

REPUBLIC OF PANAMA
MINISTRY OF AGRICULTURE DEVELOPMENT

EXECUTIVE DECREE No. 160

(June 6, 2013)

Which establishes the proceedings to impose administrative sanctions for infractions to the regulations of aquatic resources, aquaculture, marine-coastal and fishing established in Law 44 of November 23, 2006.

THE PRESIDENT OF THE REPUBLIC

In use of his legal and constitutional faculties

WHEREAS:

Article 11, subparagraph c, Executive Decree No. 17 of July 9, 1959, establishes that the Executive Branch is authorized to regulate the fishing in all national territory by means of Executives Decree, and particularly: Take all the necessary measures for rational implementation of the current legal provisions, according to the technical surveys.

Article 28 of Decree Law No. 17 of 1959, stipulates that the prohibitions on fishing will be general and special.

Article 32 of Decree Law No. 17 of 1959, states that special fishing prohibitions refer to those established in this Decree Law or by statutory Decrees and those which refer to closed season, closed zones, minimum sizes for different species, or for the mesh of the nets, restrictions on the intensity of fishing, amount of vessels, permitted fishing gears or limitations on captures.

Article 64, paragraph 1 of Law 38 of June 4, 1996, by which the United Nations Convention of the Law of the Sea is approved in Montego Bay on December 10, 1982, stipulates that the coastal State as well as the other States whose nationals fish in the region the highly migratory species, listed in Annex I, shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species in all the region, both within and beyond the exclusive economic zone. In those regions in which there is no appropriate international organization, the coastal State as well as the other States whose nationals capture these species in the region, will cooperate in order to establish an organization of this type and participate in their work.

Article 92 paragraph 1 of Law 38, 1996, states that the vessels shall sail under the flag of only one State and, except for the exceptional cases expressly referred to in the International Treaties or in this Convention, shall be submitted to the exclusive jurisdiction of said State on high seas. A vessel may not change its flag neither during a voyage nor in a layover, except when effectively transferring ownership or changing registry.

Article 94, paragraph 1 of Law 38 of 1996 states that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over vessels flying its flag.

Article 2 of Law 64 of October 29 of 2008, whereby the Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea of December 10, 1982 related to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks adopted in New York, on December 4, 1995 is approved, establishes that the objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 5, subparagraphs g, j and l of Law 64 of 2008, state that in order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas should, in compliance with their duty to cooperate in accordance with the Convention: protect biodiversity in the marine environment; collect and share, in a timely manner, complete and accurate data concerning fishing activities on, particularly on vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programs; Implement and enforce compliance with conservation and management measures through effective monitoring, control and surveillance systems.

Article 19, paragraph 2, subparagraph i of Law 64 of 2008, establishes that the passage of a foreign vessel shall be considered detrimental to the peace, good

order or security of a coastal State if such vessel carries out any fishing activity within its territorial waters.

The Aquatic Resources Authority of Panama, created by Law No. 44 of November 23, 2006 is the governing body of the State responsible for the compliance and enforcement of the laws and regulations concerning the aquatic resources and the national fishing and aquaculture policies adopted by the Executive Branch;

The Aquatic Resources Authority of Panama, within the scope of its duties will be represented before the Executive Branch by the Ministry of Agricultural Development;

Following the Principles of Fisheries Management, it is the duty of the State to adopt necessary measures for the long-term conservation and sustainable use of fisheries resources, as a precautionary measure, in order to keep these resources available for current and future generations;

The purpose of the Aquatic Resources Authority of Panama, in accordance with paragraph 2 and 3 of article 4 of the aforementioned legal code, is to regulate, promote and implement the measures and technical and administrative proceedings for the rational, sustainable and responsible use of the aquatic resources, in order to protect the national aquatic heritage and contribute to protect the environment, as well as to comply with and enforce the Agreements and International Conventions ratified by Panama.

Articles 52 and 56 of referenced law states that the procedures for the imposition of sanctions must be regulated, without prejudice to the cause resulting from it.

DECREES:

ARTICLE 1. To establish the procedure to impose sanctions to the administrative infractions due to actions or omissions which violate the regulations on aquatic, aquaculture, marine-coastal and fishing resources established in Law 44 of 2006, Laws or decrees which regulate such matter, as well as the International Agreements and Conventions ratified by the Republic of Panama.

Paragraph: The aforementioned regulation includes the resolutions, prohibitions, orders, instructions and authorizations issued by the Aquatic Resources Authority of Panama with the purpose of implementing and enforcing the current regulations on this matter.

ARTICLE 2. The Aquatic Resources Authority of Panama will sanction the vessels, their owners, operators and captains, as well as the crew members or any other person associated to the fishing activity, for violations to the norms regarding aquatic, aquaculture, coastal-marine and fishing resources, committed by vessels with Panamanian registry, within the territorial waters of the Republic of Panama, high seas or within territorial waters of another country.

The above mentioned sanctions will apply to vessels with Panamanian registry wherever they are, as well as to the vessels of any nationality within territorial waters of the Republic of Panama.

ARTICLE 3. The procedure for imposing sanctions shall initiate ex officio by the Aquatic Resources Authority of Panama, as a consequence of an action filed by a natural or legal person, State, or any Regional or Sub regional Fisheries Management Organization (RFMO). The report should at least identify the offenders, conducts or facts constituting the offence, as well as the place, date and period of time of the events.

ARTICLE 4. The sanctioning proceeding will take place in accordance with Law 38 of July 31, 2000.

ARTICLE 5. Once the sanctioning proceeding is started, the Aquatic Resources Authority of Panama will request the Panama Maritime Authority to suspend any proceedings related to the change of ownership or the cancellation of the registry of the vessel until the investigations have finalized.

In the event that the vessel wishes to cancel the certificate of registry or change ownership, it must present a performance bond for the sum of one million Balboas (B/.1,000,000.00) to the Aquatic Resources Authority of Panama

ARTICLE 6. Those who are presumed responsible shall be notified as established by the existing national legislation.

ARTICLE 7. Any expenses caused by the hearing of any evidence requested by the alleged offender to the Aquatic Resources Administration of Panama must be covered entirely by the requester.

ARTICLE 8. For all legal purposes of article 53, paragraph 6, Law 44 of November 23, 2006, the following will constitute an obstruction to the implementation of the orders given by the authorized civil servants or measures taken by them in the compliance of such law:

- a) Not having a satellite communication system on board the fishing vessel or not sending satellite communication signals (coordinates, speed and course) to the fishing control and tracking center of the Aquatic Resources Authority of Panama for over five (5) consecutive days;

- b) Not keeping a fishing logbook on board;

- c) Not having a catch or support license on board

- d) Obstructing the work of those in charge of inspecting, in the performance of their duties of monitoring the compliance with the applicable

conservation and management measures, or the work of the observers while complying with their duties of monitoring the compliance of the provisions in current legislation;

e) Carrying on board, transshipping or landing undersized fish, in violation of the current legislation;

f) Intentionally catching or retaining species in contravention of any applicable conservation measure or management measure adopted by the Regional Fisheries Management Organizations;

g) Performing transshipments in non-authorized ports or in high seas without having an observer on board;

h) Carrying out fishing activities within regional fisheries management organization zones in a manner inconsistent with or in contravention of conservation and management measures of this organization or in violation of them, or not cooperating with said association as established by it.

i) Significant violation of the existing fishing limits or quotas in accordance with the norms established by the Regional Fisheries Management Organizations;

- j) Fishing transfer operations without the transfer declaration;

- k) Other violations which may be determined by the Aquatic Resources Authority of Panama;

ARTICLE 9. In addition to those established in the Executive Decree No. 17 of July 9, 1959, to which the catch or fishing support vessels under the Panamanian flag must abide, the following are considered special fishing prohibitions

- a) Fishing without a valid license, authorization or valid permit issued by the Aquatic Resources Authority of Panama, within areas or fishing zones covered by the International Conventions or Agreements approved by the Republic of Panama;

- b) Catching and not registering or communicating them in a timely fashion, in compliance with the provisions of the conservation and management set forth by the International Agreements or Conventions approved by the Republic of Panama, by the Aquatic Resources Authority of Panama, as well as the existing relevant legislation;

- c) Performing fishing activities within a closed zone, during a closed season, without or after attainment of quota or beyond a closed depth;

- d) Fishing in unauthorized areas, on unauthorized species or with unauthorized fishing gear

- e) Fishing within the Exclusive Economic Zones of a country without a fishing license issued by such country;

- f) Performing transshipment or joint fishing operations with fishing vessels of which there is evidence of being involved in illegal, unreported and unregulated (IUU) fishing, particularly those registered in the list of IUU fishing vessels from a regional fisheries management organization, or has supported or re-supplied such vessels

- g) Transshipment at sea without an observer on board;

- h) Intentionally falsifying or concealing the trademark, identity or registration of a fishing vessel;

- i) Concealing, tampering with or disposing of evidence related to an investigation of an infraction;

- j) Robbing, resisting, intimidating, sexually harassing, interfering with or illegally obstructing or delaying an authorized inspector or observer;

- k) Multiple violations of that which is established in article 8 which together constitute a serious disregard of existing measures

- l) Other violations that may be determined by the Aquatic Resources Authority of Panama;

ARTICLE 10. The infractions mentioned in article 8, constitute a serious fault in accordance with article 54, paragraph 2, of Law 44 of 2006, which will be sanctioned with a fine that goes from ten thousand one Balboas (B/.10,001.00) to a million Balboas (B/.1,000,000.00), and the confiscation of the fishing gear as well as the product, in accordance with the aggravating or mitigating circumstances, the amount of the loss or damage caused , the social and economic repercussions as well as the repetition of the offence.

Failure to comply with the sanctions set out in this article will be handled through coercive jurisdiction.

ARTICLE 11. Due to their nature, infractions to the special fishing prohibitions referred to under article 9 of this Executive Decree, are considered serious and as set out on article 297 of the Fiscal Code, they will be penalized with the confiscation of the product and with a fine of one thousand Balboas (B/.1,000.00) per gross registered ton and a fine of two thousand Balboas (B/.2,000.00) per gross registered ton in the event of a general repeated offence.

A special repeated offence might result in an order to confiscate the vessel.

ARTICLE 12. For all legal purposes stipulated in articles 10 and 11, the amount of the established sanction will be based on the equivalent to the illegal activity carried out, the environmental consequences and the damage produced by such activity to the State.

ARTICLE 13. Recurrence of the violations established in article 8 of this Executive Decree, by the vessels flying the national flag on international service or registered abroad, will be sanctioned as established in article 297 of the Fiscal Code.

ARTICLE 14. In the sanctioning proceedings resulting from the non-compliance to the rules established the International Agreements or Conventions ratified by the Republic of Panama, the current laws, and the conservation and management measures dictated by said Authority regarding the aquatic resources, the catch and support license will be temporarily suspended to the vessel under investigation as long as there is no decision on the merits of the cause.

The abovementioned temporary suspension will be dictated by a reasoned resolution issued by the Aquatic Resources Authority of Panama based on the presumed commission of a serious offence and shall be communicated in a timely manner to the Maritime Authority of Panama and the Regional Fisheries Management Organizations to which the Republic of Panama belongs for all the relevant purposes

ARTICLE 15. Any provision contrary to this Executive Decree is repealed upon entering into force of this Executive Decree

ARTICLE 16. This Executive Decree will come into force as from its promulgation

SUPPORTING LAWS: Decree Law No. 17 of July 9, 1959; Law 38 of June 4, 1996; Law 44 of November 23, 2006; Law 64 of October 29, 2008.

LET THIS BE MADE KNOWN AND PUBLISHED

Given in the City of Panama on the sixth (6th) day of June, two thousand thirteen (2013).

RICARDO MARTINELLI B.

President of the Republic of Panama

OSCAR ARMANDO OSORIO CASAL

Minister of Agricultural Development