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Professional hunting courses may continue but charter fishing is prohibited – finding a rational balance

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Updates on The Department of Environment, Forestry and Fisheries COVID-19 Directions for Fisheries, Forestry and Biodiversity Sector

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On 5 June 2020 the Department of Environment, Forestry and Fisheries published various directions to address, combat and prevent the spread of COVID-19 relating to the freshwater and marine fishing sectors, forestry sector and biodiversity sector in terms of regulation 4(10) of the regulations to the Disaster Management Act No. 57 of 2002.

These directions come into effect on 5 June 2020 and were necessitated by the country entering into alert Level 3 of the national lockdown with effect from 1 June 2020.

There are some important provisions in these directions for persons operating within these sectors to take note of.

Fishing sector

These directions were published in Government Gazette 43410. The purpose of these directions is to reduce the threat to the fishing sector which has been caused by Covid-19 and to alleviate, contain and minimise the effects of the national state of disaster on the freshwater and marine fishing industry sectors in particular.

Under these directions all fishing, including recreational fishing is allowed. However, charter fishing, which is also a form of recreational fishing, is prohibited under alert Level 3. Charter fishing is defined in the directions as "*fishing from a vessel carrying more than one person for hire that intend to undertake or are engaged in recreational fishing*" and recreational fishing is defined as "*any fishing done in the sea, an estuary or a freshwater system for leisure or sport and not for sale, barter, earnings or gain*". An estuary is as defined in section 1 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008.

Although recreational fishing is allowed, all rules relating to social distancing, health protocols, movement and the prohibition of gatherings must be observed.

The publication of these directions has raised eyebrows. Whilst some have welcomed the directions on the one hand, the directions have also been labelled as "nonsensical and irrational" on the other hand. In a Legalbrief Environment article dated 9 June 2020, the director of a fishing advisory company called Feike described the directions as "arbitrary control of people" and "open to legal challenge", especially by the Deep Sea Angling Association and the Charter Boat Operators. The argument put forward to support this view is that "there is very little difference between recreational fishing and any other form of fishing". The article goes on further to argue that "the majority of recreational fishers operate from the shore and the coastline and fish in solitude, whereas commercial fishers on the other hand are 10 or 12 on a little boat, particularly with small-scale fishing" and accordingly the risks of spreading the Covid-19 virus is "higher on a commercial fishing boat than with recreational fishermen". The rationality of the distinction between charter fishing, which is prohibited under alert Level 3 and commercial fishing, which is permitted under alert Level 3 is therefore questionable. It remains to be seen whether affected stakeholders will challenge these directions by way of judicial review.

Recreational fishers are required to be in possession of a valid recreational fishing permit which can be obtained at the respective post offices in terms of the Marine Living Resources Act 18 of 1998 and applicable freshwater fishing legislation.

The validity period of any right, permit, exemption or licence or any timeframes attached to any condition in such right, permit, exemption or licence, which have lapsed during the lockdown period of the national state of disaster or during alert Level 4 or which will lapse during alert Level

3 have been extended or are deemed to be extended until the end of alert Level 3, including:

- timeframes with regards to validity periods as outlined in the Fisheries Covid-19 public notice titled 'Exemption in terms of section 81 of the Marine Living Resources Act 18 of 1998 to all holders of licences, permits and authorisations issued in terms of the Marine Living Resources Act 18 of 1998 to operate without permits for the next 90 days'; and
- the second Fisheries Covid-19 public notice titled 'Exemptions issued to all fishing sectors in terms of section 81 of the Marine Living Resources Act 18 of 1998' issued by the Department of Fisheries on 24 and 26 March 2020 respectively.

Forestry sector

These directions were published in Government Gazette 43411. The purpose of these directions is to reduce the threat to the forestry sector which has been caused by Covid-19 and to alleviate, contain and minimise the effects of the national state of disaster and to ensure fair processes, especially with regard to specified licensing, evaluation of licence applications, inspections and issuing of licenses in terms of the National Forests Act No. 84 of 1998 ("National Forests Act").

The Department of Environment, Forestry and Fisheries in all the nine provinces (as issuing authority) will receive and process applications in the manner indicated in annexure 1 to these directions. Email addresses for the submission of online applications have been provided in the directions in respect of all nine provinces.

Annexure 1 describes the services to be provided under alert Level 3 and the manner in which such services are to be provided in the following main categories:

- receipt of applications for licences in terms of sections 7, 15 and 23 of the National Forests Act may be submitted physically or electronically;
- the evaluation of licence applications may be conducted through site visits by dedicated officials;
- site inspections will be conducted as far as is practically possible and where there are protected trees posing a threat to life and property, an application in that regard must be accompanied by a digital picture of the tree;
- where site inspections are required but cannot be conducted, licences may be issued provisionally, subject to a condition that an inspection will be conducted at a later date to be determined by the issuing authority; and
- licences will be issued manually.

If there is any uncertainty about whether a service is restricted or not, the relevant official of the particular issuing authority should be approached for guidance and/or confirmation.

Biodiversity sector

These directions were published in Government Gazette 43409. The purpose of these directions is to ensure fair processes in relation to permits, registrations and certificates during alert Level 3 and to provide direction to the biodiversity sector in respect of activities carried out in terms of the National Environment Management: Biodiversity Act 10 of 2004 ("Biodiversity Act"), the National Environment Management: Protected Areas Act 57 of 2003 and any applicable provincial conservation legislation during alert Level 3.

The validity period of permits, registrations and certificates that have expired during the period of lockdown and alert Level 4 have been extended or are deemed to be extended for a period of 30 working days from the publication of these directions. Holders of these permits, registrations and certificates must apply to the relevant issuing authority for the renewal of such permits, registrations and certificates within a period of 10 working days of the publication of these directions.

The validity period of permits, registrations and certificates that have expired during alert Level 3, or which will expire during alert Level 3, have been extended or are deemed to be extended for a period of 30 working days after the end of alert Level 3. Holders of these permits, registrations and certificates must apply to the relevant issuing authority for the renewal of such permits, registrations and certificates within a period of 10 working days after the end of alert Level 3.

Any activity carried out during alert Level 3 which involve biodiversity resources and which requires a permit, registration or certificate in terms of the Biodiversity Act or any applicable provincial legislation may only be carried out in terms of such a permit, registration or certificate. Applicants for these permits, registrations or certificates must submit their applications in accordance with annexure 1 to these directions. Issuing authorities will receive, process and issue permits, registrations and certificates during alert Level 3 in accordance with annexure 1 to these directions.

In terms of these directions:

- all services that were permitted with restrictions during alert Level 4 in the directions published in Government Gazette 43323 and Government Gazette 43355 of 14 May 2020 and 26 May 2020 respectively are now permitted with no restrictions under these directions, unless indicated otherwise in these directions;
- culling and subsistence hunting are permitted. Subsistence hunting has been defined in these directions as hunting for the primary purpose of the hunter acquiring game meat for food security;
- the moving, conveying or translocating of live or dead specimens or products is permissible, even across district, metro or provincial borders, subject to obtaining the required permit;
- wildlife auctions are permissible subject to the directions published in Government Gazette 43323 and Government Gazette 43355 on 14 May 2020 and 26 May 2020;
- live or dead specimens or products may be imported into or exported from South Africa, subject to phytosanitary or animal health requirements and any directions published in respect of Trade, Industry and Competition;
- persons may apply for new registrations or for the inclusion of new species to existing permits and registrations;
- all bioprospecting and biotrade activities may continue; and
- professional hunting courses may continue and any person who will not be able to meet the requirements for the renewal of permits to operate as professional hunters and hunting outfitters, will nevertheless be able to renew such permits during or immediately after the national state of disaster, as a once-off waiver of such requirements.

The annexure to these directions provides for the various authorising departments or issuing authorities in all nine provinces which shall provide the services described in the annexures to these directions and sets out the manner in which such services shall be provided.

The annexure contains the list of services to be provided, including, amongst other things, the receipt and evaluation of permit applications, site inspections, issuing and dispatch of permits. The manner in which such services shall be provided makes provision for the submission of applications by email, dispatching of permits by courier or email, conducting a site inspection where possible or issuing provisional permits where a site inspection cannot be conducted. The annexure must be referred to for the full list of permitted services under alert Level 3.

It is important to note that these directions provide that in the event that any authorised issuing authority affected by these directions has arrangements which are different from the arrangements provided in these directions and has publicly indicated the different arrangements, in respect of the extension of timeframes, applications for and issuing of permits, registrations and certificates or activities permitted under alert Level 3, such different arrangements shall prevail over these directions. Therefore it is critical that any person requiring the services permitted under these directions enquires from the relevant issuing authority whether their arrangements are different from the arrangements provided in these directions and whether those different arrangements have been publicly declared and, if so, to follow those arrangements.



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