

DECREE No.49/1998/ND-CP OF JULY 13, 1998 ON THE MANAGEMENT OF FISHERY ACTIVITIES OF FOREIGN INDIVIDUALS AND MEANS IN THE VIETNAMESE SEA AREAS

THE GOVERNMENT

Pursuant to the Law on Organization of the Government of September 30, 1992;

Pursuant to the June 23, 1994 Resolution of the National Assembly of the Socialist Republic of Vietnam on the ratification of the 1982 United Nations Convention on the Law of the Sea;

Pursuant to the April 25, 1989 Ordinance on Protection and Development of Aquatic Resources;

Pursuant to the July 6, 1995 Ordinance on the Handling of Administrative Violations;

At the proposal of the Minister of Aquatic Resources,

DECREES:

Chapter I

GENERAL PROVISIONS

Articles 1.- The State of the Socialist Republic of Vietnam exercises its State management rights over the biological and non-biological resources in the Vietnamese sea areas.

The Ministry of Aquatic Resources shall assist the Prime Minister in performing the uniform management over the fishery activities of foreign individuals and means in the Vietnamese sea areas.

Article 2.- This Decree shall apply to foreign individuals and means, including those belonging to foreign-invested fishery enterprises established and operating under the Law on Foreign Investment in Vietnam that conduct such activities as surveying, prospecting, catching, rearing marine products, collecting and transporting reared and exploited marine products (hereafter referred to as fishery activities for short) in the Vietnamese sea areas.

Ships which are not engaged in marine product-exploitation in fishery activities but enter and leave

the national ports in accordance with the Maritime Code to perform commercial import and/or export contracts (including cases where the goods are marine products) shall not be subject to this Decree.

Article 3.- The State of Vietnam shall create favorable conditions for foreign individuals and means to conduct fishery activities in the Vietnamese sea areas.

Article 4.- Foreign individuals and means conducting fishery activities in the Vietnamese sea areas shall have to strictly abide by Vietnamese laws; be subject to the supervision and control by the Vietnamese marine control forces. All violations shall be dealt with according to the provisions of this Decree and other provisions of Vietnamese laws.

Article 5.- In this Decree the terms below are construed as follows:

1. The "means owner" is the owner, the shipmaster or manager of the means;

2. The "Vietnamese sea areas" are the sea areas under the sovereignty and sovereignty jurisdiction of the Socialist Republic of Vietnam according to the December 5, 1977 Declaration of the Government of the Socialist Republic of Vietnam and the 1982 United Nations Convention on the Law of the Sea ratified on June 23, 1994 by the National Assembly of the Socialist Republic of Vietnam, including the internal waters, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf;

3. "Foreign individuals" are persons who do not hold Vietnamese nationality;

4. "Foreign fishery means" include ships, boats and mobile and non-mobile means on the sea which do not register Vietnamese nationality;

Chapter II

FISHERY ACTIVITIES IN THE VIETNAMESE SEA AREAS

Article 6.- On the basis of investment licenses, scientific research and cooperation, scientific and technical cooperation contracts or other contracts for fishery (hereafter collectively referred to as the licenses) which have been granted or approved by the competent agencies of the Vietnamese State, foreign organizations and individuals shall have to register with the Vietnamese Ministry of Aquatic Resources

the specific operations of their means so as to be granted fishery activity registration papers before taking their means into the Vietnamese sea areas.

Article 7.- The Vietnamese Ministry of Aquatic Resources shall grant fishery activity registration papers (hereafter referred to as the registration papers for short) to every foreign means within five days from the date the concerned foreign organization or individual completes the procedures to apply for such registration.

In cases where a registration paper expires before the license, application for its extension may be made. Any change in the contents of a registration paper must be approved by the Vietnamese Ministry of Aquatic Resources.

When granting a registration paper, the Vietnamese Ministry of Aquatic Resources shall be entitled to collect a fee according to current regulations on fees and charges.

Article 8.- A registration paper shall be invalidated in the following cases:

1. The license is suspended or canceled;
2. The registration paper expires or is altered, erased or torn out;
3. The registration paper is temporarily suspended, suspended or revoked;
4. The registration paper is used for a wrong means, a wrong person aboard the means or at variance with its contents.

Article 9.- After granting a registration paper, the Vietnamese Ministry of Aquatic Resources shall have to notify the concerned Vietnamese agencies at least five days before the foreign means enters the Vietnamese sea area of the following contents:

1. The name, code and registration number of the means;
2. The major features for identification of the means;
3. A copy of the granted registration paper.

Article 10.- Foreign individuals and means conducting fishery activities in the Vietnamese sea areas shall have to strictly comply with the following

regulations:

1. The name, code and registration number of the means must be clearly written according to the contents of the registration paper.

2. They must always carry the following papers:

a/ The fishery activity registration paper;

b/ The registration paper of the means;

c/ The personal papers of each person aboard the means.

3. They shall have to operate in accordance with the contents of the granted registration papers; strictly abide by Vietnamese laws and observe the reporting regime prescribed by the Vietnamese Ministry of Aquatic Resources;

4. In case of necessity, the Vietnamese Ministry of Aquatic Resources shall appoint Vietnamese supervisors to conduct the supervision aboard foreign means and notify the means owners thereof in advance. Foreign means owners shall have to receive and ensure the working and living conditions for such Vietnamese supervisors like those enjoyed by officers aboard the means and ensure their right to use communication equipment available on board the means so as to contact with the Vietnamese competent agencies.

5. They shall have to create favorable conditions for members of the Vietnamese marine control forces to perform their official duty.

Article 11.- Foreign means which have had registration papers shall be permitted to leave the Vietnamese sea areas only after they have fulfilled their obligations under the signed contracts and observed other relevant provisions of Vietnamese laws.

Article 12.- During the effective term of the registration paper, if a means owner wishes to cease operation, he/she shall have to report it to the Vietnamese Ministry of Aquatic Resources at least seven days before the date he/she intends to cease operation; in cases where operation ceases due to a *force majeure* reason, the Vietnamese Ministry of Aquatic Resources must be notified thereof within 24 hours.

Article 13.- When accidents occur, the means

owners shall have to immediately notify the concerned Vietnamese agencies at the nearest place, clearly stating the specific requirements for help and rescue and they shall have to obey the settlement of consequences by these agencies.

Article 14.- The Vietnamese marine control forces, which take the prime responsibility for controlling fishery activities, include: the coast guard, the border guard and the aquatic resource protection inspectorate. The customs and other specialized inspectorate forces shall have to join in controlling fishery activities in the Vietnamese sea areas.

The tasks, powers and organizations of these forces shall comply with the provisions of law.

While on duty, the Vietnamese marine control forces shall have to wear their own uniform, badges and signs as prescribed. Every means of the Vietnamese marine control forces shall be hoisted with a national flag and its own pennant, its specialized mark and code must be painted and installed at a place to be easily seen.

Chapter III

HANDLING OF VIOLATIONS

Article 15.- In cases where foreign individuals or means violate Vietnamese laws and the provisions of this Decree, the marine control forces shall promptly make on-the-spot reports thereon, seal up all communication equipment and means, itinerary, locator and material evidences; keep the means in its status quo conditions and escort it to a nearest port or berth then hand it over together with all the documents and evidences in accordance with the provisions of this Decree and other relevant provisions of Vietnamese laws to agencies with handling competence.

The temporary seizure of people who violate the regulations on fishery activities shall be resorted to only when the means owners or the involved people personally commit the violations or obstruct Vietnamese officials from performing their official duty.

Article 16.- Foreign individuals and means that conduct fishery activities in the Vietnamese sea areas without registration papers or with invalidated registration papers as stipulated in Article 8 of this Decree shall be handled as follows:

1. The means owner shall be subject to a fine of 50 to 100 million Vietnam dong.

Apart from such fine, all the marine products, fishing gears and other tools used in the illegal fishing of marine products shall be confiscated.

2. For serious violations, the violators may be examined for penal liability and if aquatic resources is damaged or the environment is polluted they shall have to pay compensation therefor.

Article 17.- If foreign individuals and means conducting fishery activities on the Vietnamese sea areas with registration papers violate the provisions of this Decree or relevant provisions of Vietnamese laws, they shall, depending on the seriousness, nature and consequences of each violation, be handled as follows:

1. Fishery activities in a wrong area, use of an expired registration paper or fishing gears and tools other than those stated in the registration paper, shall be subject to a fine of 20 to 50 million Vietnam dong;

2. Use of explosives, toxic chemicals, electric pulses or storage of fishing gears not permitted for use in marine resource exploitation shall be subject to a fine of 50 to 100 million Vietnam dong;

3. Exploitation of marine resources on the Vietnamese State's list of aquatic resources banned from exploitation shall be subject to a fine of 30 to 70 million Vietnam dong;

4. Destruction or change of the habitat of marine resources shall be subject to a fine of 20 to 50 million Vietnam dong;

5. Pollution of the living water areas of marine resources shall be subject to a fine of 10 million dong for water areas of less than one hectare and 10 to 20 million dong per hectare for water areas of one hectare or more.

6. Violations of the regulations on aquaculture, on the manufacture, trading, import and export of aquatic breeds and feeds and on the epidemic and disease prevention, veterinary hygiene inspection and aquatic resource quarantine shall be subject to a fine of five to 20 million Vietnam dong;

7. Deliberate obstruction or non-observance of the guidance of the Vietnamese marine control force members on official duty shall be subject to a fine of five to 20 million Vietnam dong;

8. Violations of the provisions in Clauses 1, 2, 3, 4 and 5 of this Article shall, in addition to a fine, also be subject to one or several additional sanctions such as confiscation of all marine products, confiscation of fishing gears and tools employed in the violating acts; and, depending on each specific type of violation, the registration paper of the violating means shall be suspended or temporarily suspended for three to six months. For serious violations, the violators may be examined for penal liability as prescribed by Vietnamese laws.

Article 18.-

1. Fined persons must quickly pay the fine and compensation money within 30 days from the date they receive the fining decision;

2. Confiscated means, fishing gears and/or aquatic products shall be auctioned according to the provisions of Vietnamese laws. All the proceeds from the auction, fines and compensation money must be remitted into the State budget. The collection and payment of such amounts and the making of deductions to reward persons who make merits in the seizure shall comply with current regulations of the Ministry of Finance on the collection, management and use of fines in the handling of administrative violations.

3. Fines and compensation money may be collected in a freely convertible foreign currency converted from the fines imposed in the Vietnam dong at the exchange rate announced by the State Bank of Vietnam at the time the fines are collected.

Article 19.- The competence for handling violations committed by foreign individuals and means conducting fishery activities in the Vietnamese sea areas is stipulated as follows:

1. The Ministry of Aquatic Resources:

a/ Settling complaints and denunciations relating to the fishery activities of foreign individuals and means in the Vietnamese sea areas as prescribed by law;

b/ Temporarily suspending, suspending or revoking registration papers;

c/ Proposing to the Prime Minister or a competent Vietnamese agency to suspend or revoke licenses as stipulated in Article 6 of this Decree.

2. The presidents of the People's Committees of

the provinces and cities directly under the Central Government:

a/ Settling complaints and denunciations relating to the fishery activities conducted by foreign individuals and means in the Vietnamese sea areas according to their competence prescribed by law;

b/ Issuing decisions to fine or handle violations of the provisions of this Decree;

c/ Proposing the Ministry of Aquatic Resources to temporarily suspend, suspend or revoke registration papers;

d/ Organizing the collection of fines and compensation money; organizing the temporary seizure and return of foreign individuals and means as prescribed by law.

3. The marine control forces:

a/ Seizing foreign means and persons aboard the means that violate the provisions of this Decree or other provisions of Vietnamese laws, making reports thereon, escorting and handing them over to the competent agency for handling;

b/ Handling violations according to the prescribed competence.

Article 20.- In cases where foreign individuals and means are temporarily seized:

1. The People's Committees of the provinces and cities directly under the Central Government shall have to notify the Ministry for Foreign Affairs and the Ministry of Aquatic Resources thereof immediately after the seizure for their coordination in handling the case;

2. The means owners shall have to bear all expenses for the maintenance of their means as well as for meals, accommodation and repatriation of violators during the time they are temporarily seized in Vietnam;

3. Temporarily seized means and equipment shall be kept intact in the conditions described in the dossier and report on the seizure and hand-over. In cases they are lost or damaged, the persons responsible for temporarily maintaining them shall have to pay compensation.

Article 21.- Organizations and individuals that deliberately commit wrong acts or acts beyond their competence in granting registration papers and

handling violations in contravention of the provisions of this Decree and relevant law provisions shall, depending on the seriousness of their violations, have to pay compensation for any damage, be disciplined or examined for penal liability.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 22.- This Decree takes effect 15 days after its signing and replaces Decree No. 437-HDBT of December 22, 1990 of the Council of Ministers (now the Government).

Article 23.- In cases where an international agreement on fishery which the Socialist Republic of Vietnam has signed or acceded to contains provisions different from the provisions of this Decree, such international agreement shall apply.

Article 24.- The Minister of Aquatic Resources shall coordinate with the concerned ministries and branches in implementing this Decree.

Article 25.- The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government and the presidents of the People's Committees of the provinces and cities directly under the Central Government shall have to implement this Decree.

On behalf of the Government

Prime Minister

PHAN VAN KHAI