



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

EXEMPTION GRANTED FROM THE PROVISIONS OF SECTION 18 OF THE MARINE LIVING RESOURCES ACT, 1998 (ACT NO.18 OF 1998) TO ALL HOLDERS OF COMMERCIAL FISHING RIGHTS WHOSE RIGHTS EXPIRED ON 30 SEPTEMBER 2020 AND/OR ON 31 DECEMBER 2020

Introduction

In terms of section 81(1) of the MLRA, *"If in the opinion of the Minister there are sound reasons for doing so, he or she may, subject to the conditions that he or she may determine, in writing exempt any person or group of persons or organ of state from a provision of this Act."*

On Tuesday, 24 November 2020, the Deputy Director-General: Fisheries Management (Acting) duly delegated in terms of section 79 of the MLRA issued an exemption in terms of section 81(1) to all Holders of Commercial Fishing Rights in the twelve fishing sectors due for reallocation. This exemption was to allow Holders of Commercial Fishing Rights in the twelve fishing sectors to continue fishing without a right in terms of section 18 of the MLRA, until 31 December 2021.

Despite the above Exemption, there have been some enquiries from Commercial Exemption Holders intending to change their shareholding and/or members' interests as well as straight conversions or name changes. As such, this Exemption supplements the Exemption of 24 November 2020, with additional conditions to provide clarity on these matters.

I hereby amend the Exemption granted on 24 November 2020 to Holders of Commercial Fishing Rights whose rights expired on 30 September 2020 and/or 31 December 2020, and add the following exemption conditions:

TRANSFER OF FISHING EXEMPTIONS

1. This exemption shall not be transferred to any other person and where the Exemption Holder is a company or close corporation, no share/members interest may be transferred/sold at any time during the validity period of this exemption.

EXEMPTION CONDITIONS FOR EXPIRED RIGHTS

2. Companies/close corporations may register a straight conversion from a close corporation to a company or name change (no change in shareholding/members' interest), provided that such change does not involve the transfer or sale of any shares/members interest of the Exemption Holder.
3. The Exemption Holder implementing a straight conversion from a close corporation to a company or name change (no change in shareholding/members' interest), must inform the Department in writing of such change and supply all relevant documentation in compliance with paragraph 7.1 of the Policy for the Transfer of Commercial Fishing Rights: 2009 (Gazette No 32449) ("the Transfer Policy").
4. The Department must be notified within 30 days of any straight conversion or name change, which must be acknowledged in writing by the Department.
5. Transfer of shares and/or notifications of change in shareholding and/or members' interests from companies and/or close corporations operating under the exemption granted in terms of section 81 of the MLRA on 24 November 2020, will not be considered during the validity period of the exemption.
6. Notwithstanding conditions 1, 2 and 5, entities that are operating under exemptions and that are also the holders of valid commercial fishing rights in other sectors, that have not yet expired, will be allowed to transfer shares/members interest, in terms of section 21 of the MLRA, the Transfer Policy, the sector-specific policies and the relevant permit conditions.
7. Applications by private companies and close corporations for the transfer of shares/member's interest in the circumstances detailed in condition 6, will only be accepted up until 90 days prior to the date for submission of applications for the 2021 Fishing Rights Allocation Process.
8. Notwithstanding any other condition in this exemption, exemption holders, trading as public companies, including companies listed on the Johannesburg Stock Exchange, will be allowed to trade their shares. If the sale or transfer of shares by such public company results in a change in the controlling/ownership shareholding or a decrease in transformation as at the date of the allocation of the right, (which has subsequently expired), or since the last section 21 transfer was approved by the Department, the exemption holder must make application in terms of section 21 of the MLRA, the Transfer Policy and, the sector-specific policies.

9. Failure to comply with any of these exemption conditions, may result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of subsection 81(2) of the MLRA.
10. In the event of the death of a shareholder or a member during the validity period of this exemption, the Exemption Holder must inform the Department in writing within 30 days of the death of a shareholder/member. If the Exemption Holder intends to transfer the shares/members interest, the Exemption Holder must comply with the provisions of the Transfer Policy. All relevant documentation must be supplied, including death certificate, marriage certificate, where applicable, Identity Document(s) of the beneficiary(ies), letter of authority, copy of the Will accepted by the Master of the High Court, where applicable, certificate issued by the Master of High Court confirming finalisation of the estate, liquidation and distribution statement, where applicable.
11. Transfer of shares/member's interest in the circumstances detailed in condition 10 above will only be accepted up until 90 days prior to the date for submission of applications for rights in the upcoming 2021 Fishing Rights Allocation Process.
12. These additional exemption conditions must be read together with the exemption of 24 November 2020, and the Exemption Holder must, when fishing, keep a certified copy of this amended exemption and the exemption of 24 November 2020 available for inspection at any time.

VALIDITY PERIOD

The exemption issued on 19 April 2021 is hereby withdrawn and replaced with this exemption. This exemption is valid until 31 December 2021.



Ms Sue Middleton

DEPUTY DIRECTOR-GENERAL: FISHERIES MANAGEMENT Duly delegated with the authority in terms of section 79 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998)

DATE: 10/06/2021

Issued by the Department of Forestry, Fisheries and the Environment
Branch: Fisheries Management
Private Bag X2, Vlaeberg, 8018. Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town, 8001

