

## Shipping & Transport - South Africa

### Reefer owners beware

Contributed by **Bowman Gilfillan**

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The Department of Agriculture, Forestry and Fisheries appears to have adopted a concerning stance on the requirements of the Marine Living Resources Act regarding the licensing of vessels entering South African waters. The policy affects reefer vessels in particular and owners are advised to pay attention to this development.

Among other things, the act requires that every foreign-flagged fishing vessel entering the South African exclusive economic zone apply for and obtain a fishing permit. A 'fishing vessel' is defined in the act as any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities, and includes all gear, equipment, stores, cargo and fuel onboard. Further, the term 'related activities' is defined as including:

- storing, buying, selling, transshipping, processing or transporting fish or any fish product taken from South African waters up to the time it is first landed or in the course of high seas fishing;
- storing, buying, selling or processing fish or any fish product onshore from the time it is first landed;
- refuelling or supplying fishing vessels, selling or supplying fishing equipment or performing any other act in support of fishing;
- exporting and importing fish or any fish product; and
- providing agency, consultancy or other similar services for and in relation to fishing or a related activity.

It is a criminal offence to undertake fishing or related activities without the requisite licence. The penalties for contravention include a number of measures which may be taken by a fishery control officer, such as seizure of the vessel concerned or the arrest of anyone whom the fishery control officer has reasonable grounds to suspect has committed an offence in terms of the act.

The act seems to be sufficiently clear; what is concerning is the manner in which fishery control officers are implementing it. For example, in a recent case the fishery control officers in Cape Town conducted a raid in the port and seized a reefer vessel which had called for medical assistance to a crew member and undertook subsequent repairs, on the grounds that the vessel had no fishing licence onboard. There was no suggestion by the officers that the vessel was actually engaged in fishing or related activities. Instead, the officers' view was that an offence had been committed by the mere fact that the vessel was capable of carrying fish and had entered the South Africa exclusive economic zone without a fishing permit. On a plain reading of the act, no criminal offence had been committed on the facts of the case. The reasonable inference is that the fishery control officers had acted outside the scope of the act.

Perhaps the most worrying aspect was that, in the face of a legal challenge to the seizure notice, the fishery control officers took it upon themselves to arrest the master of the vessel with the assistance of the South African Police Services at 7:00pm before the vessel was due to depart, so that the master might be prosecuted in the magistrates' court under the act unless he paid an admission of guilt fine.

The extent to which actions of this nature by the department will continue is unknown, but until the fishing industry or lobby groups can get a clear understanding of the department's policy, it is advisable for reefer owners (in particular) to canvass the issue with their local port agents well in advance of calling at South Africa.

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