

Government

Decree No. 191/2004/ND-CP

SOCIALIST REPUBLIC OF VIETNAM

Independence-Freedom-Happiness

Hanoi, November 18th, 2004

**DECREE OF GOVERNMENT ON MANAGEMENT OF FISHERY ACTIVITIES OF
FOREIGN FISHING VESSELS IN VIETNAM'S SEAS**

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

pursuant to the November 26, 2003 Law on Fisheries;

Pursuant to the July 2, 2002 Ordinance on Handling of Administrative Violations;

At the proposal of the Minister of Fisheries,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.- Scope of regulation

This Decree prescribes the conditions, procedures and competence for grant and withdrawal of fishery activity permits; responsibilities of owners of foreign fishing vessels engaged in fishery activities in Vietnam's seas; responsibilities of the State management bodies for fishery activities of foreign fishing vessels in Vietnam's seas; the examination, control and handling of administrative violations, and complaints and denunciations related to fishery activities of foreign fishing vessels in Vietnam's seas.

Article 2.- Subjects of application

This Decree applies to owners of foreign fishing vessels engaged in fishery activities in Vietnam's seas and concerned agencies, organizations and individuals.

Where the international agreements which Vietnam has signed or acceded to contain provisions different from those of this Decree, such international agreements shall apply.

Article 3.- Interpretation of terms

In this Decree, the following terms are construed as follows:

1. Owner of a fishing vessel means the owner, charterer, manager or captain of a fishing vessel.
2. Vietnam's seas mean sea areas under the sovereignty, sovereign rights and jurisdiction of the Socialist Republic of Vietnam, prescribed in the June 26, 2003 National Boundary Law and the international agreements between the Socialist Republic of Vietnam and other concerned countries.
3. Foreign fishing vessel means a fishing vessel registered overseas.

Article 4.- Principles for fishery activities of foreign fishing vessels in Vietnam's seas

1. Fishery activities of foreign fishing vessels in Vietnam's seas shall be carried out on the basis of international cooperation, ensuring equality, mutual benefit, respect for each party's independence, sovereignty and law as well as international law.
2. Fishery activities of foreign fishing vessels in Vietnam's seas must comply with the national and local fishery sector development plannings and plans; ensure safety for fishing activities and people working on board fishing vessels.

3. Foreign fishing vessels may engage in fishery activities in Vietnam's seas only when they are granted the fishery activity permits by a competent Vietnamese body.
4. Foreign fishing vessels engaged in fishery activities in Vietnam's seas must strictly observe the provisions of this Decree and other relevant Vietnamese law provisions.

Chapter II

CONDITIONS, PROCEDURES AND COMPETENCE FOR GRANT AND WITHDRAWAL OF FISHERY ACTIVITY PERMITS WITH RESPECT TO FOREIGN FISHING VESSELS

Article 5.- Fishery activity permits of foreign fishing vessels

1. Fishery activity permits (hereinafter referred to as permits for short) shall be granted to each fishing vessel. A fishing vessel owner may apply for permits for more than one fishing vessel. The contents of a permit shall comply with the form enclosed with this Decree (not printed herein).
2. The term of a granted permit shall not exceed 12 months for aquatic resource-exploiting activities and 24 months for other fishery activities.
3. Permits may be extended more than once, with each extension not exceeding 12 months.

Article 6.- Conditions for grant of permits

Foreign fishing vessels shall be considered for being granted fishery activity permits when their owners fully meet the following conditions:

1. Having one of the following papers and documents:
 - a/ The investment licenses, granted by competent State management bodies;
 - b/ Projects documents on aquatic resource survey and exploration or exploitation cooperation, already approved by the Prime Minister or the Minister of Fisheries under the Prime Minister's authorization;
 - c/ Project documents on aquatic resource-related technical training and technology transfer cooperation and on the charter of foreign fishing vessels, already approved by the Minister of Fisheries;
 - d/ Project documents on aquatic resource trading, purchase or carriage cooperation, already approved in principle by the provincial/municipal People's Committee presidents.
2. The fishing vessels' registration certificates and technical safety certificates.
3. The radio frequency and radio trans-reception equipment use permits.
4. Fishing vessel captains and chief engineers must have appropriate diplomas and certificates as prescribed by law.

Article 7.- Procedures for grant, extension of permits

1. Dossiers of application for permits shall each consist of:
 - a/ An application for a permit for fishing vessel, made according to a form set by the Ministry of Fisheries;
 - b/ The relevant papers and documents prescribed in Clauses 1, 2, 3 and 4, Article 6 of this Decree;
 - c/ The list of crewmen and people working on board the fishing vessel (with their full names, nationalities and job titles clearly stated) and their photos.
2. Dossiers of application for permit extension shall each consist of:
 - a/ An application for permit extension, made according to a form set by the Ministry of Fisheries;
 - b/ A report on the fishing vessel's activities in the duration stated in its granted permit;
 - c/ The fishing vessel's technical safety certificate (a notarized copy);
 - d/ The granted permit (a notarized copy).

3. The agency with permit-granting competence defined in Article 8 of this Decree shall consider the grant or extension of permits within 15 working days after receiving the complete and valid dossiers. In case of refusal, they must reply in writing, clearly stating the reasons therefor.

4. Fishing vessel owners applying for permits or permit extension must pay a fee according to Vietnamese law provisions.

Article 8.- Agency in charge of grant, extension of permits

The Aquatic Resource Exploitation and Protection Department under the Ministry of Fisheries shall be the agency competent to grant and extend permits for foreign fishing vessels engaged in fishery activities in Vietnam's seas.

Article 9.- Cases where permits are invalidated

1. Fishing vessels terminate their activities in Vietnam's seas ahead of the expiry of the term indicated in their permits.

2. The investment licenses or cooperation contracts are suspended or cancelled.

3. The permits are suspended or cancelled.

4. The permits expire.

5. The fishing vessels are destroyed, sunken or missing.

Article 10.- Cases where permits are withdrawn

1. The permits are erased or modified.

2. The fishing vessels have committed administrative violations for the third time during the term of their permits.

3. The permits are used not for the fishing vessels for which they are granted.

Chapter III

RIGHTS AND RESPONSIBILITIES OF OWNERS OF FOREIGN FISHING VESSELS

Article 11.- Rights of owners of foreign fishing vessels engaged in fishery activities in Vietnam's seas

1. To carry out fishery activities in Vietnam's seas according to the contents of their permits.

2. To be notified in time by the professional agencies of the Vietnamese State of the weather conditions; to be supplied with information relating to their fishery activities and guidance on Vietnamese law provisions upon request.

3. To have their legitimate rights and interests protected by the Vietnamese State in the course of carrying out fishery activities.

4. To have other rights prescribed by Vietnamese laws.

Article 12.- Responsibilities of owners of foreign fishing vessels in the course of their vessels' activities

Owners of foreign fishing vessels must strictly observe the following provisions when their vessels are engaged in fishery activities in Vietnam's seas:

1. Seven (07) days before operating their fishing vessels into Vietnam's seas, to notify such to the Aquatic Resource Exploitation and Protection Department under the Vietnamese Ministry of Fisheries. When entering Vietnam, to complete entry procedures according to law provisions.

2. To always carry along on board their fishing vessels the following papers (original copies):

a/ The fishery activity permit;

b/ The fishing vessel registration certificate;

c/ The fisher vessel technical safety certificate;

d/ The radio frequency and radio trans-reception equipment use permit.

e/ The register of crewmen and passports of all people working on board the fishing vessels.

3. To operate strictly according to the contents stated in their granted permits; to make entries in logbooks and make activity reports according to the regulations of the Vietnamese Ministry of Fisheries.

4. To observe all relevant Vietnamese law provisions and the international agreements which Vietnam has signed or acceded to.

5. To admit, and ensure working and living conditions for, Vietnamese supervisors like officers on board fishing vessels.

6. To submit to the examination and control by the control forces in Vietnam's seas, as stated in Clause 1, Article 17 of this Decree.

7. When meeting incidents, accidents or dangers in need of help, the fishing vessel owners must release SOS signals according to regulations and, when conditions permits, immediately notify the concerned Vietnamese agencies in the nearest places thereof, clearly stating the specific requirements for help.

Article 13.- Responsibilities of owners of foreign fishing vessels which terminate activities

1. When foreign fishing vessels terminate their activities and leave Vietnam's seas, their owners must fulfill all obligations stated in their granted permits, the approved projects and the signed contracts (except for contracts containing specific agreements) and prescribed by other relevant Vietnamese law provisions.

2. Where a foreign fishing vessel terminates its activity though its permit remains valid, its owner must report in writing such to the permit-granting agency at least seven (07) days before the expected date of activity termination.

Chapter IV

RESPONSIBILITIES OF STATE MANAGEMENT BODIES FOR FISHERY ACTIVITIES OF FOREIGN FISHING VESSELS IN VIETNAM'S SEAS

Article 14.- Responsibilities of the Ministry of Fisheries

The Ministry of Fisheries shall assist the Government in uniformly managing fishery activities of foreign fishing vessels in Vietnam's seas and have the responsibilities:

1. To manage fishery activities of foreign fishing vessels in Vietnam's seas according to the provisions of this Decree and relevant Vietnamese laws.

2. To provide for the grant and extension of permits, appointment of Vietnamese supervisors to conduct supervision on board foreign fishing vessels (cases subject to supervision, supervising duration and contents).

3. To notify and send the copies of the permits granted or extended for foreign fishing vessels to the Ministry of Defense, the Ministry of Public Security, the Ministry of Communications and Transport, the General Department of Customs and the concerned provincial/municipal People's Committees for coordinated management of activities of foreign fishing vessels.

4. To inspect, examine and settle complaints, denunciations and handle law violations according to its competence and law provisions.

Article 15.- Responsibilities of ministries and branches

1. The Ministry of Planning and Investment shall coordinate with the Ministry of Fisheries and the provincial-level People's Committees in evaluating investment projects involving the engagement of foreign fishing vessels in fishery activities in Vietnam's seas for the grant of investment licenses thereto.

2. The Ministry of Defense, the Ministry of Public Security, the Ministry of Communications and Transport, the General Department of Customs and other ministries and functions shall, according to their respective functions, tasks and powers, have the responsibilities:

a/ To coordinate with the Ministry of Fisheries in performing the State management over fishery activities of foreign fishing vessels in Vietnam's seas;

b/ To inspect, examine and settle complaints, denunciations and handle law violations according to its competence and law provisions.

Article 16.- Responsibilities of provincial-level People's Committees

The provincial-level People's Committees shall, according to their functions, tasks and powers, have the responsibilities:

1. To coordinate with the Ministry of Planning and Investment and the Ministry of Fisheries in evaluating to investment projects involving engagement of foreign fishing vessels in fishery activities in Vietnam's seas for the grant of investment licenses thereto.

2. To approve in principle the projects on aquatic resource trading and purchase or carriage cooperation in compliance with the development plannings and plans of the fishery sector and the localities.

3. To inspect, examine and settle complaints, denunciations and handle law violations according to its competence and law provisions.

Chapter V

EXAMINATION, CONTROL, HANDLING OF ADMINISTRATIVE VIOLATIONS; COMPLAINTS, DENUNCIATIONS

Article 17.- Examination, control of fishing activities of foreign fishing vessels in Vietnam's seas

1. The forces examining and controlling fishing activities of foreign fishing vessels in Vietnam's seas include: The fishery inspectorate, the Coast Guard, the Border Guard, the Inland Waterway Traffic Police, the Customs and other specialized inspectorates.

The examination and control forces shall examine and control fishing activities of foreign fishing vessels in Vietnam's seas, which are related to the domains or branches under their respective management according to Vietnamese law provisions; handle administrative violations according to their respective competence defined in the Ordinance on Handling of Administrative Violations; and concurrently be responsible for coordinating with the concerned forces in performing their respective tasks.

2. When being on duty, the forces defined in Clause 1 of this Article must wear uniforms, badges, insignias and specialized inspector's cards according to law provisions.

Ships and boats, when engaged in marine examination and control duties, must fly the Vietnamese national flag, signal flags and signs of their specialized forces according to law provisions.

Article 18.- Handling of administrative violations committed by foreign fishing vessels already granted the permits

If owners of foreign fishing vessels possessing the permits, when carrying out fishery activities in Vietnam's seas, commit acts of violating the Vietnamese law provisions in the fishery domain, they shall be sanctioned under the Government's decree prescribing sanctions against administrative violations in the fishery domain and other relevant Vietnamese law provisions.

Upon detecting one of the cases subject to permit withdrawal defined in Article 10 of this Decree, the persons with administrative violation-handling competence shall immediately seize the permits and promptly notify the Aquatic Resource Exploitation and Protection Department under the Ministry of Fisheries thereof for withdrawal.

Article 19.- Procedures for handling administrative violations and executing sanctioning decisions; applying measures to stop administrative violations

1. The procedures for handling administrative violations shall comply with the provisions of the Ordinance on Handling of Administrative Violations and Decree No. 134/2003/ND-CP of November 14, 2003 detailing the implementation of a number of articles of the 2002 Ordinance on Handling of Administrative Violations.

2. The application of measures to stop administrative violations and secure the handling thereof shall comply with the provisions from Article 43 thru Article 49 of the 2002 Ordinance on Handling of Administrative Violations.

3. The management of foreigners violating the provisions of this Decree, pending their deportation, shall comply with the provisions of Article 51 of the 2002 Ordinance on Handling of Administrative Violations.

4. In cases where foreign fishing ships are arrested:

a/ The forces which have made the arrests or received the cases for investigation must immediately report to the Ministry of Foreign Affairs and the Ministry of Fisheries for coordinated handling; put forward proposals when they deem it necessary to deport the foreigners who have committed administrative violations;

b/ Fishing vessel owners must bear all expenses for the preservation of their fishing vessels, lodging, repatriation and other expenses for violators during the time they are kept in custody or managed in Vietnam.

Article 20.- Handling of violations committed by persons with administrative violation-handling competence

The handling of violations committed by persons with administrative violation-handling competence of the provisions of this Decree shall comply with the provisions of Article 121 of the 2002 Ordinance on Handling of Administrative Violations.

Article 21.- Complaints, denunciations

1. Organizations and individuals may complain about and denounce acts of violating the provisions of this Decree according to law provisions on complaints and denunciations.

2. The competence, procedures and time limits for settling complaints and denunciations shall comply with law provisions on complaints and denunciations.

Chapter VI

IMPLEMENTATION PROVISIONS

Article 22.- Effect of the Decree

This Decree takes effect 15 days after its publication in the Official Gazette and replaces the Government's Decree No. 49/1998/ND-CP of July 13, 1998 on management of fishery activities conducted by foreign persons and means in Vietnam's seas.

Article 23.- Guidance and implementation responsibility

1. The Minister of Fisheries shall have to guide the implementation of this Decree.

2. The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies and the provincial-level People's Committee presidents shall have to implement this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI