

WEST BENGAL MARINE FISHING REGULATION ACT, 1993

9 of 1993

[14th June, 1993]

CONTENTS

CHAPTER 1 :- Preliminary

1. Short title, extent and commencement
2. Definitions
3. Authorisation of officers for the purpose of any provision of the Act

CHAPTER 2 :- Regulation of fishing

4. Power to regulate, restrict, or prohibit certain matters within specified areas
5. Prohibition of use of fishing vessel in contravention of any order made under section 4
6. Prohibition of fishing using fishing vessels which are not licensed
7. Licensing of fishing vessel
8. Cancellation, suspension and amendment of licence
9. Registration of fishing vessels
10. Information to be given to authorised officer about movement of fishing vessel
11. Returns to be furnished by owner of registered fishing vessel
12. Finality of orders under sections 7,8 and 9
13. Appeal against order refusing grant of licence, registration etc

CHAPTER 3 :-Management and control of fishing harbours and fish landing centres

14. Management and control of fishing harbours and fish landing centres

CHAPTER 4 :- Penalties

15. Power to enter and search fishing vessels
16. Disposal of seized fish
17. Adjudication
18. Penalty
19. Appeal against order of adjudicating officer
20. Revision by appellate authority
21. Power of adjudicating officer and appellate authority in relation

to holding of enquiry
22. Offences by companies

CHAPTER 5 :- Miscellaneous

23. Exemptions
24. Protection of action taken in good faith
25. Power to make rules

WEST BENGAL MARINE FISHING REGULATION ACT, 1993

9 of 1993

[14th June, 1993]

An Act to regulate marine fishing by fishing vessels along the coastline of the State. WHEREAS it is necessary to regulate marine fishing by fishing vessels along the coastline of the State; It is hereby enacted as follows

CHAPTER 1 Preliminary

1. Short title, extent and commencement :-

- (1) This Act may be called the West Bengal Marine Fishing Regulation Act, 1993.
- (2) It extends to the whole of West Bengal.
- (3) It shall come into force on such date as the State Government may by notification appoint.

2. Definitions :-

- (1) In this Act, unless the context otherwise requires,
 - (a) "adjudicating officer" means the Director of Fisheries, West Bengal, or any other officer, not below the rank of Assistant Director of Fisheries, authorised by the State Government by notification, to exercise the powers, conferred on, and discharge the duties imposed upon, the adjudicating officer by this Act for such area as may be specified in the notification;
 - (b) "appellate authority" means the Secretary, Fisheries Department, Government of West Bengal;
 - (c) "authorised officer" means such officer as the State Government may by notification authorise in respect of any matter in which a reference is made to such officer in this Act;

(d) "fishing vessel" means a ship or boat, whether or not fitted with mechanical means of propulsion, which is used or intended to be used for fishing within the specified area for profit, and includes

(i) a catamaran,

(ii) a country craft,

(iii) a canoe, or

(iv) a vessel, intended to carry or transport fish within the specified area for gain:

Provided that nothing in this clause shall apply to a vessel which is used in ferry service authorised by the State Government and carries fish owned by passenger on board;

(e) "port" means the space within such limits as may, from time to time, be defined by the State Government by notification for the purposes of this Act;

(f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "registered fishing vessel" means

(i) a fishing vessel registered under section 11 of the Marine Products Export Development Authority Act, 1972, or

(ii) a fishing vessel registered under any other law for the time being in force, or

(iii) a fishing vessel registered under section 9 of this Act;

(i) "specified area" means such area in the sea along the entire coastfied by the State Government by notification;

(j) "State" means the State of West Bengal, and includes the territorial waters along the entire coastline thereof.

(2) For the purposes of this Act, "territorial waters" shall have the same meaning as in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.

3. Authorisation of officers for the purpose of any provision of the Act :-

The State Government may by notification authorise

(a) any officer of the State Government, not below the rank of a District Fishery Officer or Deputy Superintendent of Police, or

(b) any Gazetted Officer of the Border Security Force or Coastal Guard, with the consent of the Central Government, to exercise such of the powers conferred on, and discharge such of the duties imposed upon, an authorised officer under this Act and in such areas as may be specified in the notification.

CHAPTER 2

Regulation of fishing

4. Power to regulate, restrict, or prohibit certain matters within specified areas :-

(1) The State Government may, having regard to the provisions of sub-section (2), by order notified in the Official Gazette, regulate, restrict or prohibit the following matters:

(a) the fishing in any specified area by such class or classes of fishing vessels as may be prescribed;

(b) the number, size and class of fishing vessels which may be used for fishing in any specified area;

(c) the catching in any specified area of such species of fish and for such period as may be specified in the notification;

(d) the use of such fishing gear indicating mesh, size or type of construction or by other general description in any specified area as may be prescribed.

(2) In making an order under sub-section (1), the State Government shall have regard to the following matters:

(a) the need to protect the interests of different sections of persons engaged in fishing, particularly those engaged in fishing using fishing vessel such as catamaran, country craft, or canoe;

(b) the need to conserve fish and to regulate fishing on a scientific basis;

(c) the need to maintain law and order in the sea;

(d) any other matter that may be prescribed.

5. Prohibition of use of fishing vessel in contravention of any order made under section 4 :-

No owner or master of a fishing vessel shall use, or cause or allow

to be used, any fishing vessel for fishing in such manner as cause or allow to be used, any fishing vessel for fishing in such manner as contravenes an order made under section 4:

Provided that nothing in such order shall be construed as preventing the passage of any fishing vessel from or to the shore through any specified area, or to or from any area, other than a specified area, for the purpose of fishing in any other area or for any other purpose:

Provided further that the passing of such fishing vessel through any specified area shall not, in any manner, cause any damage to any fishing nets or tackles belonging to any person who engages in fishing in the specified area by using any registered fishing vessel.

6. Prohibition of fishing using fishing vessels which are not licensed :-

No person shall, after the commencement of this Act, carry on fishing in any specified area using a fishing vessel unless he has obtained in this behalf a licence in accordance with the provisions of this chapter: Provided that nothing in this section shall apply to any fishing vessel, which was being used for fishing immediately before the commencement of this Act, for such period as may be specified by the State Government by notification.

7. Licensing of fishing vessel :-

(1) Every owner of a registered fishing vessel shall make an application in writing to the authorised officer for the grant of a licence for using such fishing vessel for fishing in any specified area.

(2) Every application under sub-section (1) shall be in such form, shall contain such particulars, and shall be accompanied by such fees, as may be prescribed.

(3) The authorised officer may, after making such enquiry as he deems fit and having regard to the provisions of sub-section (4), either grant, or refuse to grant, to the owner of the fishing vessel, a licence for using such fishing vessel for fishing in the specified area or specified areas mentioned in such licence.

(4) In granting or refusing a licence under sub-section (3), the authorised officer shall have regard to the following matters:

(a) whether the fishing vessel is a registered fishing vessel;

(b) the condition of the fishing vessel including the accessories and the fishing gear attached to it;

(c) whether any order has been made under section 4;

(d) any other matter that may be prescribed.

(5) A licence granted under this section shall be in such form, and shall be subject to such conditions (including the conditions of payment of fees and furnishing of security for due compliance with the conditions), as may be prescribed:

Provided that different fees may be prescribed in respect of licences for different classes of fishing vessels.

(6) A licence granted under this section shall be valid for the period specified therein or for such extended period as the authorised officer may think fit to allow in any case.

(7) Where the authorised officer refuses to grant a licence, it shall record a brief statement of the reasons for such refusal.

8. Cancellation, suspension and amendment of licence :-

(1) If the authorised officer is satisfied, either on a reference made to him in this behalf or otherwise, that

(a) a licence granted under section 7 has been obtained by misrepresentation as to an essential fact, or

(b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted, or has contravened any of the provisions of this Act or the rules or the orders made thereunder, then, without prejudice to any other penalty to which the holder of such licence may be liable under this Act, the authorised officer may, after giving the holder of the licence a reasonable opportunity of being heard, cancel or suspend the licence or forfeit the whole or any part of the security, if any, furnished under sub-section (5) of section 7.

(2) Subject to any rules that may be made in this behalf, the authorised officer may also vary or amend a licence granted under section 7.

9. Registration of fishing vessels :-

(1) The owner of every vessel, used or intended to be used for purposes of fishing and kept in the State, shall get such vessel

registered under this Act unless it is already registered under section 11 of the Marine Products Export Development Authority Act, 1972, or any other law for the time being in force.

(2) Every application for registration of such vessel shall be made by the owner thereof to the authorised officer in such form, and shall be accompanied by such fees, as may be prescribed,

(a) before the expiration of one month from the date on which he first, became the owner of such vessel, or

(b) before the expiration of three months from the date of commencement of this Act, whichever is later:

Provided that the authorised officer may, for sufficient reasons to be recorded in writing extend the time-limit for registration by such period as he thinks fit.

(3) The authorised officer shall issue to the owner of the vessel registered by him a certificate of registration in the prescribed form and shall enter in a register to be kept by him, in such form as may be prescribed, the particulars of such certificate:

Provided that the authorised officer may, for sufficient reasons to be recorded in writing, refuse to register the vessel.

(4) The registration of a vessel once made under this section shall, until cancelled by the authorised officer, continue to be in force, provided that where a vessel is required to hold a certificate to be issued by the Mercantile Marine Department of the Central Government for operation, such vessel shall hold such certificate.

(5) Every vessel registered under this section shall display in the prescribed manner a registration mark assigned to it by the authorised officer. (6) No vessel, other than a registered vessel, shall be entitled to a licence under section 7.

10. Information to be given to authorised officer about movement of fishing vessel :-

Where a registered fishing vessel moves from the area of one port to the area of another port, the owner of such fishing vessel shall give information to that effect in the prescribed manner to the authorised officer by whom such fishing vessel was registered and also to the port officer having jurisdiction over the area to which such fishing vessel moves.

11. Returns to be furnished by owner of registered fishing vessel :-

Every owner of a registered fishing vessel shall furnish to the authorised officer at the prescribed time and in the prescribed manner such returns as may be prescribed. (2) The authorised officer may inspect any registered fishing vessel at any time to verify the accuracy of any return furnished under sub-section (1).

12. Finality of orders under sections 7,8 and 9 :-

Every decision of the authorised officer under section 7, section 8 or section 9 shall, subject to any right of appeal under section 13 or section 19, be final.

13. Appeal against order refusing grant of licence, registration etc :-

(1) Any person aggrieved by an order of the authorised officer under section 7, section 8 or section 9, may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the adjudicating officer: Provided that the adjudicating officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

(2) On receipt of an appeal under sub-section (1) the adjudicating officer shall, after giving the appellant a reasonable opportunity of being heard, pass as expeditiously as possible such orders thereon as he deems fit.

(3) Every order passed by the adjudicating officer under sub-section (2) shall, subject to any right of appeal under section 19, be final.

CHAPTER 3

Management and control of fishing harbours and fish landing centres

14. Management and control of fishing harbours and fish landing centres :-

(1) The State Government may, for the purposes of this Act, by notification, declare any harbour as a fishing harbour and any centre for landing of fish as a fish landing centre, and thereupon the management and control of such fishing harbour and fish landing centre shall vest in the State Government.

(2) The State Government may, by notification, appoint a Fishery

Terminal Authority and transfer to it the management and control or any fishery harbour and fish landing centre.

(3) The constitution, powers and functions of the Authority referred to in sub-section (2) shall be such as may be prescribed.

(4) The State Government shall have powers to levy and collect fees or charges from the operator of a fishing vessel, transporter of fish and others using the facilities of a fishing harbour or fish landing centre at such rates as that Government may fix:

Provided that the State Government may authorise the Authority referred to in sub-section (2) to exercise all or any of the powers of that Government under this sub-section.

CHAPTER 4 Penalties

15. Power to enter and search fishing vessels :-

(1) The authorised officer may, if he has reason to believe that any fishing vessel is being, or has been, used in contravention of any of the provisions of this Act or the rules or the orders made thereunder or any of the conditions of the licence, enter and search such vessel and impound such vessel with all the fittings and accessories on board and seize any fish found in it.

16. Disposal of seized fish :-

(1) The authorised officer shall keep the fishing vessel impounded under section 15 in such place and in such manner as may be prescribed.

(2) In the absence of any facilities for the storage of the fish seized, the authorised officer may, if he is of the opinion that the disposal of such fish is necessary, dispose of such fish by sale and deposit the proceeds thereof with the State Government in the manner prescribed.

17. Adjudication :-

(1) Where any authorised officer has reason to believe that any fishing vessel is being, or has been, used in contravention of any of the provisions of this Act or the rules or the orders made thereunder or any of the conditions of the licence, he shall make a report to that effect to the adjudicating officer.

(2) The adjudicating officer shall hold, in the prescribed manner, an

enquiry into the matter mentioned in the report after giving all the parties concerned a reasonable opportunity of being heard.

18. Penalty :-

(1) If, after the enquiry held under sub-section (2) of section 17, any person is found to have contravened any of the provisions of this Act or the rules or the orders made thereunder or any of the conditions of the licence, he shall be punished with fine not exceeding,

(a) in the case involving fish,

(i) five thousand rupees, if the value of the fish is one thousand rupees or less, or

(ii) five times the value of the fish, if such value is more than one thousand rupees, and

(b) in any other case,

(i) ten thousand rupees, if the fishing vessel is fitted with mechanical means of propulsion, or

(ii) five thousand rupees, if the fishing vessel is not fitted with mechanical means of propulsion.

(2) The adjudicating officer may, in addition to any penalty that may be imposed under sub-section (1), direct that

(a) the licence of the fishing vessel shall be

(i) cancelled or revoked, or

(ii) suspended for such period as he may deem fit, or

(b) the fishing vessel with all the fittings and accessories on board that may have been impounded, or the fish that may have been seized, under section 15, shall be forfeited to the State Government:

Provided that no fishing vessel shall be forfeited to the State Government if the adjudicating officer, after hearing the owner of such vessel or any person claiming any right to such vessel, is satisfied that the owner or such person, as the case may be, had exercised due care to prevent the commission of the offence.

19. Appeal against order of adjudicating officer :-

(1) Any person aggrieved by an order of the adjudicating officer may, within thirty days from the date of such order, prefer an appeal to the appellate authority: Provided that the appellate authority may entertain any appeal after the expiry of the said period of thirty days, but not beyond sixty days from the date of the order appealed against if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period of thirty days.

(2) No appeal under this section shall be entertained by the appellate authority unless the appellant has, at the time of filing the appeal, deposited the amount of penalty payable under the order appealed against: Provided that on an application made by the appellant in this behalf, the appellate authority may, if it is of the opinion that such deposit will cause undue hardship to the appellant, by order in writing, dispense with such deposit either unconditionally or subject to such conditions as it may deem fit.

(3) On receipt of an appeal under sub-section (1), the appellate authority may, after holding such enquiry as it may deem fit and after giving the parties concerned a reasonable opportunity of being heard, confirm, modify or set aside the order appealed against and the decision of the appellate authority shall be final:

Provided that

(a) if the sum deposited by way of penalty under sub-section (2) exceeds the penalty directed to be paid by the appellate authority, the excess amount, or

(b) if the appellate authority sets aside the order imposing penalty, the whole of the sum deposited by way of penalty, shall be refunded to the appellant.

20. Revision by appellate authority :-

The appellate authority may call for and examine the records of any proceeding before an adjudicating officer or an authorised officer for the purpose of satisfying itself as to the legality or propriety of any finding or order or as to the regularity of the proceeding, and may make such order in respect thereto as it may think fit: Provided that no such order shall be made except after giving the parties concerned a reasonable opportunity of being heard.

21. Power of adjudicating officer and appellate authority in relation to holding of enquiry :-

(1) The adjudicating officer and the appellate authority shall, while holding an enquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:

(a) summoning and enforcing the attendance of any witness and examining him on oath;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavit;

(e) issuing commission for the examination of witness or document.

(2) The adjudicating officer or the appellate authority shall, while exercising any power under this Act, be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

22. Offences by companies :-

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section,

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER 5

Miscellaneous

23. Exemptions :-

(1) Nothing contained in this Act shall apply to survey vessels belonging to the Central Government or any State Government or any undertaking of the Central Government or any State Government.

(2) If the State Government is of the opinion that it would not be in the public interest to apply all or any of the provisions of this Act to any class or classes of fishing vessels used for fishing in any specified area it may, by notification, exempt, subject to such conditions as it may think fit to impose, such class or classes of fishing vessels used for fishing in any such area from the operation of all or any of the provisions of this Act.

24. Protection of action taken in good faith :-

(1) No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of that Government or any officer or other person authorised by that Government for anything which is in good faith done or intended to be done under this Act or the rules or the orders made thereunder .

(2) No suit or other legal proceeding shall lie against the State Government or any officer of that Government or any officer or other person authorised by that Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or the rules or the orders made thereunder.

25. Power to make rules :-

(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

(a) the use of the fishing gear indicating mesh, size or type of

construction or by general description in any specified area under clause (d) of sub-section (1) of section 4;

(b) the matter under clause (b) of sub-section (2) of section 4;

(c) the form of application for licence under sub-section (1) of section 7, the particulars which it shall contain and the fees which shall accompany it;

(d) the matter under clause (d) of sub-section (4) of section 7;

(e) the form of licence under section 7 and the conditions to which the licence shall be subject;

(f) the procedure to be followed in granting or refusing a licence under section 7 or cancelling, suspending, varying or amending such licence, or in registering a vessel under section 9 or cancelling such registration;

(g) the form of the application for registration of a vessel under section 9, the particulars which such application shall contain and the fees which shall accompany the application, the form of the certificate of registration and the form of the register referred to in section (3) of section 9 and the manner in which the registration mark referred to in sub-section (5) of section 9 shall be displayed;

(h) the manner in which the information referred to in section 10 shall be given;

(i) the form, time and manner in, which the returns referred to in subsection (1) of section 11 shall be furnished;

(j) the place and the manner in which an impounded fishing vessel shall be kept under sub-section (1) of section 16 and the manner in which the proceeds of sale of the seized fish shall be deposited with the State Government, under sub-section (2) of section 16;

(k) the procedure of enquiry by the adjudicating officer under sub-section (2) of section 17;

(l) the fees payable for the supply of copies of documents or orders, or for any other purpose or matter involving the rendering of any service by any officer or authority under this Act; and

(m) any other matter which is to be, or may be, provided for by rules under this Act.