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Decree-Law No. 21/2008,
of the 25 June 2008

Implementation of Satellite System for Monitoring Fishing Vessels

The fishing sector is one of the key areas of the IV Government's effort to reduce poverty by leveraging on economic growth generated by public investment, increased private-sector investment and maximization of economic and social benefits managed in a sustainable fashion.

Government has anticipated investment in appropriate equipment for promoting the infrastructure, technology and manpower required to exploit and control the resources that may potentially exist in national territorial waters. In this context plans have been made to implement a Vessel Monitoring System (internationally known as VMS) with a view to monitoring all vessels legally or illegally operating in the maritime space of Timor-Leste.

Overexploitation of fishery resources in recent years, mainly caused by excess fishing capacity and heavy illegal fishing in national waters, has generated serious imbalances that put at jeopardy the renewal and maintenance of the stocks of several fish species and, consequently, the future of fisheries.

Action has been taken, on the one hand, by improving the legislation in force, imposing quotas and establishing closed areas and closed seasons, and, on the other hand, by awarding fishing licenses and adopting technical measures of resource conservation. So far, however, such action has been clearly insufficient.

It is therefore necessary to take more appropriate and more effective action for both monitoring and controlling fishing activities and defending and preserving fish resources, as defined in the Government's programme.

Continuous monitoring via satellite of certain types of fishing vessels is considered a key instrument to secure a better monitoring and control of fishing activities, as it allows for substantially improved fishing ground surveillance and illegal landing control.

This system has other positive attributes, i.e. strengthening security conditions at sea and providing a tool for assessing the fishing activity developed by each vessel.

The State of Timor-Leste, by way of Decree-Law no. 6/2004, of the 21 April 2004, took a pioneering step in this field by establishing the mandatory installation on board of equipment for continuously monitoring certain types of fishing vessels.

The above mentioned need for strengthening the monitoring and control of fishing activities with a view to ensuring the conservation and renewal of fishery resources in waters under the sovereignty and jurisdiction of Timor-Leste, combined with the country's regional commitments, requires the creation of a system for monitoring fishing vessels via satellite, thus broadening and deepening the scope of the aforesaid Decree-Law. This should be considered in the light of fishing activities that are increasingly limited and conditioned by scarce resources. Also the right to fish implies the correlated duty to rationally preserve and manage resources.

Pursuant to the provisions of Article 150 and Article 151 of Decree-Law no. 6/2004, of the 21 April 2004, the Government establishes the following to be enforced as law.

CHAPTER ONE OBJECT AND SCOPE OF APPLICATION

Article 1

Object

1. This decree-law sets up and regulates the Fishing-Vessel Continuous Monitoring System via satellite, hereafter referred to as SIMOCEP, with a view to monitoring national and foreign fishing vessels licensed to operate in Timor-Leste for the purpose of surveillance and control of fishing activities.
2. SIMOCEP is the world-wide known VMS (Vessel Monitoring System), as referred to in Article 151 of Decree-Law no. 6/2004, of the 21 April 2004.
3. This decree-law aims to
 - a) improve the management of fish stocks in Timor-Leste, by means of effective monitoring, control and surveillance of fishing vessels;
 - b) improve law enforcement, in particular as regards the fight against illegal, non-declared and non-regulated fishing;
 - c) collect data and information on activities developed by fishing vessels, with a view to improving the sustainable management of national maritime resources;
 - d) fulfil the country's national and international commitments regarding the practice of responsible fishing.

Article 2

Definitions

The following definitions govern the application of this decree-law:

- a) **SIMOCEP** – A Fishing-Vessel Continuous Monitoring System via satellite based on telecommunications technologies and geographic information, which enables the monitoring of fishing vessels by graphically representing them on a digital chart;

- b) **Automatic Location Communicator (ALC)** – A continuous monitoring device approved by the Minister which is installed on board of fishing vessels with a view to transmitting information on the speed, route and position of the said vessel, or any other data that may be required concerning its activities;
- c) **Centre for Fisheries Control and Surveillance** – Head office of SIMOCEP (VMS), within the National Directorate for Fisheries and Fish-Farming (DNPA). Its mission is to ensure the control of the fishing vessels covered by this decree-law and of fishing vessels from third countries equipped with a VMS that operate in waters under national sovereignty or jurisdiction, by receiving and processing data transmitted by the ALC;
- d) **Information from the Fishing-Vessel Continuous Monitoring System (or SIMOCEP – VMS Information)** – All data and information generated, obtained or received in connection with the operation of the vessel monitoring system, as laid down in this Decree-Law.

Article 3

Scope

1. The fishing-vessel continuous monitoring system (SIMOCEP) applies to all semi-industrial and industrial fishing vessels duly licensed and registered in harbours of Timor-Leste, as well as to vessels developing fishery-related activities.
2. Notwithstanding the provisions of the previous number, SIMOCEP also applies to all national vessels licensed to operate in international waters and/or in third countries.
3. The Minister in charge of the fisheries sector shall determine, by ministerial order, other vessel categories that must install the automatic location communicator and keep it on board.

CHAPTER TWO COMPETENCE AND DUTIES

Article 4

Competent Authority

1. The National Directorate for Fisheries and Fish-Farming, hereafter referred to as DNPA, shall be the authority competent for monitoring, in the framework of the SIMOCEP, the national and foreign fishing vessels licensed in Timor-Leste, for the surveillance and control of their activities.
2. While performing its functions, DNPA shall be responsible for carrying out the following tasks:
 - a) Defining the technical modality for rendering the SIMOCEP operational;
 - b) Allocating the resources and infra-structure required for implementing the system;
 - c) Managing the system;
 - d) Defining the format of the fishing-vessel activity report
 - e) Supervising and assessing the SIMOCEP implementation;

- f) Establishing Operating Procedure Standards for the Automatic Location Communicator (ALC);
- g) Registering the transmitters currently used;
- h) Monitoring and supervising the creation of the system, including the approval of the final result of the SIMOCEP network test;
- i) Receiving, processing and distributing the system's data;
- j) Managing the system's website;
- k) Ensuring security of the system's information;
- l) Reporting on the fish-vessel monitoring activities;
- m) Appointing the manager of the satellite service.

Article 5

Mandatory ALC installation

1. Fishing vessels covered by Article 3 of this decree-law shall install an ALC on board and keep it operational.
2. All expenses incurred in connection with installing, rendering operational and maintaining the ALC shall be paid by the ship-owner or its legitimate representative.
3. The provisions of this decree-law also apply to ALC devices installed on board of fishing vessels prior to its entry into force.

Article 6

ALC specifications, technical attributes and functionality

ALC specifications, technical attributes and functionalities shall be defined by order of the cabinet member in charge of the fisheries sector.

Article 7

Approval of SIMOCEP and ALC

The SIMOCEP system and the ALC model shall be approved by the cabinet member in charge of the fisheries sector, in line with the specifications and technical attributes defined in the order referred to in the previous article.

Article 8

ALC certification

1. ALC operational capacity, following its installation on board, shall be confirmed by DNPA, by means of a certificate issued by the manufacturer or by companies accredited by such manufacturer, whose model shall be approved by order of the cabinet member in charge of the fisheries sector.
2. Licensing for fishing purposes of vessels referred to in Article 3, above, shall depend on the operational certification of the respective ALC.

Article 9

List of vessels

1. DNPA should draw up a list of the fishing vessels covered by this decree-law and keep it updated. It may provide such list to other nations in the region who use the SIMOCEP, at their request.

2. The list mentioned in the previous number should specify the flag state, the number of internal fleet register, the external identification and the name and radio call sign of each vessel.

CHAPTER THREE

RESPONSIBILITY OF THE SHIP-OWNER OR ITS REPRESENTATIVE

Article 10

ALC maintenance

1. The ship-owner, or its representative, should ensure the maintenance of the ALC, repairing any technical deficiencies or failures or replacing it, as soon as such occurrences are detected by the skipper or reported by DNPA.
2. The ALC should be repaired or replaced immediately after the end of the vessel's fishing trip. Such vessel may not begin any new fishing trip before having the operational capacity of its equipment confirmed by DNPA.
3. Whenever any ALC technical deficiency, failure or malfunctioning is detected by the SIMOCEP Head Office (Centre for Fisheries Control and Surveillance), DNPA shall immediately report such fact to the ship-owner or its representative, with a notification to repair or replace the ALC as provided for in the previous numbers.
4. Irrespective of the provisions of the previous number, whenever the ship-owner or its representative detect any technical deficiency, failure or malfunctioning of the ALC they should immediately report such fact to SIMOCEP and comply with the instructions issued by DNPA.
5. ALC devices should be repaired or replaced by the company (or companies) accredited by the manufacturer for such purpose and the ship-owner shall pay for any expenses incurred in connection with such operations.
6. The list of companies referred to in the previous number shall be published in an order issued by the cabinet member in charge of the fisheries sector.

Article 11

Fishing vessels forbid to fish

1. DNPA may, in case the ALC is not operational and whenever justified, order a vessel to stop its fishing activity. DNPA shall immediately notify the ship-owner or its representative that the ship is forbid to develop any fishing activities until its equipment has its operational capacity confirmed by DNPA.
2. Following the interdiction referred to in the previous number, the ship shall immediately return to a harbour.
3. DNPA shall immediately report the initial and final date of the interdiction referred to in number 1, above, to the Port Authority (PA), the National Directorate for Customs (DNA), the National Directorate for Immigration (DNI), the Permanent Secretary to the Defence Ministry (SMPD), the Command of the Naval Branch of the F-FDTL (CN) and the Commander of the PNTL Maritime Department (UM).

Article 12

Legal provisions governing ALC ownership

1. ALC is owned by the ship-owner, following its acquisition from the company accredited by the manufacturer.
2. Notwithstanding the provisions of the previous number, the ship-owner or its representative should make sure that the ALC is kept in the place where it has been installed and in a good operating condition.
3. The ship-owner, or its representative, are responsible for the loss or deterioration of the ALC due to fire, theft, general average, particular average or shipwreck.

Article 13

Transmission

1. Fishing vessels covered by Article 3 of this decree-law should ensure that their ALC is active and in continuous communication with the head office of SIMOCEP at a distance of at least 50 (fifty) nautical miles of the maritime waters of Timor-Leste, whenever they:
 - a) enter or leave the maritime waters of Timor-Leste;
 - b) fish at high seas, or in the maritime waters of a different State, for a period of 6 (six) hours before entering or after leaving the maritime waters of Timor-Leste;
 - c) find themselves in the maritime waters of Timor-Leste, leaving after they have lost their fishing permit or license;
2. Fishing vessels should transmit to the satellite service manager the information specified in the paragraphs of the previous number, as well as the type/name and the manufacturer of their ALC.

Article 14

Transmission-related costs

The ship-owner shall pay all communication-related expenses that do not fit the objectives and the purpose of the SIMOCEP system created by this decree-law.

CHAPTER FOUR SIMOCEP AND CONFIDENTIALITY RULES

Article 15

SIMOCEP Head Office

1. The Centre for Fisheries Control and Surveillance (CCVP), within DNPA, is the Head Office of SIMOCEP. Its competence is to ensure the monitoring of fishing vessels covered by this decree-law by receiving and processing data transmitted by the ALC, irrespective of the waters in which they operate or the harbour where they currently are, as well as fishing vessels from foreign countries which are required to have a SIMOCEP, currently operating in waters under national sovereignty or jurisdiction.

2. DNPA ensures speedy reporting to the PA, DNA, SPMD, CN and UM of data concerning the continuous monitoring of ALC-equipped fishing vessels, after they are duly processed and deemed pertinent to the control of fishing activities.

Article 16

Data to be transmitted by the ALC

1. ALC devices installed on board of fishing vessels ensure the automatic transmission to CCVP of data relevant to the control of fishing activities, namely:
 - a) Identification of vessel;
 - b) Date and hour;
 - c) Most recent geographic position of vessel;
 - d) Speed and bearing of vessel;
 - e) Date and hour of entry into and departure from fishing areas.
2. In case of failure or technical deficiency of the ALC, the captain or skipper of the vessel, or its owner, shall report by telex, telecopy, phone or radio to the CCVP, at least once every twenty-four hours after the moment in which such occurrence is detected, the data referred to in paragraphs a), b) and c) of number 1 above.
3. CCVP ensures the automatic and simultaneous communication to the centre for fisheries control and surveillance of the third country of the data referred to in paragraphs a), b) and c) of number 1 above, regarding national fishing vessels to which SIMOCEP is applicable and currently operating in the waters of such third country.

Article 17

Data storage and processing

1. All SIMOCEP information is considered confidential.
2. Data from fishing vessels covered by the SIMOCEP system, as referred to in number 1 of the previous article, shall be stored in computer files at CCVP.
3. Neighbouring states in the region may have computer access to the files referred to in the previous number, at their express request.
4. Data may only be divulged for purposes of criminal investigation, instruction of lawsuits or administrative offences or scientific research and should comply with the regulations governing data confidentiality.
5. The Minister in charge of the fisheries sector shall establish, by ministerial order, the rules defining data collection and processing by SIMOCEP.

CHAPTER FIVE FINAL AND TRANSITIONAL PROVISIONS

Article 18

Penalty system

1. Any breach of the provisions of this decree-law shall be punishable in the terms of Law no. 12/2004, of the 29 December 2004, and of Decree-Law no. 6/2004, of the 21 April 2004.

2. Offences in breach of this decree-law may also be punishable with the supplementary penalties of license withdrawal and seizure of the catch, fishing equipment and/or the fishing vessel.

Article 19

Appeal from decisions

Any natural or legal person has the right to claim against the plaintiff or appeal to the respective hierarchical superior from decisions that may affect its interest, in terms of general law.

Article 20

Regulations

Regulations that should ensure the execution of this decree-law shall be approved by Cabinet Decree or Ministerial Order, as appropriate.

Article 21

Revoked legislation

All legislation on fisheries previously in force that contradicts this decree-law is revoked.

Article 22

Entry into force

This decree-law shall enter into force 30 days after its publication.

Approved at the Council of Ministers, on the 5 March 2008

The Prime-Minister

(Kay Rala Xanana Gusmão)

The Minister for Agriculture and Fisheries

(Mariano Assanami Sabino)

Enacted on the 16 June 2008

To be published.

The President of the Republic

José Ramos-Horta

