

Fisheries and Marine Resources (Safety and Security Measures for Fishermen at Sea) Regulations 2016

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THE FISHERIES AND MARINE RESOURCES ACT

Regulations made by the Minister under section 74(1)(l) of the Fisheries and Marine

Resources Act

1. These regulations may be cited as the Fisheries and Marine Resources (Safety and

Security Measures for Fishermen at Sea) Regulations 2016.

2. In these regulations -

“Act” means the Fisheries and Marine Resources Act;

“awning” means red or orange tarpaulin, canvas or other similar material of an area of not

less than 2.5 metres by 2.5 metres;

“buoyant boiler” means a container that does not sink and is capable of removing water

from a fishing boat;

“Coast Guard Station” has the same meaning as in the National Coast Guard Act;

“drug” means any substance which, when consumed or inhaled by a person or when applied to or injected into a person’s body, may influence the performance of that person to safely operate a fishing boat, and which includes, but is not limited to, an intoxicating drink;

“fisherman” means a person registered as such under section 11 of the Act;

“fishing base” means a place found on an islet of Mauritius, or a vessel, which is equipped for communication to and from a VHF radio;

“fishing boat” -

(a) means a boat used for fishing and fishing related activities; but

(b) does not include a boat used for fishing as sport, water sport or for any other recreational purpose;

“hand-flare” means a hand-flare as specified in the First Schedule;

“hospital” -

(a) means a State-controlled institution which provides medical or surgical treatment for in-patients or out-patient; and

(b) includes a health centre;

“intoxicating drink” means any substance which, when consumed by a person or injected

into a person's body, may influence the performance of that person to safely operate a

fishing boat, and which includes, but is not limited to, alcohol;

"lifebuoy" means a lifebuoy as specified in the Second Schedule;

"life-jacket" means a life-jacket as specified in the Third Schedule;

"mirror" means a daylight signalling mirror, heliograph or any reflective surface made of glass or metal that reflects sunlight;

"operate" means the act of controlling the speed and course of a fishing boat at sea or the act of controlling a fishing boat used for fishing;

"owner" means the owner of a fishing boat; "prescribed limit" means -

(a) 23 microgrammes of alcohol in 100 millilitres of breath;

(b) 50 milligrammes of alcohol in 100 millilitres of blood;

(c) 67 milligrammes of alcohol in 100 millilitres of urine; or

(d) such other proportion as may be prescribed;

"radar reflector" means any metallic or aluminum device mounted at least 2 metres in

height on board a fishing boat so as to reflect electromagnetic waves emitted by a radar;

“registered medical practitioner” has the same meaning as in the Medical Council Act;

“safety and security equipment” means the safety and security equipment specified in the

Fourth Schedule;

“SOLAS” means the International Convention for the Safety of Life at Sea, 1974;

“use” means use at sea;

“VHF radio” means a combined transmitter and receiver set which operates on standard

international frequencies, and is as specified in the Fifth Schedule.

3. These regulations shall apply to fishing boats registered under section 44 of the Act and

measuring less than 12 metres in length overall.

4. The owner of a fishing boat shall not lease or lend his fishing boat to any person other than

a fisherman.

5. (1) No fishing boat shall be used unless there is, on the fishing boat, all safety and security

equipment, as applicable.

(2) The safety and security equipment shall be in good working condition.

(3) (a) Any person who is in charge of a fishing base from which one or more fishing

boats operate shall ensure that -

(i) the fishing base is equipped with a VHF radio;

(ii) the VHF radio is in good working condition; and

(iii) at all times when a fishing boat operating from the base is at sea, the VHF

radio is kept operational.

(b) Any person who, without lawful excuse, contravenes subparagraph (a) shall

commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

(4) Any person who, without lawful excuse, operates or is in charge of, or permits any

other person to operate or to be in charge of, a fishing boat -

(a) without all safety and security equipment, as applicable;

(b) where any of the safety and security equipment, as applicable, is not in good

working condition,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000

rupees.

6. (1) Subject to paragraph (2), any person who goes out at sea in a fishing boat shall wear a

life-jacket during the whole trip.

(2) A fisherman may not wear a life-jacket while fishing.

(3) Any person who contravenes paragraph (1) shall commit an offence and shall, on

conviction, be liable to a fine not exceeding 10,000 rupees.

7. (1) Any person who -

(a) operates or attempts to operate a fishing boat at sea; or

(b) is in charge of a fishing boat at sea,

whilst being unfit to operate that fishing boat by reason of his being under the influence of an

intoxicating drink or of a drug, to such an extent as to be incapable of having proper control of

the fishing boat, shall commit an offence.

(2) (a) A person who commits an offence under paragraph (1) shall, on conviction, be

liable to a fine not exceeding 50,000 rupees.

(b) In the case of a second or any subsequent conviction under paragraph (1), the

offender shall be liable to a fine not exceeding 100,000 rupees.

(3) Part X of the Criminal Procedure Act, the Probation of Offenders Act and the

Community Service Order Act shall not apply to a person liable to be sentenced under

paragraph (2).

8. (1) Any person who -

(a) operates or attempts to operate a fishing boat at sea; or

(b) is in charge of a fishing boat at sea,

after consuming so much alcohol that the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit, shall commit an offence.

(2) It shall be a defence for a person charged with an offence under paragraph (1) to

prove that, at the time he is alleged to have committed the offence, the circumstances were

such that there was no likelihood of his operating the fishing boat whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.

(3) (a) Any person who commits an offence under paragraph (1) shall, on conviction, be

liable to a fine not exceeding 50,000 rupees.

(b) In the case of a second or any subsequent conviction under paragraph (1), the

offender shall be liable to a fine not exceeding 100,000 rupees.

(4) Part X of the Criminal Procedure Act, the Probation of Offenders Act and the

Community Service Order Act shall not apply to a person liable to be sentenced under

paragraph (3).

9. (1) Subject to regulation 12, a police officer in uniform may request -

(a) a person operating, or attempting to operate, or in charge of a fishing boat at

sea, where he has reasonable cause to suspect him of being under the influence

of alcohol; or

(b) a person whom he has reasonable cause to believe was operating or attempting

to operate a fishing boat which was involved in an accident at sea,

to provide a specimen of his breath for a breath test either at the place where the request is

made, or at the nearest Coast Guard Station or police station where such test may be carried

out.

(2) A person who, without reasonable excuse, fails to provide a specimen of his breath for

a breath test pursuant to a request made under paragraph (1) shall commit an offence and

shall, on conviction, be liable to a fine not exceeding 25,000 rupees.

(3) Subject to paragraph (4), a police officer may arrest a person without warrant where

(a) the result of a breath test, carried out pursuant to paragraph (1), indicates that

the proportion of alcohol in that person's breath exceeds the prescribed limit; or

(b) that person has failed to provide a specimen of his breath for a breath test when

required to do so pursuant to this regulation and the police officer has

reasonable cause to suspect that the person has alcohol in his body.

(4) A person shall not be arrested pursuant to paragraph (3) when he is at a hospital as a

patient.

10. (1) Subject to regulation 12, a police officer may, in the course of an investigation into

whether a person has committed an offence under regulation 7 or 8, request that person —

(a) to provide 2 specimens of breath for analysis by means of a device of such type

as the Minister to whom responsibility for the subject of land transport and road

traffic is assigned may approve; or

(b) to provide at hospital a specimen of blood or urine, or both, for a laboratory test.

(2) Where the provision of a specimen other than a specimen of breath is requested

pursuant to paragraph (1), the question whether it is to be a specimen of blood or a specimen of

urine shall be decided by the police officer making the request, but where a registered medical

practitioner is of the opinion that, for medical reasons, a specimen of blood cannot or should not

be taken, the specimen shall be 2 specimens of urine.

(3) A specimen of urine shall be provided within one hour of the request for its provision

being made and after the provision of a previous specimen of urine.

(4) Any person who, without reasonable excuse, fails to provide a specimen when

required to do so, pursuant to this regulation, shall commit an offence and shall, on conviction,

be liable to a fine not exceeding 25,000 rupees.

(5) A police officer shall, on requesting any person to provide a specimen for a laboratory

test, pursuant to this regulation, warn that person that a failure, without reasonable excuse, to

provide the specimen may render him liable to prosecution and may be used against him as

evidence.

(6) (a) In a prosecution under regulation 7 or 8, a refusal without reasonable excuse by a

person to submit himself to a breath test, or to give a specimen of his blood or specimens of his

urine, when required to do so pursuant to this regulation, shall be held against him as prima

facie evidence that, at the material time, the proportion of alcohol in his blood exceeded the

prescribed limits.

(b) Subparagraph (a) shall not apply where the person has not been warned by a

police officer in accordance with paragraph (5).

11. (1) Subject to paragraph (2), where 2 specimens of breath are provided by a person

pursuant to regulation 10, the specimen with the lower proportion of alcohol in the breath shall

be used and the other shall be disregarded.

(2) Where the specimen with the lower proportion of alcohol contains not more than 40

microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it

should be replaced by such specimen as may be required under regulation 10(b), and, if he

then provides such a specimen, neither specimens of breath shall be used.

12. (1) A person who has been admitted as a patient at a hospital shall not be requested to

provide a specimen of breath for a breath test, or to provide a specimen of blood or specimens

of urine for a laboratory test, unless the registered medical practitioner in immediate charge of

his case has been notified of the proposal to make the request and -

(a) where the request is then made, it shall be for the provision of a specimen at the

hospital; but

(b) where the registered medical practitioner objects on the ground specified in

paragraph (2), the request shall not be made.

(2) The ground on which the registered medical practitioner may object is that the request for the provision of a specimen or, in the case of a specimen of blood or urine, the warning required under regulation 10(5) to be given to the patient, would be prejudicial to the proper care and treatment of that patient.

(3) Any objection and the grounds thereof raised under this regulation shall be set out in a certificate under the hand of the registered medical practitioner in charge of the case.

(4) Where a registered medical practitioner specified in this regulation issues a certificate containing any statement which is false or misleading in a material particular, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

(5) Part X of the Criminal Procedure Act, the Probation of Offenders Act and the Community Service Order Act shall not apply to a person liable to be sentenced under this regulation.

13. These regulations shall come into operation on 2 May 2016.

Made by the Minister on 7 April 2016.

FIRST SCHEDULE

[Regulation 2]

HAND-FLARE

A hand-flare shall -

- (a) be SOLAS-approved or approved by the Minister;
- (b) be kept in a water-resistant casing;
- (c) carry brief instructions, or diagrams clearly illustrating instructions, for using the hand-flare;
- (d) burn with a bright light;
- (e) have a burning period of not less than one minute;
- (f) continue to burn after having been immersed for a period of 10 seconds in 100 millimetres of water; and
- (g) have a self-contained means of ignition.

SECOND SCHEDULE

[Regulation 2]

LIFEBUOY

A lifebuoy shall —

- (a) be SOLAS-approved or approved by the Minister;
- (b) have an outer diameter of not more than 800 millimetres and an inner diameter of not less than 400 millimetres;
- (c) be constructed of buoyant material and shall not depend on rushes, cork shavings or granulated cork, any other loose granulated material or any air compartment which depends on inflation for buoyancy;
- (d) be capable of supporting not less than 14.5 kilogrammes of iron in fresh water for a period of 24 hours;
- (e) have a mass of not less than 2.5 kilogrammes;
- (f) not sustain burning, nor continue melting, after being totally enveloped in fire for a period of 2 seconds;
- (g) be fitted with a grabline of not less than 9.5 millimetres in diameter and not less than 4 times the outside diameter of the body of the buoy in length, and the grabline shall be secured at 4 equidistant points around the circumference of the buoy to form 4 equal loops;
- (h) be fitted with a buoyant lifeline of not less than 7 metres in length; and
- (i) have at least 3 fluorescent retro-reflective tape band markings.

THIRD SCHEDULE

[Regulation 2]

LIFE-JACKET

A life-jacket shall —

- (a) be SOLAS-approved or approved by the Minister;
- (b) not sustain burning nor continue melting, after being totally enveloped in fire for a period of

2 seconds;
- (c) have buoyancy, which is not reduced by more than 5 per cent after 24 hours' submersion

in fresh water;
- (d) be fitted with a whistle firmly secured by a cord; and
- (e) be fitted with retro-reflective tapes.

FOURTH SCHEDULE

[Regulation 2]

SAFETY AND SECURITY EQUIPMENT

The safety and security equipment required on a fishing boat at sea shall be —

- (a) at least 2 hand-flares;
- (b) one lifebuoy;
- (c) one life-jacket for every person on board the fishing boat;
- (d) one buoyant bailer;
- (e) one mirror;
- (f) one whistle or equivalent sound-signalling device;
- (g) one waterproof electric torch with one spare set of batteries and one spare bulb in a waterproof container;
- (h) one pair of oars or an alternative mode of propulsion;
- (i) one anchoring device;
- (j) in case of off-lagoon fishing, a radar reflector and a sheet of awning;
- (k) in case of off-lagoon fishing from a fishing boat measuring not more than 6 metres in length overall and not operating from a fishing base, an auxiliary outboard engine with a horsepower of not less than 8;
- (l) in case of off-lagoon fishing from a fishing boat measuring over 6 metres but less than 12

metres in length overall and not operating from a fishing base, an auxiliary engine with a

horsepower of not less than 15; and

(m) in case of a fishing boat operating from a fishing base, a VHF radio.

FIFTH SCHEDULE

[Regulation 2]

VHF RADIO

The VHF radio shall —

(a) be water resistant;

(b) carry brief instructions or diagrams clearly illustrating instructions, for using the VHF radio;

(c) have the emergency frequency MMB channel 16;

(d) have transmission power ranging between 1 and 25 watts, giving a communication range

of not less than 15 nautical miles between an aerial found on any fishing base and the

fishing boat; and

(e) be operated by dry batteries.