 9

The vessels in class IV, entitled foreign fishing vessels, are: all vessels which do not fall under any of the classes of fishing vessels defined in the preceding article.

Article 10

Fishing for coastal shellfish and demersal fish may be conducted only by traditional fishing boats or by small-scale or industrial fishing vessels which fall under classes I, II and III.

TITLE III

AUTHORIZATION REGIME FOR VESSELS

IN CLASSES I, II AND III

Article 11

Any vessel referred to in article 8 which engages in small-scale or industrial fishing as defined in article 5 of this Decree must hold a licence issued in accordance with the provisions of this Decree and any regulations implementing it and must observe the conditions stipulated in that licence.

Article 12

The issuance of a fishing licence is subject to payment of a fee, the amount and terms of which shall be established by decree.

Article 13

Fishing licences shall be issued by the Minister of Fisheries and Aquaculture after obtaining an opinion from the Interministerial Commission on Fishing and Aquaculture established in article 5 of Ordinance No. 93-022 of 4 May 1993. The Minister of Fisheries and Aquaculture shall notify applicants of the decision thus taken. An applicant must be informed of the renewal, granting, revocation, suspension or rejection of an application for a fishing licence for the next fishing season before 30 October of a given year.

Article 14

1. Subject to the provisions of article 15 of this Decree, fishing licences shall be granted for a maximum period of 12 months and may be renewed for successive 12-month periods starting from the date of issuance. However, in the case of the vessels referred to in article 8, paragraphs 2 and 3, licences shall be renewable no more than twice.

2. Further fishing licences shall be renewed or granted in the following order of decreasing priority:

(a) Fishing licences shall be renewed in the case of existing companies operating class-I vessels, the secondary grounds for priority being: the fact that they have available, on land, adequate installations for the processing, packaging and preservation of catch, or that they are able to obtain a reasonable selling price for their overall catch;

(b) Fishing licences shall be renewed in the case of existing companies operating class-II vessels, with the same secondary grounds for priority as defined in subparagraph (a);

(c) Fishing licences shall be renewed in the case of existing companies operating class-III vessels, with the same secondary grounds for priority as defined in subparagraph (a);

(d) New licences may be granted to companies operating class-I vessels, and shall be distributed equally among existing companies and any new companies undertaking to develop class-I operations within two years, beyond which time the licences shall be revoked if the undertaking has not been met;

(e) New licences shall be granted, if fishery resources permit, to existing or prospective companies operating class-II and class-III vessels.

Article 15

1. The granting or renewal of a fishing licence shall be denied in cases where:

(a) The boat is not registered in compliance with existing legislation;

(b) The applicant does not fulfil the legal conditions.

2. In addition to the reasons given in paragraph 1 above, a fishing licence may be denied, suspended or revoked:

(a) In order to guarantee proper management of fishery resources so as to ensure their perpetuation or conservation or to fulfil the objectives of the plans for the management and development of fisheries provided for in article 6 of Ordinance No. 93-022 of 4 May 1993;

(b) In order to guarantee better integration of the fishing subsector into the national economy, in cases where:

- An enterprise does not have available, on land, an adequate installation for processing, packaging and preserving its catch;

- An enterprise obtains selling prices for its products which are deemed not to be competitive with the prices obtained by the other companies established in Madagascar;

- An enterprise has not had its partnership agreement or service contract certified in advance by the competent national authorities;

(c) If an applicant has, in the 12 months prior to the application, been found guilty of violating the provisions of Ordinance No. 93-022 of 4 May 1993 or of any other legislative or regulatory text governing fishing and aquaculture.

3. The grounds for denial of a licence must always be specified by the Ministry of Fisheries and Aquaculture.

4. A fishing licence may not be suspended or revoked by the competent authorities for reasons other than those set out in this article and in article 14.

5. Where a licence is revoked or suspended for the reasons set out in paragraph 2 (a) above, the fee paid for the licence shall be reimbursed in proportion to the unexpired period of validity.

Article 16

1. Fishing licences shall be drawn up in the manner prescribed in this Decree and in any regulatory texts adopted pursuant to articles 3 and 10 of this Decree, and shall be subject to:

- (a) The general conditions laid down in the legislation governing fishing operations;
- (b) Any general conditions which may be laid down pursuant to paragraph 2 of this article;
- (c) Any special conditions which may be laid down pursuant to paragraph 3 of this article.

2. The Minister of Fisheries and Aquaculture may, after obtaining an opinion from the Interministerial Commission on Fishing and Aquaculture, define, in a duly promulgated decree, supplementary general conditions which are to be included in all or certain categories of fishing licences and which relate, inter alia, to the closed seasons for fishing, the minimum size of species or the characteristics of fishing gear.

3. The Minister of Fisheries and Aquaculture may, after obtaining an opinion from the Interministerial Commission on Fishing and Aquaculture, include in a fishing licence any special conditions that in his judgement should be observed, which may relate, inter alia, to:

- (a) The type and method of fishing, fishing gear and any authorized related activity;
- (b) The area within which fishing or any other related activity shall be authorized;
- (c) The species and quantities of allowable catch, including, where appropriate, restrictions on by-catch.

4. In the interests of proper management of fisheries, the Minister of Fisheries and Aquaculture may, after obtaining an opinion from the Interministerial Commission on Fishing and Aquaculture, modify, add or eliminate any special condition included in a licence. The holder of the licence shall be notified without delay of any such modification or elimination.

Article 17

Fishing licences are transferable only to a vessel belonging to the same company, upon request of the beneficiary and with the authorization of the Minister of Fisheries and Aquaculture.

Article 18

1. The Minister of Fisheries and Aquaculture shall notify an applicant of a decision to renew, grant, revoke or suspend a fishing licence within a period of no more than three months from the date of the opinion of the Interministerial Commission on Fishing and Aquaculture. After three months, in the absence of a decision by the Minister of Fisheries and Aquaculture, the opinion of the Interministerial Commission on Fishing and Aquaculture shall be notified to the Applicant as constituting a decision.

2. The original fishing licence must always be kept on board a vessel.

Article 19

The provisions of this section shall apply, mutatis mutandis, to support vessels as defined in article 8 of this Decree.

TITLE IV

AUTHORIZATION REGIME FOR FOREIGN VESSELS

Article 20

1. This title shall apply to foreign vessels as defined by Ordinance No. 93-022 of 4 May 1993 and by article 9 of this Decree;

In the event that the agreement between States thus envisaged does not yet exist, the Minister of Fisheries and Aquaculture may reach agreement with an individual or legal entity of a foreign State on the conditions of operation to which that individual or legal entity is subject. A protocol of agreement shall be drawn up for that purpose.

2. No vessel referred to in paragraph 1 of this article may fish in the maritime waters under national jurisdiction or harvest the sedentary species of the Malagasy continental shelf without having been authorized to do so under article 13, paragraph 2, of Ordinance No. 93-022 of 4 May 1993.

Article 21

All vessels sailing under foreign flags which enjoy the right of passage through the maritime waters under national jurisdiction must tidy away and stow their fishing gear so that it cannot easily be used.

Article 22

The Minister of Fisheries and Aquaculture shall determine the number of vessels sailing under a foreign flag which may fish in the maritime waters under national jurisdiction, the duration of the validity of licences, the species which may be caught and, if necessary, quotas for each of the authorized species. This information shall be included in the fisheries agreement or in the special licence envisaged in article 13, paragraph 2, of Ordinance No. 93-022 of 4 May 1993.

Article 23

Vessels sailing under a foreign flag which are authorized to fish in the maritime waters under national jurisdiction must inform the Minister of Fisheries and Aquaculture, by the fastest possible means of communication, of their entry into and departure from Malagasy maritime waters, and must report their position at regular intervals during their presence in those waters.

Article 24

1. In addition to the provisions laid down in articles 22 and 23 above, the international agreements concluded pursuant to article 13, paragraph 2, of Ordinance No. 93-022 of 4 May 1993 must:

(a) Specify the number and characteristics of the vessels whose operations are permitted and the authorized fishing zones, types of fishing and species of catch;

- (b) Stipulate that the shipowner or his representative must obtain a special individual licence for his vessel and specify, if necessary, the procedure for applying for and obtaining a licence;
 - (c) Determine the amount of fees and other financial compensation;
 - (d) Contain a clause regarding the periodic transmission, by shipowners, of statistical data on catches to the competent office of the Ministry of Fisheries and Aquaculture;
 - (e) Require the marking of vessels in accordance with the provisions of this Decree and its implementing regulations;
 - (g) Lay down the obligation of the flag State or any competent authority to adopt all appropriate measures to ensure that fishing vessels which are so authorized respect the terms and conditions of the agreement and the relevant provisions of the existing laws and regulations.
2. Any agreement under article 13, paragraph 2, of Ordinance No. 93-022 of 4 May 1993 and any protocol of agreement as envisaged in article 20 of this Decree must be compatible with the management and development plans prepared in accordance with the provisions of article 6 of that Ordinance.
3. The above-mentioned agreements may also make provision for:
- (a) Offloadings at Madagascar of all or part of the catches;
 - (b) Training of nationals;
 - (c) Construction of shore infrastructure and measures for the transfer of technology;
 - (d) The presence of Malagasy inspectors or observers on board vessels sailing under foreign flags during all or part of the time they are present in the maritime waters under national jurisdiction;
 - (e) Any other measure or provision negotiated between the parties.

Article 25

All requests for the special licences envisaged in articles 20, 22 and 24 of this Decree must include the following information:

- (a) Name of the vessel, number and port of registration;
- (b) Exterior identifying marks;
- (c) Name and address of the shipowner or charterer;
- (d) Gross tonnage, overall length, loaded capacity;
- (e) Distinctive signal, radio frequency used;
- (f) Type of fishing, species which are expected to be caught, fishing season.

Article 26

A licence issued under article 22 of this decree shall be valid for only one vessel. In the event that several vessels participate in the same fishing operation, each of the vessels must hold an individual fishing licence. The

original document shall be kept on board the vessel.

Article 27

The information about the vessel stipulated in article 25 of this Decree must appear on the licence.

The following information may supplement that information or be reproduced in an annex:

- (a) The zones in which fishing is authorized;
- (b) The period of validity of the licence;
- (c) The species which may be fished, their minimum size or minimum weight, and the maximum proportion of allied species;
- (d) The maximum allowable catch;
- (e) The fishing methods to be used and the types of gear;
- (f) The conditions of offloading, transfer and use of the species caught;
- (g) The conditions of entry, resupplying and maintenance of vessels sailing under foreign flags in Malagasy ports;
- (h) Where applicable, the conditions of participation in a fishing research programme;
- (i) The conditions of the employment and training of Malagasy personnel on board vessels;
- (j) Where applicable, the conditions for the boarding of one or two qualified Malagasy observers to monitor fishing operations, make the necessary statistical reports and obtain documents, without impeding the work on board;
- (k) The amount of the fee and the terms of payment.

Article 28

The captain of an authorized vessel sailing under a foreign flag shall keep a fishing log showing for each day of fishing: the catch zone, meteorological conditions, the fishing gear used, the total catch by principal species, the total by-catch and all other information considered useful by the Malagasy authorities.

The log shall be transmitted every month to the office responsible for fisheries.

Article 29

The name of the vessel shall be displayed visibly in Roman characters at least 45 cm high and 6 cm wide, in white letters on a black background, on each side of the navigation bridge and level with it.

The radio call sign of the vessel shall be painted on the upper part of the bridge in red letters on a white background; the letters must be at least the size indicated in the preceding paragraph.

Article 30

The Minister of Fisheries and Aquaculture may suspend or cancel a special licence, either

- (a) Because the vessel sailing under a foreign flag violated the provisions of fisheries legislation; or

- (b) Because the measure is required for the rational management of the stocks concerned.

In the latter case, the proportion of the fee paid for the licence corresponding to the unexpired period of validity shall be refunded.

TITLE V

OTHER TYPES OF FISHING

Article 31

Subsistence fishing and recreational fishing shall be free at all times, subject to the provisions of the legislation in force, and shall not entail the collection of any fees.

Article 32

1. Scientific or experimental fishing, as defined in article 7 of this decree, shall be subject to prior authorization by the Minister of Fisheries and Aquaculture on the advice of the Minister of Scientific Research. This authorization, in addition to the general conditions established in article 33 below, may be accompanied by all the conditions and limitations which are considered appropriate by the Minister of Fisheries and Aquaculture.
2. A non-renewable authorization issued in such case shall be valid for a maximum period of twelve (12) months.

Article 33

1. Vessels which have been authorized to operate in Malagasy waters under article 32 above must pass in transit through a Malagasy port designated by the Malagasy authorities before and after each fishing trip.
2. The Minister of Fisheries and Aquaculture is entitled to require of all vessels wishing to engage in research fishing as defined in article 7 of this decree:
 - (a) That the operations take place on the basis of a research plan which takes into account the objectives of the plans for the development and management of fisheries as defined by Ordinance No. 93-022 of 4 May 1993;
 - (b) That one or more experts designated by him be associated with the operations;
 - (c) That all the data collected and the results obtained be communicated to him within a period specified by him.
3. The Minister of Fisheries and Aquaculture is entitled to require of every vessel wishing to engage in prospecting as defined in article 7 of this Decree:
 - (a) That one or two observers designated by him be stationed on board the fishing vessel and that the costs incurred by them be borne by the shipowner;
 - (b) That all information he may consider necessary, particularly with regard to zones of operation, the fishing methods to be used and the resources targeted, be communicated to him in advance.
4. An individual or legal entity which, after a prospecting trip, wishes to obtain a commercial fishing licence for

the same type of fishing as was being carried out during the prospecting may submit an application to that effect to the Minister of Fisheries and Aquaculture. This application shall be accorded priority over others submitted by persons who have not carried out prospecting trips with the same objective. The application may lead to the granting of one or more fishing licences by the Minister of Fisheries and Aquaculture after obtaining an opinion from the Interministerial Commission on Fishing and Aquaculture, subject to the restrictions established to ensure the rational management of stocks and in accordance with the provisions of this Decree.

TITLE VI FINAL PROVISIONS

Article 34

The rights and obligations set forth in the special laws concerning socio-economic interests shall have no impact on the implementation of the provisions of this Decree.

All provisions which are contrary to this Decree, in particular those of Decree No. 71-238 of 18 May 1971 and Decree No. 73-171 of 22 June 1973, are and shall remain abrogated in respect of fisheries and aquaculture.

Nevertheless, the provisions of regulatory texts which are not inconsistent with this Decree and concern matters covered by this Decree shall continue to apply until the entry into force of the texts adopted for its implementation.

Article 35

The Minister of Fisheries and Aquaculture, the Minister of the Merchant Marine, and the Minister of Finance shall be responsible, each in his own domain, for the implementation of this Decree, which shall be published in the Official Gazette of the Republic.

DONE at Antananarivo on 18 February 1994.