



STATUTORY INSTRUMENT.

No. 02 of 2016.

Fisheries Management (Amendment) Regulation 2016.

ARRANGEMENT OF CLAUSES.

1. New Section 7A.
 "7A. Imported Fish in a Licenced Facility."
2. Consideration of Licence Applications (Amendment of Section 9).
3. Drawing on performance bonds (Amendment of Section 13).
4. New Section 22A.
 "21A. Serious Offences or Violations."
5. New Section 24A.
 "24A. Port State Measures."
6. Electronic Transmission and Storage (Amendment of Section 32).
7. Penalties (Amendment of Section 39).
8. New Section 40
 "40. Penalty Notices."
9. Repeal and Replacement of the Schedule.



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No. 02 of 2016.

Fisheries Management (Amendment) Regulation 2016,

Being a Regulation to amend the ***Fisheries Management Regulation 2000,***

MADE by the Head of State, acting in accordance with, the advice of the National Executive Council under Section 76 of the ***Fisheries Management Act 1998*** to come into operation upon publication in the National Gazette.

1. NEW SECTION 7A.

The Principal Regulation is amended by inserting a new section after Section 7 as follows:

“7A. IMPORTED FISH IN A LICENSED FACILITY.

(1) Any fish storage facility or fish factory or fish export facility licence issued in accordance with Section 7 of this Regulation shall only have fish or fish products on its licensed premises that have been first landed to the facility as whole fresh or frozen fish from a licensed and authorised vessel.

(2) It shall be an offence for the premises, the subject of any such licence, to be used for the commercial storage, processing or sale of any fish or fish product, or any combination of these whether canned, frozen or fresh, that was not landed to the facility as whole fresh or frozen fish from a licensed and authorised vessel.

(3) It shall not be an offence under Subsection 2 if the fish storage facility has sought and been issued with a permit in writing by the Managing Director which shall not be unreasonably refused.

(4) Upon conviction of any offence under Subsection (2) the fish storage facility or fish factory or fish export facility licence shall be automatically suspended for a period of 30 days.



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(5) Upon conviction of any or further offences under Subsection (2) within a period of two years from the date of an earlier offence the fish storage facility or fish factory or fish export facility licence shall be suspended in accordance with Section 19 of the Regulation.

(6) A licensed fish storage facility shall maintain such records as are necessary to be able to verify the origin of all fish or fish products stored on its premises.

(7) A licensed fish storage facility shall maintain such records as are necessary to be able to verify the destination of all fish or fish products originating from the premises in such a manner as to satisfy the requirements of any relevant system of catch documentation or catch certification.”.

2. CONSIDERATION OF LICENCE APPLICATIONS (AMENDMENT OF SECTION 9).

Section 9 of the Principal Regulation is amended in Subsection (6) by inserting after paragraph (e) the following new paragraph:

- “(f) there are reasonable grounds to believe that a vessel master, owner, or operator has a history of fishing -
- (i) on board any vessel on a list of vessels maintained by a regional fisheries management organization as a vessel that has engaged in illegal, unreported or unregulated fishing; or
 - (ii) on board any vessel that has been suspended or cancelled due to offences against the Act or Regulations; or
 - (iii) on board any vessel that has been suspended or cancelled due to offences against the Act or Regulations of another State.”.

3. DRAWING ON PERFORMANCE BONDS (AMENDMENT OF SECTION 13).

Section 13 of the Principal Regulation is amended by repealing Subsection (1) and replacing it with the following:

- “(1) The Authority may draw on performance bond for -
- (a) non-compliance in accordance with a term, condition or requirement of the licence or the Act; or
 - (b) or failure to satisfy a penalty imposed under Section 40 of this Regulation.”.

4. NEW SECTION 21A.

The Principal Regulation is amended by inserting a new section after Section 21 as follows:

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“21A. SERIOUS OFFENCES OR VIOLATIONS.

(1) In addition to the power in Sections 19 and 21, the Board, on the recommendation of the Managing Director, may cancel or suspend or refuse to issue a licence if there is reason to believe that the vessel, or its owner or operator has been involved in the commission of a serious offence or violation.

(2) For the purposes of the Act and this Regulation, “serious offence or violation” means -

- (a) Fishing without a valid license, authorization or permit; or
- (b) Fishing without reporting the catch or misreporting the catch; or
- (c) Fishing in a closed area, fishing during a closed season or fishing without any allocation of allowable catch or allowable effort when required to have one, or fishing after having exhausted any such allocation established by the Authority; or
- (d) Fishing for a stock which is subject to a moratorium or for which fishing is prohibited; or
- (e) Fishing with the use of prohibited gear and methods; or
- (f) Falsifying, concealing or tampering with vessel markings, identity or registration to conceal vessel identity or lack of registration; or
- (g) Concealing, tampering or disposing of evidence relating to an investigation; or
- (h) Assaulting, resisting, intimidating, harassing, seriously interfering with, or unduly obstructing or delaying a fisheries law enforcer, authorized inspector or observer or other duly authorized government officer; or
- (i) Tampering with or disabling the vessel monitoring system; or
- (j) Committing multiple violations which taken together constitute a serious disregard of the Act and this Regulation.”.

5. NEW SECTION 24A.

The Principal Regulation is amended by inserting a new section after Section 24 as follows:

“24A. PORT STATE MEASURES.

(1) The Minister may by notification in the National Gazette designate any port or area of any port in Papua New Guinea to which foreign fishing vessels, and Papua New Guinea fishing vessels authorised to fish on the high seas or other country fishery waters may be permitted or denied access.

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(2) A list of such ports or areas shall also be published on the National Fisheries Authority website.

(3) Any Fishery Officer appointed in accordance with the provisions of Section 48 of the Act shall be designated as a port inspector for the purpose of Port State Measures inspections.

(4) No foreign fishing vessel may enter any Papua New Guinea port to land, tranship, package or process fish, or to refuel or resupply their vessel if port entry has been refused in accordance with any approved policy or procedure related to Port State Measures.

(5) An individual or company whose vessel has been refused port entry or other action in accordance with any approved policy or procedure may appeal any such decision in accordance with an appeals procedure approved by the Managing Director.”.

6. ELECTRONIC TRANSMISSION AND STORAGE (AMENDMENT OF SECTION 32).

Section 32 of the Principal Regulation is amended by inserting after Subsection (3) the following new subsection:

“(4) For the avoidance of doubt, the publication of fishery management scheme data on the Authority website relating to approved catch limits, approved effort limits, allocations of catch at an aggregated level, allocations of effort at an aggregated level, or other fishery management or compliance data or information of a type approved by the Board from time to time, shall not constitute a breach of Section 74 of the Act.”.

7. PENALTIES (AMENDMENT OF SECTION 39).

Section 39 of the Principal Regulation is amended by inserting the following new subsections:

“(3) Where a natural person is found guilty of committing the same offence against this regulation within 24 months, a court may impose a penalty not exceeding twice the maximum penalty for the offence.

(4) Where a corporation is found guilty of committing the same offence against this regulation within 24 months, a court may impose a penalty not exceeding four times the maximum penalty for the offence.

(5) Where a Penalty Notice is issued in accordance with Section 40 of this regulation for the same offence within 24 months the penalty notice amount shall be twice the offence provided for in Schedule 2 for a natural person, and 4 times the offence provided for in Schedule 2 for a corporation.”.

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8. NEW SECTION 40.

The Principal Regulation is amended by inserting the following new section after Section 39 as follows:

“40. PENALTY NOTICES.

(1) A fisheries officer may in accordance with any procedure approved by the Managing Director serve a penalty notice on a person or corporation if the fisheries officer is satisfied that the person or corporation has committed an offence against the Act or this Regulation.

(2) Within 28 days of the date the penalty notice was issued, the person or corporation served the penalty notice must, either pay to the Authority the penalty prescribed by the regulations for the offence if dealt with under this section, or elect to have the matter heard before a Court.

(3) If the person or corporation served the penalty notice fails to pay the penalty within the prescribed period -

- (i) the amount required to be paid becomes a civil debt due to the National Fisheries Authority; and
- (ii) the vessel licence is suspended; and
- (iii) the National Fisheries Authority may elect to prosecute the matter in Court.

(4) A penalty notice must be served personally, by registered post, or by email to the address provided by the person or corporation.

(5) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person or corporation is liable to any further proceedings for the alleged offence.

(6) No criminal offence shall be recorded for any offence where a payment is made under this section.

(7) Payment of any penalty under this section is not an admission of liability for the purposes of having been taken to have committed a criminal offence.

(8) If a person or corporation who is served a penalty notice elects to have the matter heard before a Court, the Court shall not, upon conviction, impose a penalty that is lower than the prescribed penalty notice fine.

(9) An offence under a provision of the Act or this Regulation specified in Column A of Schedule 2 is a prescribed offence.

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(10) The amount shown in Column B of Schedule 2 opposite the prescribed offence is the amount of penalty prescribed for the offence if a penalty notice is issued for a category 1 seriousness offence.

(11) The amount shown in Column C of Schedule 2 opposite the prescribed offence is the amount of penalty prescribed for the offence if a penalty notice is issued for a category 2 seriousness offence.

(12) The amount shown in Column D of Schedule 2 opposite the prescribed offence is the amount of penalty prescribed for the offence if a penalty notice is issued for a category 3 seriousness offence.

(13) Category 1 seriousness penalties may be applied by any authorised fishery officer, to the Master or any crew member.

(14) Category 2 seriousness penalties may only be applied to the Master of any vessel, or to any corporation, following approval by the Managing Director.

(15) Category 3 seriousness penalties may only be applied to any corporation following approval by a Summary Administrative Panel established in accordance with Section 64 of the Act.

(16) The category of seriousness of any offence in Subsections 12, 13 and 14 shall be determined having regard to a policy approved by the Board which may include reference to the circumstances prevailing at the time of the offence.

(17) If a payment is made under this section, any catch associated with the offence is to be forfeited, however, any fishing vessel or fishing gear used on the commission of the offence shall remain the property of the owner unless the ongoing possession of that fishing vessel, or fishing gear would be illegal under any circumstances in which case it shall be forfeited and disposed of in accordance with any relevant provisions of the Act, or this Regulation.

(18) The penalty points shown in Column E of Schedule 2 shall be the amount of penalty points that may be used to determine suspension or cancellation of a fishing licence whether associated with a penalty notice or a court prosecution.

(19) Any penalty point expires two years after it was issued, or immediately after the period of any licence suspension.

(20) Where a penalty point is issued following the issue of a penalty notice the penalty point applies from the date of the offence.

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(21) Where a penalty point is issued following a conviction by a court the penalty point applies from the date of the conviction.

(22) Where any vessel is used in the commission of any offences accumulating six points or more during any two year period that licence shall be suspended for a period of 30 days.

(23) Where any vessel is used in the commission of any offences accumulating 10 points or more during any two year period that licence shall be suspended for a period of 90 days during which time the owner or operator shall be required to prepare submissions to the Managing Director outlining why that licence should not be recommended to the Board for cancellation in accordance with the provisions of Section 41B, (2), (3) and (4) of the Act.

(24) Providing the Managing Director is satisfied there are no substantial mitigating circumstances relating to the commission of any offences raised in such submissions, the Managing Director shall recommend to the Board that the licence be cancelled.

(25) The Board shall upon receiving a recommendation from the Managing Director cancel any licence and where the licence is cancelled not agree to issue another licence as a replacement despite the terms of any access or other agreement or contract.

(26) Notwithstanding that any offence may have been committed prior to the coming into effect of these provisions, this section shall be deemed to have been in effect at the time of the commission of the offence.”

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9. REPEAL AND REPLACEMENT OF THE SCHEDULE.

The Schedule to the Principal Regulation is repealed and replaced with the following:

“SCHEDULES.

Schedule 1. - Licence Fees.

Fees for all fishing vessels licence are for the annual licence period or the remaining part thereof.

Domestic Vessels		Locally Based Foreign Vessels		Foreign Vessels	
Length (metres)	Kina	Length (metres)	Kina	Length (metres)	Kina
<10	200	<50	8,000	<50	10,000
10-15	1000	>50	10,000	>50	12,000
15-20	2,000				
20-25	3,000				
25-30	4,000				
30-40	5,000				
40-50	6,000				
>50	7,000				

For fish reefer carriers, motherships, light boats, fuel tankers and other support craft where subject to an access or other agreement, the licence fee is as above.

For freelance fish carrier and fuel tankers not under an access or other agreement, the licence fee is as above.

OTHER LICENCES

Aquaculture:	500 / year, or 100 per hectare – whichever is lesser.
Fish Buyers:	500
Fish Storage/Fish Factory:	5,000 (fish storage combined with fish factory licence)
Fish Export:	2,000 per enterprise
Other activities that may be licensed:	2,000
Duplicate Licence:	200
Licence Application Fee:	200

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Schedule 2. - Penalty Notice Offences and Penalties.

Column A	Column B	Column C	Column D	Column E
Offences	Category 1 offence penalty amount Kina	Category 2 offence penalty amount Kina	Category 3 offence penalty amount Kina	Penalty points
Part 1. - Offences under the Act.				
Section 46,(1)(d), and (2)(d) (fishing without a purse seine licence, or in breach of a purse seine licence condition).	20,000	200,000	2,000,000	5
Section 40B,(6) (where there is a breach of an international conservation and management measure the master, owner, and operator all commit an offence)	8,000	80,000	800,000	3
Section 58, (1)(b),(c), (d), (e), (f), (g), (h), (n), (p), (r), (x), (y), (z), (bb), (cc), and (dd).	8,000	80,000	800,000	3
Section 42(4) (provide false, inaccurate, or misleading information in a licence application – offence by both the person completing the form and the company)	4,000	40,000	400,000	3
Section 58,(1)(a), (i) (j), (k), (l), (m), (o), (q), (s), (t), (u), (v), (a) and (aa).	1,000	10,000	20,000	2
Part 2. - Offences under the Regulation.				
Section 38,(a) (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o).	2000	20,000	40,000	1

Dated this

19th

day of

January

, 2016.


ACTING GOVERNOR-GENERAL.