

[LEGAL NOTICE NO. 83]

MARITIME TRANSPORT DECREE 2013
(DECREE NO. 20 OF 2013)

Maritime (Navigation Safety) Regulations 2014

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MARITIME (NAVIGATION SAFETY) REGULATIONS 2014

IN exercise of the powers conferred upon me by section 240(1)(t), (u) and (v) of the Maritime Transport Decree 2013, I hereby make the following Regulations—

PART 1 — PRELIMINARY

Short title and commencement

1. These Regulations may be cited as the Maritime (Navigation Safety) Regulations 2014 and shall come into force on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“access lane” means an area or lane designated as an access lane by the Authority;

“aids to navigation” includes—

- (a) any lightship and any floating or other light exhibited for the guidance of ships;
- (b) any description of a fog signal not carried on a ship;
- (c) all marks and signs in aid of marine navigation;
- (d) any electronic or other aid to marine navigation not carried on board any ship;

“Authority” means the Maritime Safety Authority of Fiji;

“buoyancy aid” means—

- (a) a buoyancy aid as defined in New Zealand Standard NZS 5823:1989, 5823:2001 or 5823:2005 or other international standards acceptable to the Authority ; or
- (b) a buoyancy aid which the Chief Executive Officer is satisfied substantially complies with the standard prescribed in paragraph (a) and that provides a minimum of 53 newton of buoyancy.

“Decree” means the Maritime Transport Decree 2013;

“Fiji waters” means all the waters in Fiji comprising of—

- (a) the territorial seas;
- (b) the archipelagic waters;
- (c) the internal waters; and
- (d) the exclusive economic zone;

- “Flag A” means flag A of the International Code of Signals (divers flag) being a swallow tailed flag, or a rigid equivalent of not less than 600 mm by 600 mm, coloured in white and blue with the white portion fastened onto the mast;
- “Flag B” means flag B of the International Code of Signals being a swallow tailed flag, or a rigid equivalent, coloured in red, of not less than 600 mm by 600 mm;
- “length” in relation to a ship, means length overall;
- “navigate” means the act or process of managing or directing the course of a ship on, through, over, or under the water;
- “on the surface of the water” in respect of a seaplane that is taking off from, or alighting on the water, means the seaplane is in contact with the water surface;
- “personal flotation device” means any serviceable buoyancy aid that is designed to be worn on the body and that is certified by the Authority or a recognised maritime administration;
- “port area” means prescribed ports including marinas, wharves, harbour, including a port that is declared under the Sea Ports Management Act 2005, the Customs Act 1986 and section 117 of the Decree;
- “marine notice” means a public notice published by the Authority;
- “raft” means an inflatable craft manoeuvred by—
- (a) oars or paddles; or
 - (b) a combination of oars and paddles,
- but does not include inflatable kayaks, white water sledges, tubes or equipment used for river surfing;
- “recognised maritime administration” means an authority that the Chief Executive Officer considers is competent to certify a personal flotation device’s compliance with a standard;
- “recreational craft” means a ship that is—
- (a) a pleasure craft;
 - (b) solely powered manually; or
 - (c) solely powered by sail;
- “reserved area” means an area of water reserved by the Authority for special purposes such as rafting competitions, jet ski operation and other similar activities;
- “river” includes a stream and any modified or artificial watercourse but does not include any part of a river within the ebb and flow of the tide at ordinary spring tides;

“Ships Reporting System” means ships reporting system as required under Chapter V Regulation 11 of SOLAS;

“Ships Routeing System” means ships routeing system as required under Chapter V Regulation 10 of SOLAS; and

“unpowered craft” means powered only by a craft’s occupant or occupants using a single or double bladed paddle as a lever without the aid of a fulcrum provided by rowlocks, thole pins, crutches or like arrangements, but does not include a raft manoeuvred solely by paddles.

Purpose

3.—(1) These Regulations set basic national navigation requirements for modern boating conditions and safety expectation.

(2) These Regulations—

- (a) introduce new requirements for the carriage of personal flotation devices (buoyancy aids designed to be worn on the body) on pleasure craft whereby provision is made for exemptions to these requirements in restricted circumstances where compliance with a regulation is impractical or inappropriate;
- (b) make the wearing of personal flotation devices mandatory in some circumstances; and
- (c) set a standard for the required personal flotation devices which is based on the New Zealand standard NZS 5823:2001 and proposes that personal flotation devices of other national or international standards which substantially comply with the New Zealand standard may be accepted by the Chief Executive Officer as complying with the requirements of these Regulations.

Application

4. These Regulations shall apply to ships in Fiji waters.

PART 2—OPERATING REQUIREMENTS

Personal flotation devices

5.—(1) No person in charge of a recreational craft may use a recreational craft unless there are on board, and in a readily accessible location, sufficient personal flotation devices of an appropriate size for each person on board.

(2) Sub-regulation (1) shall not apply to—

- (a) a person using a surfboard or similar unpowered craft;
- (b) a person using a sailboard or windsurf, if a wetsuit is worn at all times;
- (c) a diver on a boat of 7 metres or less in length, that is used for recreational diving within infringing reefs, if a wetsuit is worn at all times; and
- (d) a person training for or participating in a sporting event, if the training or the event is supervised in accordance with the safety system of a national sporting organisation approved by the Chief Executive Officer.

(3) No person in charge of a recreational craft may use that recreational craft in circumstances where tides, river flows, poor visibility, rough seas, adverse weather conditions, emergencies or other situations cause danger or a risk to the safety of the person on board, unless every person on board is wearing a properly secured personal flotation device of an appropriate size for that person.

(4) No operator of a ship may use the ship to tow any person unless the person being towed wears a properly secured personal flotation device of an appropriate size for that person.

(5) No person may cause himself or herself to be towed by any ship, unless the person being towed wears a properly secured personal flotation device of an appropriate size for that person.

(6) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Minimum age for operating power driven ships

6.—(1) No person under the age of 16 years shall be in charge of, or propel or navigate, a power driven ship that is capable of a speed exceeding 10 knots unless—

(a) he or she is under the direct supervision of a person over the age of 16 years; and

(b) the person directly supervising is in immediate reach of the controls,

unless exempted under sub-regulation (3).

(2) The owner of a ship under sub-regulation (1) shall not allow any person under the age of 16 years to be in charge of or propel or navigate that ship, unless he or she is under the direct supervision of a person over the age of 16 years who is in immediate reach of the controls.

(3) The Chief Executive Officer may grant an exemption in accordance with section 33 of the Decree for any specified place or places, to a person under the age of 16 years for transport, training, competitions or other sporting events, if the Chief Executive Officer considers that the person—

(a) is competent to propel or navigate a power driven ship exceeding 10 knots;

(b) is aware of relevant navigation safety rules; and

(c) will be under adequate supervision during the proposed activity or activities.

(4) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Speed of ships

7.—(1) Except for ships under sub-regulations (4) and (5), no person may propel or navigate a ship including a ship towing a person or object at a speed exceeding 5 knots –

(a) within 50 metres of any other ship, raft, or person in the water;

(b) within 200 metres of the shore or of any structure; or

(c) within 200 metres of any ship or raft that is flying Flag A.

(2) No person may propel or navigate a powered ship at a speed exceeding 5 knots while any person on board has any portion of his or her body extending over the fore part, bow or side of the ship.

(3) No person may cause himself or herself to be towed by a ship (whether or not on a water ski, aquaplane or other similar object) at a speed exceeding 5 knots in any circumstance specified under sub-regulation (1).

(4) Sub-regulation (1)(a) and (b) shall not apply to a—

- (a) ship over 500 gross tonnage, if the ship cannot be safely navigated;
- (b) sailing ship powered by sail in relation to any other ship powered by sail, while the ships are participating in an organised yacht race or for training purposes;
- (c) craft training for or participating in competitive rowing or paddling; or
- (d) Fiji Navy ship, police ship, pilot ship and a tug, or any other ship required to undertake emergency response.

(5) Sub-regulation (1)(b) shall not apply to a ship operating in an access lane or a reserved area for the purpose for which the access lane or reserved area was declared.

(6) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Wake

8.—(1) Subject to regulation 7, any person who propels or navigates a recreational craft or any other propelled ship must ensure that its wake does not cause unnecessary danger or risk of damage to other ships or structures, or risk of harm to other persons.

(2) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Look-outs on ship used for water skiing or towing any person

9.—(1) No person—

- (a) in charge of a ship shall use the ship to tow any person; or
- (b) shall cause himself or herself to be towed,

at a speed exceeding 5 knots unless there is a responsible designated look-out to immediately notify the person in charge of the ship of any mishap that occurs to the person who is being towed.

(2) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Towing between sunset and sunrise

10.—(1) No person shall, between sunset and sunrise,—

- (a) operate a ship that is towing any person on water skis, an aquaplane, surfboard, or similar object; or
- (b) cause himself or herself to be towed.

(2) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Conduct in access lanes

11.—(1) No person may propel, navigate or manoeuvre a ship in an access lane other than for the purpose for which it is declared.

(2) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Marking of access lanes

12.—(1) Any person intending to mark and use an access lane must apply to the Authority.

(2) Where an access lane is defined and approved by the Authority, the applicant must ensure that the access lane is demarcated with appropriate channel markers approved by the Authority.

(3) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Reserved areas

13.—(1) No person shall obstruct any other person while that other person is using a reserved area for the purpose for which it is reserved.

(2) Where there is a reserved area, the Authority must ensure that—

- (a) adequate signs are provided in the vicinity of the area; and
- (b) the area of water of the reserve is marked appropriately with the approval of the Authority.

(3) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Anchoring and obstructions

14.—(1) No person may anchor a ship so as to—

- (a) obstruct the passage of other ships or obstruct their approach to any wharf, pier or jetty; or
- (b) create a hazard to other ships at anchor.

(2) When a ship is moored in a dock or alongside a wharf, jetty, pier or other landing place, the owner or master of the ship must ensure that—

- (a) the ship is securely fastened to the dock, wharf or other landing place; and
- (b) an adequate and safe means of access to the ship is provided that is properly installed, secured, and adjusted to suit any tidal condition.

(3) No person may place any obstruction, including any fishing apparatus, in any waters that is likely to—

- (a) restrict navigation;

- (b) cause injury or death to any person; or
- (c) cause damage to any ship or any property.

(4) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Damage to aids to navigation

15.—(1) No person may tie a ship to any aid to navigation without the written permission of—

- (a) the Authority; or
- (b) if the aid to navigation is privately owned, by the owner of that aid to navigation.

(2) No person may damage, remove, deface or otherwise interfere with an aid to navigation.

(3) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Distance from oil tankers or other ships showing Flag B

16. Where possible, the master of a ship must not allow that ship to approach within 200 metres of—

- (a) an oil tanker or any other ship that is showing Flag B by day or a red all round light by night; or
- (b) any wharf, quay, pier, jetty, or premises belonging to the State.

Duty of master of a ship under 500 gross tonnage

17.—(1) The master of a ship under 500 gross tonnage must not allow that ship to impede the navigation of any ship of 500 gross tonnage or more, if the ships are in the port area.

(2) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

River safety rules

18.—(1) A person in charge of a ship on a river shall—

- (a) ensure that the ship keeps to the starboard (right) side of the river channel;
- (b) if going upstream, give way to any ship going downstream; and
- (c) not operate the ship unless river and weather conditions permit safe operation of the ship.

(2) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

Flags and signals

19.—(1) The master of any ship carrying explosives and oil tankers who intends to load or unload, in a port area shall display Flag B by day and an all-round red light at the masthead or where it can best be seen at night.

(2) The master of any ship from which dive operations are in progress and any person diving from such a ship shall ensure that Flag A is displayed in such a manner that it can be clearly identified by the watch keeper of another ship at a distance in excess of 200 metres.

(3) Any person who contravenes this regulation commits an infringement offence and shall be liable to a fine of \$200.

PART 3—ADMINISTRATION

Temporary events

20.—(1) Any person intending to conduct a race, speed trial, competition or other organised water activity must apply to the Chief Executive Officer—

- (a) to temporarily suspend the application of regulation 7 or any sub-regulation thereof during the conduct of the race, speed trial, competition or other organised water activity; and
- (b) to temporarily reserve the area for the purpose of that activity.

(2) If the Chief Executive Officer is satisfied that an application may be granted without endangering the public, and that any consultation with affected parties that the Chief Executive Officer considers necessary has been undertaken, he or she may grant the application for a specified period subject to such conditions as he or she may specify in the interests of maritime safety.

(3) No grant of an application under sub-regulation (2) shall have effect unless the applicant, not less than 7 days before the commencement of the activity, publicly notifies the period of the activity and details of the temporary suspension or the reserved area.

Removal or alteration of speed restriction

21.—(1) A person may apply to the Chief Executive Officer to have any speed limit prescribed under regulation 7 removed or altered for waters specified in the application.

(2) An application under sub-regulation (1) must not be granted unless the Chief Executive Officer, as applicable, is satisfied that—

- (a) the application has been published in a daily newspaper or the *Gazette*;
- (b) affected persons have had reasonable opportunity to comment on the application;
- (c) the applicant has provided evidence of the consultation undertaken with affected persons and any navigation safety concerns arising from the consultation process and any measures taken to address the concerns raised; and
- (d) removal or alteration of the speed limit shall not unacceptably increase the risk to navigation safety or endanger persons using waters that are the subject of the application approved.

(3) Any application granted under sub-regulation (1) must be notified in the marine notice as soon as practicable after it is granted.

(4) The Chief Executive Officer may approve an application in accordance with sub-regulation (2) for a specified period subject to such conditions as he or she may specify in the interest of maritime safety.

Appointment of Safe Boating Advisors

22.—(1) The Chief Executive Officer may appoint a suitably qualified person as a Safe Boating Advisor for the purpose of promoting safety awareness on recreational craft subject to any condition the Chief Executive Officer considers necessary in the interests of maritime safety.

(2) The Chief Executive Officer may revoke the appointment of a person under sub-regulation (1) by notice in writing setting the grounds for revocation.

PART 4—MARINE PROTECTED AREAS AND MARINE RESERVES

Marine protected areas and marine reserves

23.—(1) The Authority shall be notified of any marine protected areas or marine reserve applicable to Fiji waters that limit navigation of ships or that is to be protected by Ships Routeing System or Ships Reporting System.

(2) Proposals for Marine Protected Areas and Marine Reserves that will be affected by international shipping activities must be submitted to the International Maritime Organisation by the Authority for approval and must comply with the provisions of IMO resolution A.927(22) *Guidelines for the designation of special areas under MARPOL 73/78 and guidelines for the identification and designation of particularly sensitive sea areas* and IMO resolution A.982(24) *Revised Guidelines for the identification and designation of particularly sensitive sea areas*.

(3) Proposals for Ships Routeing Systems or Ships Reporting Systems as a result of the declaration of marine protected areas or marine reserves must be submitted to the International Maritime Organisation by the Authority for approval and must comply with the provisions of IMO resolution A.572(14) *General Provisions on Ship's Routeing* and IMO resolution MSC.111(73) *Guidelines and criteria for ship reporting systems* and Chapter V, Regulation 11 of SOLAS.

(4) Any declared marine protected area and marine reserve must be clearly marked on nautical charts and if possible marked with buoys.

(5) Discharge from ships of any marine pollutant is prohibited in marine protected areas and marine reserves.

(6) Any person who contravenes this regulation commits an offence and shall be liable upon conviction to a fine not exceeding \$200,000 or to a term of imprisonment not exceeding 2 years, and in the case of a continuing offence, to a further fine not exceeding \$10,000 for each day or part thereof during which the act constituting the offence continues.

Made this 14th day of December 2014.

P. TIKODUADUA
Minister for Infrastructure and Transport