

Government

Decree No 27/2005/ND-CP

SOCIALIST REPUBLIC OF VIETNAM

Independence-Freedom-Happiness

Hanoi, March 8th, 2005

Decree of the Government regulating and guiding the implementation of certain articles in the Fisheries Law

The Government

Pursuant to Law on organization of the Government dated 25 December 2001;

Pursuant to Fisheries Law dated 26 November 2003

Upon the request of the Minister of Fisheries;

Has decreed:

Article 1. Scope of application

This Decree shall regulate and provide guidelines for implementation of certain articles of the Fisheries Law regarding marine protected areas and inland protected areas; financial sources for rehabilitation of fisheries resources; responsibilities of the specialized agencies to ensure the rights of organizations and individuals engaged in fishing operations; allocation and lease of marine areas for aquaculture purposes and fish wholesale market.

Article 2. Marine protected areas

1. Marine protected area is an identified sea areas (including any islands inside) which possess the fauna and flora system of national and international significant importance regarding the science, education, tourism, recreation, and that is protected and managed pursuant to the regulations of the protected areas.
2. The marine protected areas shall be classified into categories namely national park, habitat/species sanctuary and aquatic natural resource reserves.

Article 3. Criteria for classification of marine protected areas

1. The national park:

- a. The area should contain a representative sample of ecosystem, which is a habitat and growth residence of the marine rare and precious plant and animal species with genetic variety that have significant scientific, educational, tourist and recreational importance.
- b. The area should be large enough to maintain and develop one or more ecosystems.
- c. The area should be strictly protected.

2. Habitat/species sanctuary:

- a. The area should be a natural areas for the habitat, growth and development of marine rare and precious plant and animal species with local or national significant importance on the science, education, tourism and recreation.
- b. The area should be large enough to meet the habitat requirements of species to be protected.
- c. The area should be closely protected.

3. Aquatic natural resource reserves.

- a. The area should be at least two-thirds in a natural conditions with the growth and development habitat for marine plant and animal species and planned for maintaining the available natural state of the region.
- b. The area should be large enough to absorb sustainable resource uses without detriment to its overall long term natural values.

Article 4. Decentralization of organization and management of marine protected areas

1. The Prime Minister shall approve the master plan of marine protected areas; the establishment of national parks and protected areas which are related to many sectors or of national or international significance.
2. The Ministry of Fisheries shall formulate master plan on marine protected areas to present to the Prime Minister for approval; shall manage the marine protected areas established by the Prime Minister.
3. The People's Committee at provincial level shall, based on the appraisal opinions of the Ministry of Fisheries, establish and manage the marine protected areas, except for cases stated in paragraph 1 of this Article.

Article 5. Inland protected areas

1. The inland protected area shall be area to be zoned in the wetlands for strict protection of typical ecosystems which are of national or international significance with high biodiversity values in order to balance the ecology and to protect the species that are living in this area.
2. The inland protected area shall be managed in compliance with Decree 109/2003/ND-CP dated 23 September 2003 of the Government regarding the sustainable conservation and exploitation of the wetlands.

Article 6. Financial sources from State's budget for rehabilitation of fisheries resources

1. The fund within the central and local budget estimation shall be allocated in accordance with decentralization of State budget management. The management and use of the fund shall be implemented in accordance with law on State budget.
2. Financial sources from State's budget for rehabilitation of fisheries resources shall be used for the following purposes:
 - a. The implementation of projects on rehabilitation, protection and development of fisheries resources.
 - b. Research and assessment of the effectiveness of the rehabilitation work.
 - c. Dissemination, provision of technical training served the rehabilitation work.

Article 7. Fund for rehabilitation of fisheries resources

1. The Fund for rehabilitation of fisheries resources (hereinafter referred to as the "Fund") shall be established from the contributions of the organizations and individuals for actively enhancement and prevention against the depletion of fisheries resources.
2. The financial sources of the Fund shall include:
 - a. Contributions of organizations and individuals who directly engaged in fishing operations, aquaculture, processing, sales, import and export of fish and fishery products.
 - b. Contributions of the organizations and individuals engaged in occupations which directly affect the fisheries resources.
 - c. Donations given by local and foreign organizations and individuals.
 - d. Other sources as provided for by legislation.
3. The fund shall be annually used for the following purposes:
 - a. Production and procurement of fish fry, artificial barriers and other materials to be released into the natural waters for fisheries resources rehabilitation purposes.
 - b. Management and operation of the Fund.
4. The Prime Minister shall decide the establishment, organization and operation of the Fund.

Article 8. Circumstances for reduction and exemption to contribution to the Fund

1. Subjects to be exempted from contribution to the Fund shall include the followings:
 - a. Individuals engaged in fishing operations, aquaculture and fish processing for non-commercial purposes.

b. Vessels operated for scientific purposes; on official duty; search and rescue work and those served the national defense and security purposes.

c. Vessels operated in the period of less than 50 days per year or vessels coping with accidents or risk.

2. The vessels which operated in the period of less than 100 days per year shall have 50% reduction in the contribution to the Fund.

3. Ministry of Finance shall chair and coordinate with Ministry of Fisheries to make specific regulations relating to exemption and reduction procedures.

Article 9. Duties of specialized agencies in the assurance of the rights of the organizations and individuals engaged in fishing operations

1. Ministry of Natural Resources and Environment shall have the duties to timely provide the reports on weather developments for the Radio the Voice of Vietnam and Vietnam Television Station for daily broadcasting as well as Ministry of Fisheries for its sector' direction.

2. The Ministry of Fisheries shall have the duties as follows:

a. Establish the forecast on the fisheries resources in the fishing grounds on seasonal basis, on monthly and half month basis for timely provision for the Radio the Voice of Vietnam and Vietnam Television Station to periodically broadcast twice a week.

b. Provide guidance on fishing techniques for the fishers.

c. To inform the internal and external fisheries activities through the mass organizations of the fisheries sector and other related mass media.

d. Coordinate with the Ministry of Trade in issuing weekly bulletins on fisheries markets.

Article 10. Allocation and lease of marine areas for aquaculture

1. Marine areas for aquaculture shall be areas planned for the aquaculture purposes, counting from the edge of marine waters at the lowest tidal on average over years.

2. Marine areas shall be allocated to the following objects free of charge for aquaculture purposes:

a. Local residents who directly conduct aquaculture activities and their livelihoods mainly depend on the income derived from aquaculture.

b. Local residents who engage in coastal fishing operations then convert to aquaculture activities.

3. The application file for allocation of marine areas for aquaculture shall be as follows:

Objects stated in paragraph 1 of this Article shall have application letter for allocation of marine areas for aquaculture which is certified by the People's Committee at their local district, commune, ward or downtown. The aquaculture skills and commitments on environmental protection in aquaculture shall be stated in the application letter.

4. The application file for the lease of marine areas for aquaculture shall be as follows:

a. In the cases of local organizations and individuals:

- Application letter for lease of marine areas for aquaculture

- Feasibility study on aquaculture appraised by the fisheries agency at provincial level.

- The justification of technical capacity on aquaculture.

- Environmental impact assessment on aquaculture and environmental protection plan appraised by management agency dealing with environment.

- Certificate of trading registration (legitimate copies).

b. In case of foreign organizations and individuals:

- Application letter for lease of marine areas for aquaculture

- Environmental impact assessment on aquaculture and environmental protection plan appraised by management agency dealing with environment.

- License on foreign investment (legitimate copies).

5. During 30 working days, upon the receipt of sufficient and legitimate files, the competent agencies shall consider and decide the allocation, lease of marine areas and grant certificate of marine areas use right for aquaculture purposes. In case of refusal, the written reply shall be prepared with clear reasons.

6. The competent agency in charge of decision on the allocation and lease of marine areas for aquaculture shall also be an agency to grant and revoke the certificate of marine areas use right.

Article 11. Allocation and lease of land for aquaculture

The allocation and lease of land, the procedures for allocation and lease of land as well as the granting of certificate of the land use right for aquaculture shall be done in accordance with land law. The application file for allocation and lease of land for aquaculture shall be complied with the regulations laid down in Article 10 of this Decree.

Article 12. Areas quota, duration of allocation and lease of marine areas for aquaculture

The quota of areas and duration for allocation and lease of marine areas for aquaculture purposes shall be set out as follows:

1. The area of marine waters allocated for aquaculture shall not be more than one (1) hectare.
2. The area of marine waters leased for aquaculture shall not be more than thirty (30) hectares for the areas from 3 nautical miles landward or not more than one hundred (100) hectares for the areas from 3 nautical miles seaward.
3. The duration for allocation and lease of marine areas for aquaculture shall not be more than twenty (20) years long, from the date stated in the decision regarding the allocation and lease of marine areas.
4. In cases where the allocated and leased marine areas for aquaculture purposes have not fully used as regulated by the Ministry of Fisheries, the unused areas shall be revoked.

Article 13. Extension of duration for allocation and lease of marine areas for aquaculture upon the termination of use right

1. The organizations and individuals who desire to continuously use the marine areas for aquaculture shall prepare the files as stated in paragraphs 3 and 4 of Article 10 of this Decree in 6 months in advance prior to the termination of the marine use right and send to the competent State agencies for extension of allocation and lease duration.
2. Foreign organizations and individuals shall include the legitimate copies of investment license extended (if any).
3. The duration of allocation and lease of marine areas for aquaculture purposes shall not exceed the previous duration granted.
4. During 30 working days upon the receipt of sufficient files, the competent agency shall consider and decide the extension of allocation or lease duration and renew the certificate of marine areas use right for aquaculture purposes. In case of refusal, the written reply shall be prepared with clear reasons.

Article 14. Handling of assets invested in the marine areas and leasing fees for marine areas for aquaculture purposes where the allocated and leased marine areas are revoked or voluntarily returned

1. Organizations and individuals whose marine areas are revoked or who voluntarily return the marine areas stated in points a, b, c and d of paragraph 1 of Article 29 of Fisheries Law shall be responsible for removal of assets invested in marine areas. The State shall refund the remaining leasing fees if the leasing duration is not expired (in case of full payment in advance).
2. The revocation of marine areas stated in point e paragraph 1 of Article 29 of Fisheries Law shall be set out as follows:
 - a. The State shall refund the remaining leasing fees if the leasing duration is not expired (in case of full payment in advance).
 - b. The State shall support the cost for removal of assets invested in the marine areas and aquaculture species (if any).
 - c. The compensation relating to fisheries shall be made (if any)

d. They shall be prioritized to have other marine areas allocated and leased for aquaculture upon their needs and the marine areas for aquaculture in the locality is still available.

Article 15. Wholesale fish market

1. The State shall support in the construction of infrastructure including: transaction place, roads, electrics, water supply and drainage system within the wholesale fish market.

2. The State shall encourage and facilitate every economic sectors, organizations, individuals to take part in construction, exploitation and management of wholesale fish market.

Article 16. Entry into force

This Decree shall come into force 15 days after being posted on official Gazette.

Article 17. Implementation duties

The Minister of Fisheries, Ministers and heads of ministerial –level agencies, heads of agency under the government and chairman of People’s Committee shall be responsible for implementation of this Decree.

For and on behalf of the Government

Prime Minister

Phan Van Khai (signed)