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Andaman And



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ANDAMAN AND NICOBAR ADMINISTRATION
SECRETARIAT
NOTIFICATION

Port Blair, dated the 14th May, 2004

No.93/2004./F.No.5-1 (276)/2002-Dev.I.—The Andaman and Nicobar Islands Marine Fishing Regulation, 2003 (No.1 of 2003)- Part II — Section I (No. 63 dated 18th December, 2003) is hereby republished for the information of general public.

By order and in the name of the Lieutenant Governor,

Sd/-
(Theresa Sandanam)
Assistant Secretary (Fisheries)

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 18th December, 2003/Ajrahayana 27, 1925 (Saka)

THE ANDAMAN AND NICOBAR ISLANDS MARINE FISHING
REGULATION, 2003

No. 1 of 2003

Promulgated by the President in the Fifty-fourth Year of the Republic of India.

A Regulation to provide for the regulation of sea fishing of fishing vessels in the waters surrounding the Union Territory of the Andaman and Nicobar Islands and for matters connected therewith.

In exercise of the powers conferred by article 240 of the Constitution, the President is pleased to promulgate the following Regulation made by him:—

CHAPTER I
PRELIMINARY

1. (1) This regulation may be called the Andaman and Nicobar Islands Marine Fishing Regulation, 2003.

(2) It extends to the whole of the Union Territory of the Andaman and Nicobar Islands.

(3) It shall come into force on such date as the Administrator may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of

Short title,
extent and
commence-
ment.

this Regulation and any reference in any such provision to the commencement of this Regulation shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Regulation, unless the context otherwise requires,—

(a) "adjudicating officer" means any officer of the Fisheries Department not below the rank of an Assistant Director of Fisheries authorised under section 3 to exercise the powers conferred on, and to discharge the duties imposed upon, such an officer by this Regulation for such areas as may be specified by notification in the Official Gazette.

(b) "Administration" means the Administration of the Union territory of the Andaman and Nicobar Islands;

(c) "Administrator" means the Administrator of the Union territory of the Andaman and Nicobar Islands appointed by the President under article 239 of the Constitution;

(d) "Appellate Board" means the Appellate Board constituted under section 18;

(e) "authorised officer" means an officer not below the rank of an Assistant Director of Fisheries, authorised by the Administrator by notification in the Official Gazette, to exercise the powers conferred on, and discharge the duties imposed upon such officer by this Regulation;

(f) "fish" means any vertebrate and invertebrate animal in the sea, and includes fish, crustacean, shellfish, sea cucumber (beche-de-mer), sea grasses and corals (dead or living), excluding the animals covered under the Wild Life (Protection) Act, 1972;

53 of 1972.

(g) "Fisheries Department" means the Fisheries Department of the Administration;

(h) "fishery officer" means an officer of the rank of Assistant Fisheries Guard but not above the rank of Assistant Fisheries Development Officer in the Department of Fisheries or any other officer of the Administration or the Central Government, as may be appointed by the Administrator by notification in the Official Gazette;

(i) "fishing" means exploitation, catching or collection of vertebrate and invertebrate animals in the sea excluding animals covered under the Wild Life (Protection) Act, 1972, and includes fish, crustacean, shellfish, sea cucumber (beche-de-mer), sea grasses and corals (dead or living) by applying or operating any fishing gears or culture of fish and its harvest in the waters surrounding the Union territory of the Andaman and Nicobar Islands;

53 of 1972.

(j) "fishing gears" in relation to fishing, includes implements, nets, hooks and lines, cages, traps harpoons but does not include the explosives, poisons and chemicals or any other device of mass destruction;

(k) "fishing vessels" means a ship or boat, whether or not fitted with mechanised means of propulsion, which is engaged in sea fishing for profit and includes a catamaran, country craft, canoe and dinghy engaged in sea fishing;

(l) "port" means the space within such limits as may, from time to time, be defined by the Administrator, by notification in the Official Gazette, for the purposes of this Regulation;

(m) "prescribed" means prescribed by rules made under this Regulation;

(n) "registered fishing vessel" means --

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

53 of 1972.

(ii) a vessel registered as a fishing vessel under section 9;

(n) "specified area" means such area or areas in the waters surrounding the Union territory of the Andaman and Nicobar Islands, but not beyond the territorial waters, as may be specified by the Administrator, by notification in the Official Gazette.

3. The Administrator may, by notification in the Official Gazette, authorise any officer of the Administration or of Central Government to exercise the powers conferred on, and to discharge the duties imposed upon, an authorised officer under this Regulation in such area or areas as may be specified in the notification.

Authorisation of officers.

CHAPTER II

RÉGULATION OF FISHING

4. (1) The Administrator, may, having regard to the provisions of sub-section (2), by order notified in the Official Gazette, regulate, restrict or prohibit—

Power to regulate, restrict or prohibit certain matters within specified area.

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

(b) the number of fishing vessels which may be used for fishing in any specified area; or

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

(d) the use of such fishing gear in any specified area as may be prescribed; or

(e) fishing in any specified area during such period of day or night as may be prescribed.

(2) In making an order under sub-section (1), the Administrator shall have due regard to the following matters, namely:—

(a) the need to protect the interest of different sections of persons engaged in fishing, particularly those engaged in fishing by using traditional fishing crafts such as catamaran, country craft, canoe or dinghy;

(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) the need to lease any specified area surrounding the islands to conserve the fish or shellfish or to culture the fish or shellfish;

(e) the need to lease out right to fish in the territorial waters for fish culture and harvest; and

(f) any other matter as may be prescribed.

5. No owner or master of a fishing vessel shall use, or cause to allow such vessel to be used, for fishing in any manner which contravenes an order made under section 4:

Prohibition on use of fishing vessels in contravention of any 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 area whether specified area or otherwise:

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 traditional fishing craft such as catamaran, country craft, canoe or dinghy in accordance with the provisions of this Regulation.

6. (1) The owner of a fishing vessel may make an application to the authorised officer for the grant of a licence for using such fishing vessel for fishing in any specified area.

Licensing of fishing vessels.

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

(3) The authorised officer may, after making such inquiry as he may deem fit and having regard to the matters referred to in 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 as may be mentioned in such licence.

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

(a) whether the fishing vessel is registered or not;

(b) the condition of the fishing vessel including the accessories and fishing gear with which it is fitted;

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

(d) any other matter as may be prescribed.

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

Provided that different fees and different amounts by way of security may be prescribed in respect of licences for different classes of fishing vessels.

(6) A licence granted under this section may be renewed by the authorised officer subject to the rules made under sub-section (5).

Prohibition of fishing by using fishing vessels which are not licensed.

7. No person shall, after the commencement of this Regulation, carry on fishing in any specified area using a fishing vessel, which is not licensed under section 6:

Provided that nothing in this section shall apply to a fishing vessel, which was being used for fishing in such area immediately before the commencement of this Regulation, for such period as may be specified by the Administrator, by notification in the Official Gazette.

Cancellation, suspension and amendment of licences.

8. (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 6 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 Regulation or any order or rule made thereunder.

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Regulation, the authorised officer may, after giving the holder of the licence a reasonable opportunity of showing cause and being heard, cancel or suspend the licence or forfeit the whole or any part of security, if any, furnished for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that may be made in this behalf, the authorised officer may, for reasons to be recorded in writing, also vary or amend a licence granted under section 6.

Registration of fishing vessels.

9. (1) No owner of a vessel other than a fishing vessel registered under section 11 of the Marine Products Export Development Authority Act, 1972, shall use or cause to be used for the purposes of fishing in the specified area, unless such vessel is registered as a fishing vessel under this Regulation.

13 of 1972

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

(a) before the expiry of one month from the date on which he became the owner of such vessels; or

(b) before the expiry of three months from the commencement of this Regulation, whichever is later:

Provided that the authorised officer may, for reasons to be recorded in writing, extend the time limit for registration by such period or periods not exceeding six months at a time, as he may think fit.

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

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

(4) The registration once made shall continue to be in force until it is cancelled by the authorised officer.

(5) Every vessel registered under this section shall carry the registration mark assigned to it by the authorised officer and such mark shall be displayed on the vessel in the prescribed manner:

(6) No vessel, other than a registered fishing vessel, shall be entitled to apply for a licence under section 6.

10. Where a registered fishing vessel moves from the area of one port to the area of another port, for fishing in that area, 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.

Information to be given to the authorised officer about movement of fishing vessels.

11. (1) Every owner of a registered fishing vessel shall furnish to the authorised officer at such interval and in such manner such return as may be prescribed.

Returns to be furnished by owner of registered fishing vessels.

(2) The authorised officer may enter upon and inspect any registered fishing vessel at any time to verify the correctness of any return furnished by the owner under sub-section (1).

12. (1) Any person aggrieved by an order made under section 6 or section 8 or section 9 may, within thirty days from the date on which the order is communicated to him, prefer an appeal before the adjudicating officer in the prescribed manner:

Appeal against orders made under section 6, section 8 or section 9.

Provided that the adjudicating officer may entertain the appeal after the expiry of the said period of thirty days, but not beyond sixty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the adjudicating officer shall, after giving the parties a reasonable opportunity of being heard, pass such orders thereon as he deems fit as expeditiously as possible, and in any case before the expiry of three months from the date of filing of appeal.

13. Every fishery officer shall assist the authorised officer in the discharge of his duties and may:

Powers and duties of fishery officers.

(a) interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of an offence punishable under this Regulation;

(b) enter into any vessel or premises, for inspecting fishing implements or fish therein and check the possession of the fishing licence and registration of the vessel;

(c) conduct field verification of the fishing implements and crafts available with the parties who have applied for fishing licence; and

(d) on knowing the design of any person to commit an offence punishable under this Regulation, bring the same to the notice of the authorised officer.

Power to enter and search fishing vessels.

14. If the authorised officer has, either on receipt of a report of the fishery officer or otherwise, reason to believe that any fishing vessel is being or has been used in contravention of any provision of his Regulation or of any order or rule made thereunder or of any of the conditions of the licence, he may enter and search such vessel and impound the vessel and seize the fish found in it.

Custody of fishing vessels and disposal of seized fish

15. (1) The authorised officer shall keep the fishing vessel impounded under section 14, in such place and in such manner as may be prescribed.

(2) In the absence of suitable 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 and deposit the proceeds thereof in the prescribed manner in the office of the adjudicating officer.

CHAPTER III

ADJUDICATION

Adjudication.

16. (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 Regulation, or of any rule or order made thereunder or of any of the conditions of the licence, he shall make a report thereof to the adjudicating officer.

(2) The adjudicating officer shall hold an inquiry into the matter mentioned in the report in the prescribed manner after giving all the parties concerned a reasonable opportunity of being heard.

Penalty.

17. (1) The adjudicating officer shall, after the inquiry under sub-section (2) of section 16, decide whether any persons has used, or caused or allowed to be used, any fishing vessel in contravention of any of the provisions of this Regulation or of any rule or order made thereunder or any of the conditions of the licence, and any such person, on being found guilty by the adjudicating officer, shall be liable to such penalty not exceeding,—

(a) in case the vessel involved is fifty feet or above in length,—

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

(ii) five times the value of the fish, if the value of the fish involved is more than one thousand rupees; or

(iii) five thousand rupees, in any other case, being a case not involving fish, as may be adjudged by the adjudicating officer;

(b) in case the vessel involved is below fifty feet in length,—

(i) one thousand rupees, if the value of the fish involved is not more than one hundred rupees; or

(ii) five times the value of the fish, if the value of the fish involved is more than one hundred rupees but not more than one thousand rupees; or

(iii) one thousand rupees, in any other case, being a case not involving fish, as may be adjudged by the adjudicating officer.

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

(a) the registration certificate of the fishing vessel which has been used, or caused or allowed to be used, in contravention of any provision of this Regulation or of any order or rule made thereunder or of any condition of the licence shall be—

(i) cancelled; or

(ii) suspended for such period as the adjudicating officer deems fit; or

(b) the fishing vessel which has been impounded and the fish which has been seized under section 14 shall be forfeited to the Administration:

Provided that no fishing vessel shall be forfeited under clause (b), if the adjudicating officer, after hearing the owner of the vessel or any person claiming any right thereto, is satisfied that the owner or such person had exercised due care and caution for the prevention of the commission of such offence.

18. (1) The Administrator may, by notification in the Official Gazette, constitute an Appellate Board.

Constitution of Appellate Board and appeal to Appellate Board.

(2) The Appellate Board shall consist of three members one of whom shall be a person who is or has been a District Judge and such person shall be appointed as the Chairperson of the Appellate Board and the other members shall be persons having expertise in fisheries or law and such other qualifications as may be prescribed.

(3) The fees and allowances payable to the Chairperson and other members of the Appellate Board shall be such as may be prescribed.

(4) Any person aggrieved by an order of the adjudicating officer may, within thirty days from the date on which the order is communicated, prefer an appeal to the Appellate Board:

Provided that the Appellate Board may entertain any appeal after the expiry of the said period of thirty days, but not after the expiry of sixty days from the date aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) No appeal under this section shall be entertained by the Appellate Board unless the appellant has, at the time of filing the appeal, deposited half of the amount of penalty payable under the order appealed against:

Provided that, on an application made by the appellant in this behalf, the Appellate Board may, if it is satisfied that the deposit to be made under this sub-section 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 to impose.

(6) On receipt of an appeal under sub-section (4), the Appellate Board may, after holding such inquiry as it deems 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 Board shall be final.

(7) Where the amount deposited by the appellant by way of penalty under sub-section (5) exceeds the amount directed to be paid by the Appellate Board, the excess amount so deposited, or where the Appellate Board sets aside the order imposing penalty, the whole amount so deposited by way of penalty, shall be refunded to the appellant.

19. The Appellate Board may call for and examine the records of any order made under section 17 and against the order where no appeal has been preferred under section 18, for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of the procedure and pass such order with respect thereto as it may think fit:

Revision by Appellate Board.

Provided that no such order shall be made without giving a reasonable opportunity of being heard to the parties.

Powers of the
adjudicating
officer and the
Appellate
Board.

20. (1) The adjudicating officer and the Appellate Board shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (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 affidavits; and
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter as may be prescribed.

(2) The adjudicating officer and the Appellate Board, while exercising any power under this Regulation, shall be deemed to be civil courts for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

(3) The Appellate Board shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Regulation and the rules made by the Administrator, the Appellate Board shall regulate its own procedure.

Contravention
by companies.

21. (1) Where a person committing contravention of any of the provisions of this Regulation or any rule or order made thereunder or any of the conditions of a licence granted under it is a company, every person who, at the time the contravention 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 contravention 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 contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention under this Regulation or any rule or order made thereunder or any of the conditions of a licence granted under it 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 contravention 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 IV

MISCELLANEOUS

Exemptions.

22. (1) Nothing contained in this Regulation shall apply to survey vessels belonging to

- (a) the Central Government;
- (b) a State Government;
- (c) a public undertaking.

Explanation.—For the purposes of this sub-section, "public undertaking" means any company or corporation owned or controlled by the Central Government including a Union territory Administration or by a State Government.

(2) If the Administrator is of the opinion that, having regard to the purposes of this Regulation, it would not be in the public interest to apply all or any of the provisions of this Regulation to any class or classes of fishing vessels used for fishing in any specified area or areas, he may, by notification in the Official Gazette, exempt, subject to such conditions as he may think fit to impose upon such class or classes of fishing vessel used for fishing in such specified area or areas, as he may specify in the notification, from the operation of all or any of the provisions of this Regulation:

Provided that no notification under this sub-section shall remain in force for more than six months at a time.

23. (1) No suit, prosecution or other legal proceeding shall lie against the Administrator or any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Regulation or any order or rule made thereunder.

(2) No suit or other legal proceeding shall lie against the Administrator or any officer or authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Regulation or any order or rule made thereunder.

24 (1) The Administrator may, by notification in the Official Gazette, make rules for carrying out the purposes of this Regulation.

(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, namely:—

(a) to regulate, restrict or prohibit the matters under clauses (a), (d) and (e) of sub-section (1) of section 4 and the matters to be considered by the Administrator under clause (f) of sub-section (2) thereof.

(b) the form of the application for grant of licence under sub-section (1), the particulars which it shall contain and the fees which shall accompany it under sub-section (2) of section 6;

(c) the matters to be considered by the authorized officer in granting or refusing to grant a licence under clause (d) of sub-section (4) of section 6;

(d) the form of licence, the fees payable, the conditions therein, and the security for the due performance of the conditions of the licence under sub-section (5) of section 6;

(e) the procedure to be followed in varying or modifying a licence under sub-section (2) of section 8;

(f) the form of application for registration of a vessel as a fishing vessel and the fees which shall accompany such application under sub-section (2) of Section 9;

(g) the form of certificate of registration of a vessel as a fishing vessel, the form of the register referred to in sub-section (3) of section 9 and the manner in which the registration mark of the fishing vessel shall be displayed under sub-section (5) of that section;

(h) the manner in which the information relating to movement of a fishing vessel from the area of one port to another port shall be given under section 10;

(i) the time and manner in which returns by the owner of a registered fishing vessel shall be furnished under sub-section (1) of section 11;

(j) the manner in which appeal shall be preferred before the adjudicating officer under sub-section (1) of section 12;

(k) the place and the manner in which an impounded fishing vessel shall be kept under sub-section (1) of section 15 and the manner in which the proceeds of the seized fish disposed off shall be deposited with the adjudicating officer under sub-section (2) of that section;

(l) the procedure of the inquiry by the adjudicating officer under sub-section (2) of section 16;

(m) the qualifications of the members of the Appellate Board other than the Chairperson under sub-section (2) of section 18;

(n) the fees and allowances payable to the Chairperson and other members of the Appellate Board under sub-section (3) of section 18;

(o) the matter to be prescribed under clause (f) of sub-section (1) of section 20;

(p) the procedure of Appellate Board under sub-section (3) of section 20;

(q) any other matter in respect of which provision is to be, or may be, made by rules under this regulation.

(3) Every rule made under this regulation shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
remove
difficulties.

25. (1) If any difficulty arises in giving effect to the provisions of this regulation, the Administrator may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Regulation as may appear to him to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of three years from the commencement of this Regulation.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and
saving.

26. (1) The Andaman and Nicobar Islands Fisheries Regulation, 1938 is hereby repealed.

(2) The repeal of the said Regulation shall not affect—

1 of 1938.

(a) The previous operations of the said Regulation or anything done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued, or incurred under the said Regulation; or

(c) any penalty, forfeiture or punishment imposed in respect of any offence committed against the said Regulation; or

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said regulation had not been repealed.

A.P.J. ABDUL KALAM,
President.

T.K. VISWANATHAN,
Secy. to the Govt. of India.