

Maritime (Protection of Mammals) Regulations [Cap 131]

Commencement: 12 October 1988

Order 33 of 1988

Order 24 of 1990

Order 14 of 1993

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A Regulation to make provision to prevent or minimize the accidental catching of marine mammals during fishing operations in the eastern Pacific Ocean.

WHEREAS:

- A. The Government of Vanuatu recognises that marine mammals are resources of international significance, and that they should be protected to the extent feasible with sound policies of resource management;
- B. The Primary objective of the management is to maintain the health and stability of the marine mammals within the marine ecosystem;
- C. It is necessary to regulate fishing for tunas with purse seine nets, so as to ensure the liberation of marine mammals which are incidentally trapped during fishing operations and to reduce the resultant mortality;
- D. It is necessary to participate in an international observer program to monitor the effectiveness of marine mammal rescue gear and procedures and to record the incidental mortality of marine mammals associated with fishery.

1. Interpretation

(1) In this Regulation, unless the context otherwise requires:

“Act” means the Maritime Act [Cap. 131];

“backdown maneuver” means moving a vessel in reverse thus forming a channel with the net and sinking the corkline at the end of the channel and allows the release of trapped marine mammals;

“competent regional organization” means the Inter-American Tropical Tuna Commission established in 1950 by treaty between the United States of America and the Republic of Costa Rica for the investigation and conservation of the tuna resources of the eastern Pacific Ocean;

“eastern Pacific Ocean” means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40 North latitude, 40 South latitude and 160 west longitude;

(2) For the purposes of this Regulation –

“fishing” means fishing for or catching or taking fish by the use of purse seine nets;

“marine mammals” means the offshore spotted dolphin, the coastal spotted dolphin, the eastern spinner dolphin, the whitebelly spinner dolphin, the Costa Rican spinner dolphin, the common dolphin, the striped dolphin and any other species of small tooth cetaceans;

“observer” means an observer appointed under section 4 by the competent regional organization.

2. Application

The provisions of these regulations shall only apply to Flag vessels of Vanuatu documented under the Act being used or intended to be used for commercial fishing for tuna in the eastern Pacific Ocean.

3. Requirements for the owner, authorized agent or bareboat charterer

(1) The owner, authorized agent or bareboat charterer of any Flag vessel(s) of Vanuatu documented or redocumented under the Act which is used or intended to be used for commercial fishing for tuna in the eastern Pacific Ocean shall –

(a) advise the Minister, when fishing for tuna associated with marine mammals;

(b) participate in any international program administered by the competent regional organization for protecting marine mammals in that part of the Ocean;

(c) allow and provide facilities for observers who may be made available from time to time by the competent regional organization or such other competent regional or international organization as the Minister may in writing specify to carry out their monitoring and research responsibilities on board vessels fishing for tuna;

(d) install and maintain on board their tuna purse seine nets a dolphin safety panel designed in such a way to avoid the entanglement of marine mammals captured during tuna fishing operations. The safety panel shall –

(i) be constructed of one-and-one-quarter inch stretch mesh;

(ii) have a minimum length of 329 metres (180 fathoms);

(iii) be at least 12 fathoms (2 strips) deep over its entire length;

(iv) be installed in such a way so as to cover the perimeter of the backdown area and shall be clearly marked so as to be visible during fishing operations;

(e) perform a backdown maneuver whenever marine mammals are captured in a tuna set;

(f) carry a minimum of two speedboats equipped with towing bridles and shall be used when necessary to hold the net open and prevent it from collapsing;

(g) carry out additional rescue measures to release marine mammals left in the net after the backdown maneuver which may require the use of speed boats and inflatable rafts;

(h) remove all live marine mammals from the net prior to sack-up and tuna brailing operations;

(i) where the Maritime Commissioner or the Deputy Maritime Commissioner has waived the provisions of regulation 6A(1) in respect of the vessel and its captain, in a sundown set, illuminate the

backdown channel with a lighting system of at least 140,000 lumens capacity, to facilitate the removal of live marine mammals from the net;

(j) when notified by the Minister or Commissioner or Deputy Commissioner, participate in or appear before a committee of expert skippers organized by the competent regional organization to review the performance of individual vessel in the release and rescue of marine mammals during tuna fishing operations and recommend such improvements as it thinks fit.

(2) If a purse-seine net has more than 18 strips, the safety panel shall have a minimum additional length of 10 fathoms for each additional strip.

(3) There shall be three towing points provided around the perimeter of a net, at one-quarter, one-half and three-quarters of the perimeter.

4. Competent regional organization

(1) The Inter-American Tropical Tuna Commission is hereby designated as the competent regional organization for the purposes of this Regulation.

(2) The competent regional organization shall, from time to time, place on board each Flag vessel of Vanuatu an observer or observers to record all fishing activities involving tuna and marine mammals carried out by such vessel. Such observer or observers shall complete a summary report of dolphin safety gear and set data after each trip and record such other information and data as shall be agreed between the competent regional organization and the Minister.

(3) The competent regional organization shall, within 21 days of placing an observer or observers on board a Flag vessel of Vanuatu fishing in the eastern Pacific Ocean, notify the Minister of the same.

(4) For the purposes of this regulation, “observer” includes a scientific researcher.

5. Observers

(1) Flag vessels of Vanuatu fishing for tuna in the eastern Pacific Ocean shall allow and provide facilities for observers to carry out monitoring and research responsibilities on board such vessels.

(2) An observer shall maintain records of all fishing activities involving tuna and marine mammals under an international observer program designated by the Minister and such observer shall not in any way be obstructed in carrying out his duties.

(3) Every observer shall, in respect of each vessel within 7 days following the date of next entry into a port, forward to the Commissioner or a Deputy Commissioner a report in writing and in the English language of all fishing activities involving tuna and marine mammals carried out by such vessels. Such report shall include the summary report of dolphin safety gear and set data and such other information and data as shall be agreed between the competent regional organization and the Minister.

(4) Records and information required by the international observer program may be released to that international observer program only upon the prior written approval of the Minister.

(5) All records, information and data collected pursuant to subregulation (3) may be used to enforce any provision of this Regulation or the Act.

6. Sacking-up and brailing etc. prohibited

No Flag vessel of Vanuatu fishing for tuna in the eastern Pacific Ocean shall –

(a) sack-up or brail live marine mammals;

(b) make a set on tunas associated with pure herds of eastern spinner dolphins, and on any other pure herds except offshore spotted dolphins, striped dolphins and common dolphins;

(c) make a set on or encircle any school of dolphins in which any eastern spinner or coastal spotted dolphin is observed prior to release of the net skiff.

6A. Sundown sets prohibited

(1) Subject to subregulation (2), no Flag vessel of Vanuatu fishing for tuna in the eastern Pacific Ocean shall operate a sundown set.

(2) The Commissioner or the Deputy Commissioner may, in his absolute discretion waive the provisions of subregulation (1). Such waiver shall be in writing.

(3) For the purposes of this regulation –

(a) “sundown set” is a set where the backdown maneuver and the commencement of the rolling of the net to sack-up is completed more than 30 minutes after sunset;

(b) “sunset” is the local time when the sun disappears completely below the horizon.

6B. Inspection of vessel

The Commissioner or Deputy Commissioner shall inspect of cause to be inspected every vessel being used or intended to be used solely for commercial fishing use purse seine nets applying under section 17(2)(b) of the Act to be registered on the Vanuatu Maritime Registry, to establish whether such vessel has adequate dolphin safety gear in good condition on board the vessel.

The inspection shall be recorded in the form set out in the Schedule to this regulation.

6C. Permit

(1) No Flag vessel of Vanuatu shall fish in the eastern Pacific Ocean unless –

the owner has a valid permit in respect of that vessel issued by the Commissioner or Deputy Commissioner; and

the Captain has a valid permit issued by the Commissioner or Deputy Commissioner.

(2) Every application for a permit may be made by the vessel owner and captain to the Commissioner or Deputy Commissioner of Maritime Affairs.

(3) The Commissioner or Deputy Commissioner may in his discretion grant or refuse a permit for which application is made under this Regulation and need not give any reason for his decision upon the application.

(4) A permit granted under this Regulation shall be valid for one year from its date of issue and thereafter shall expire unless renewed by the Commissioner or Deputy Commissioner.

(5) The fee of US\$1,000 shall be payable for the issue or renewal of a permit granted to the owner in respect of the vessel and the fee of US\$850 shall be payable for the issue or renewal of a permit granted to a captain, or in each case such lesser fee as the Commissioner or Deputy Commissioner shall determine.

(6) Where the Commissioner or Deputy Commissioner is satisfied that:

- (a) the dolphin safety gear on board a vessel is or becomes inadequate or is not in good condition or available for immediate use; or
- (b) the number of marine mammals killed or injured in any set made by the vessel is excessive; or
- (c) the vessel is in breach of any provision of this Regulation, the Act or any other Regulation made thereunder he may forthwith suspend the vessel's permit and thereafter after carrying out such investigation as he may deem necessary and giving the vessel owner an opportunity to object thereto, revoke the vessel's permit.

(7) Where the Commissioner or Deputy Commissioner is satisfied that a captain has, whilst in charge of a vessel,

- (a) caused or permitted the vessel to fish for tuna where the dolphin safety gear on board the vessel is or becomes inadequate or is not in good condition or available for immediate use; or
- (b) caused or permitted a set to be made by the vessel that has resulted in an excessive number of marine mammals being killed or injured; or
- (c) acted or caused or permitted the vessel to be in breach of this Regulation, the Act or any other Regulation made thereunder;

he may forthwith suspend the vessel's permit and thereafter after carrying out such investigations as he may deem necessary and giving the captain an opportunity to object thereto, revoke the captain's permit.

6D. Prohibition of explosives

No Flag vessel of Vanuatu fishing for tuna in the eastern Pacific Ocean shall use any explosive devices whatsoever in relation thereto.

6E. Transitional

(1) Every Flag vessel of Vanuatu with a valid licence to fish in the eastern Pacific Ocean shall, within two months of the date of coming into force of this Regulation, apply to the commissioner or Deputy Commissioner, as the case may be, for a permit.

(2) It is not an offence for a vessel to continue to fish in the eastern Pacific Ocean while the application lodged in respect of the vessel is with the Commissioner or Deputy Commissioner, as the case may be, for consideration.

7. Penalties

Any contravention of any provision of this Regulation by any Flag vessel of Vanuatu fishing for tuna in the eastern Pacific Ocean shall be an offence and on conviction thereof shall be liable to the penalties prescribed by or under the Act.

8. Suspension of licence

The Commissioner may, on the advice of the Minister, suspend or revoke the licence of any vessel which has contravened any provision of this Regulation in accordance with section 9 of the Act.

Table of Amendments

3(1)(i) Substituted by Order 24 of 1990
3(1)(j) Amended by Order 24 of 1990
4(2) Substituted by Order 24 of 1990
5(3) Substituted by Order 24 of 1990
5(5) Inserted by Order 24 of 1990
6(c) Inserted by Order 14 of 1993
6A-6E Inserted by Order 24 of 1990