

MONTSERAT

**FISHERIES (AMENDMENT) BILL 2023**

No. 19 of 2023

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**I ASSENT**

**Governor**

DATE:

M O N T S E R R A T

No. 19 of 2023

**A BILL FOR**

AN ACT TO AMEND THE FISHERIES ACT (CAP. 9.01) TO  
PROVIDE FOR FISHING VESSEL SAFETY.

BE IT ENACTED by The King’s Most Excellent Majesty, by and  
with the advice and consent of the Legislative Assembly of  
Montserrat, and by the authority of the same as follows:—

**1 Short title**

This Act may be cited as the Fisheries (Amendment) Act,  
2023.

**2 Interpretation**

In this Act the “**principal Act**” means the Fisheries Act  
(Cap. 9.01)

**3 Section 2 amended**

Section 2 of the principal Act is amended—

(a) by deleting the definition of “authorised officer”  
and inserting the following—

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“**authorised officer**” means—

- (a) the Chief Fisheries Officer;
  - (b) a customs officer or police officer;
  - (c) an inspector or surveyor appointed under section 124 of the Merchant Shipping (Registration) Act (Cap. 7.11); and
  - (d) any other person or category of persons designated as an authorised officer by the Minister under section 46;”;
- (b) by inserting the following definition in the correct alphabetical sequence—

“**Maritime Administration**” means the Maritime Administration established under section 3A(2) of the Merchant Shipping (Registration) Act;

“**Merchant Shipping (Registration) Act**” means the Merchant Shipping (Registration) Act (Cap. 7.11);”.

#### 4 Section 2A inserted

The principal Act is amended by inserting the following as section 2A—

##### “2A. Meaning of “seaworthy”

- (1) In this Act, “**seaworthy**” means, having regard to the nature of the fishing vessel, that by reason of the matters mentioned in subsection (2), the fishing vessel is fit to—
- (a) go to sea without serious danger to human life;
  - (b) remain at sea without serious danger to human life; and
  - (c) go on a voyage without serious danger to human life.
- (2) The matters are—

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- (a) the condition or the suitability for its purposes of—
    - (i) the fishing vessel or its machinery or equipment (including its life saving equipment); or
    - (ii) any part of the fishing vessel or its machinery or equipment;
  - (b) the operation of the fishing vessel and the sufficiency and competency of the crew;
  - (c) the loading of the fishing vessel; and
  - (d) any other matter relevant to the safety of the fishing vessel.
- (3) The term “seaworthiness” shall be construed accordingly.”.

**5 Section 9 amended**

Section 9 of the principal Act is amended—

- (a) by deleting subsection (4) and substituting the following subsections—

“(4) On receipt of the application made under this section, the Chief Fisheries Officer shall as soon as practicable—

- (a) inspect the fishing vessel to which the application relates and any relevant documentation in respect of the vessel to ensure that it is fit for the purpose of fishing; and
- (b) arrange for the Maritime Administration to inspect the seaworthiness of the vessel.

(4A) If, following the inspections referred to in subsection (4)—

- (a) the Chief Fisheries Officer is satisfied that the vessel is fit for the purpose of fishing; and

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- (b) the Maritime Administration reports that it is satisfied that the vessel is seaworthy,
- the Chief Fisheries Officer shall recommend to the Minister that the applicant be granted a certificate of registration.”;
- (b) in subsection (5), by deleting the words “seaworthy and”; and
- (c) by inserting the following immediately after subsection (5)—
- “(5A) An inspection by the Maritime Administration under subsection (4)(b) shall be undertaken by—
- (a) a surveyor appointed under section 124 of the Merchant Shipping (Registration) Act; or
- (b) a person authorised under section 125 of the Merchant Shipping (Registration) Act.
- (5B) A person undertaking an inspection under subsection (4)(b) has, in addition to the powers under section 47, the powers of a surveyor in sections 126 and 127 of the Merchant Shipping (Registration) Act.”.

**6 Section 12 amended**

Section 12 of the principal Act is deleted and the following is substituted—

**“12. Procedure in case of loss or destruction**

- (1) This section applies where a registered fishing vessel is a total loss or otherwise destroyed by shipwreck, demolition, fire or sinking.
- (2) In the event of a registered fishing vessel being in a condition referred to in subsection (1), the owner shall, immediately on obtaining knowledge of

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- the event, notify the Chief Fisheries Officer.
- (3)** On receiving a notice under subsection (2), the Chief Fisheries Officer—
- (a)* shall make an entry of the event on the register; and
- (b)* may terminate the registration of the fishing vessel.
- (4)** If the Chief Fisheries Officer terminates a registered fishing vessel’s registration under subsection (3)*(b)*, the Chief Fisheries Officer shall issue a closure transcript to the owner.
- (5)** On receipt of a closure transcript under subsection (4), the owner of the registered fishing vessel shall immediately surrender the certificate of registration issued in respect of the vessel.”.

**7 Section 13 amended**

Section 13 of the principal Act is amended by deleting subsections (1) and (2) and substituting the following—

- “(1) The Chief Fisheries Officer or an officer authorised by him may at any time inspect without notice any registered fishing vessel for the purpose of determining whether the vessel is fit for the purpose of fishing.
- (1A)** If, following an inspection under subsection (1), the Chief Fisheries Officer or an officer authorised by him has reasonable grounds for believing that the vessel is not seaworthy, the Chief Fisheries Officer shall report the vessel to the Maritime Administration.
- (1B)** The Maritime Administration or an inspector appointed under section 124 of the Merchant Shipping (Registration) Act—

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- (a) shall inspect a registered fishing vessel reported to it under subsection (1A); and
  - (b) may inspect any other registered fishing vessel at any time, without notice for the purpose of determining whether the vessel is seaworthy.
- (1C)** For the purposes of an inspection under subsection (1B), the Maritime Administration or inspector has, in addition to the powers under section 47, the powers of an inspector under sections 126, 127 and 128 of the Merchant Shipping (Registration) Act.
- (1D)** If on an inspection under subsection (1) or (1B) the person carrying out the inspection is satisfied that a vessel is—
  - (a) not fit for the purpose of fishing; or
  - (b) not seaworthy,the person shall notify the Minister.
- (2)** Where the Minister receives a notification under subsection (1D), the Minister shall—
  - (a) suspend the certificate of registration; and
  - (b) require the owner or person to whom the certificate of registration was issued to effect within such time as may be specified necessary changes or improvements to the vessel to make it fit for the purpose of fishing or seaworthy.”.

**8 Section 14 amended**

Section 14 of the principal Act is amended by deleting subsection (5)(c)(iii) and substituting the following—

“(iii) is not in compliance with regulations made under section 67(2)(s) or any other enactment that relates to the safety or seaworthiness of fishing vessels; and”.

**9 Section 25A inserted**

The principal Act is amended by inserting the following as section 25A—

**“25A. Prohibition on ships entering restricted access areas**

- (1)** For the purpose of protecting local fisheries the Maritime Administration may declare that—
  - (a)* an area of water within the territorial sea is a restricted access area, and
  - (b)* ships or ships of a particular category are excluded from entering the restricted access area (“excluded ships”).
- (2)** An excluded ship is prohibited from entering a restricted access area unless the master or owner of the ship has obtained the prior approval of the Maritime Administration, or a person authorised to act on the Maritime Administration’s behalf, to enter the restricted access area.
- (3)** The Maritime Administration may make a declaration under subsection (1) only if—
  - (a)* it is satisfied that the declaration is necessary to prevent severe damage to—
    - (i)* the fishery waters, fishery grounds or the marine environment surrounding such waters or grounds within the restricted access area; or

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- (ii) equipment used or deployed for fishing in the restricted access area, including fishing nets, fishing pots or fishing traps and associated infrastructure; and
  - (b) it has first consulted with such persons in Montserrat, or representatives of such persons, who, in the opinion of the Maritime Administration, will be affected by the declaration.
- (4) A restricted access area declared under this section shall not include a port or port limits specified in an Order made by the Governor in Council under the Port Authority Act (Cap 7.09).
- (5) A declaration under this section shall specify —
- (a) the coordinates and boundaries of the restricted access area;
  - (b) the reasons for the declaration;
  - (c) the ships or categories of ship that are prohibited from entering the restricted access area;
  - (d) how the approval of the Maritime Administration may be obtained for an otherwise prohibited ship to enter the restricted access area;
  - (e) the conditions (if any) which the Maritime Administration may impose on the entry of any ship into the restricted access area;
  - (f) when the declaration will expire or, if it is to operate indefinitely, that it remains in force until further notice;
  - (g) that it is a criminal offence for an excluded ship to enter a restricted access area unless the master or owner of the ship has obtained the prior approval of the Maritime

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Administration, or a person authorised to act on the Maritime Administration's behalf, to enter the restricted access area.

- (6) A declaration under this section may be varied or revoked by a further declaration.
- (7) If the Maritime Administration is satisfied that a declaration is no longer necessary in whole or in part for the purpose for which it was made, the Maritime Administration shall vary or revoke the declaration as soon as is reasonably practicable.
- (8) A declaration under this section shall be published—
  - (a) in the Gazette; or
  - (b) in such other manner and place, including an official website, that will enable the existence of the declaration and its contents to be brought to the attention of those who may be affected by it.”.

**10 Sections 41A and 41B inserted**

The principal Act is amended by inserting the following as sections 41A and 41B—

**“41A. Offences in respect of the registration of fishing vessels**

- (1) A person who knowingly or recklessly furnishes information which is false in a material particular in respect of the registration of a fishing vessel commits an offence and is liable on summary conviction to a fine of \$10,000.
- (2) An owner who fails, without reasonable cause, to surrender a certificate when required to do so under section 12(5) commits an offence and is liable on summary conviction to a fine of \$5,000.

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**41B. Offence of entering a restricted access area**

- (1) A master or owner of a ship which enters a restricted access area in contravention of the prohibition in subsection 25A(2) commits an offence and shall be liable on summary conviction to a fine of \$25,000.
- (2) It is a defence for a person charged with an offence under subsection (1) if that person proves that entering the restricted access area —
  - (a) was necessary for the purpose of securing the safety of the ship or another ship;
  - (b) was done for the purpose of saving life or protecting the marine environment;  
or
  - (c) was unavoidable due to the stress of weather or other force majeure.”.’

**SPEAKER**

Passed by the Legislative Assembly this day of \_\_\_\_\_, 2023.

**CLERK OF THE LEGISLATIVE ASSEMBLY**