

THE SARAWAK RIVERS ORDINANCE, 1993
**THE SARAWAK RIVERS
(SUNGAI SARAWAK BARRAGE) REGULATIONS, 1997**

[Swk. L.N. 67/97]

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(Made under section 38(1)(u))

In exercise of the powers conferred by section 38(1)(u) of the Sarawak Rivers Ordinance, 1993 *[Cap. 4]*, the Minister, with the approval of the Yang di-Pertua Negeri, has made the following Regulations:

PART I
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the **Sarawak Rivers (Sungai Sarawak Barrage) Regulations, 1997**, and shall come into force on the 1st day of December, 1997.

Interpretation

2. In these Regulations—

“barrage” means the barrage across the river from Demak Laut Industrial Park to the opposite bank thereof, and situated within the area as more particularly described in the First Schedule, and includes the gates and all other ancillary structures and facilities thereof;

“barrage area” means that area in the river described in the First Schedule, demarcated by the Controller, with the approval of the Minister, to regulate and facilitate the movement of vessels through the barrage;

“barrage operator” means any person, corporation, firm or statutory body appointed by the Board, with the approval of the Minister pursuant to regulation 3, and includes any person acting for or on behalf, or who performs the functions and exercises the powers, of a barrage operator;

“bridge” means the bridge spanning over the barrage and shiplock from Demak Laut Industrial Park to the opposite bank of the river;

“holding area” means an area on the river demarcated by the Controller, whereby vessels wait, in turn, for clearance or instructions from the barrage operator, to enter the barrage area for their passage through the shiplock;

“master”, in relation to a vessel, means her captain or any person having control thereof, and includes a pilot;

“river” means the Sungai Sarawak;

“shiplock” means the shiplock of the barrage, and includes its gates.

PART II

OPERATION AND CONTROL OF BARRAGE

Appointment of barrage operator

3. The Board may, with the approval of the Minister, by notification in the *Gazette*, appoint a barrage operator to operate and maintain the barrage.

Duties of barrage operator

4.—(1) The barrage operator shall be responsible for—

(a) operating the barrage and the shiplock in accordance with these Regulations and with such directions as may be given to him from time to time by the Controller;

(b) maintaining the barrage and shiplock, to the satisfaction of the Controller, to ensure the safe passage of riverine traffic through the barrage and shiplock;

(c) regulating traffic within the barrage area and the holding area in the river;

(d) controlling or regulating the water levels upstream of the river from the barrage so as to prevent or alleviate or mitigate flooding, siltation of the river particularly in the barrage area, and controlling and improving the quality of water in the river; and

(e) discharging such other functions as may be assigned to him by the Board.

(2) Without prejudice to the provisions of paragraph (1), it shall be the duty of the barrage operator—

(a) to regulate, direct, guide and assist the passage of vessels through the barrage;

(b) to provide tug boat services or such other assistance as may be required to vessels through the barrage;

(c) to regulate and control activities within the barrage area, including on the banks of the river within the said area;

(d) to regulate and control activities on the bridge, provided that the control of vehicular traffic thereon shall remain with the appropriate authority appointed under the Road Transport Act 1987 [Act 333.];

(e) to maintain and, where necessary, to repair the barrage and the shiplock;

(f) to maintain all telecommunication facilities established and/or necessary for the operation of the barrage and the regulation of riverine traffic through the barrage or within the barrage area and holding area;

(g) to maintain a good traffic control lookout system in the river;

(h) to maintain a good warning telemetry system, to monitor the levels of fluvial or tidal waters in the river; and

(i) subject to regulation 6, to open or close the barrage gates and shiplock for the purpose of flood water and water quality control in the river.

Procedures and direction

5.—(1) The barrage operator shall operate, manage and maintain the barrage in accordance with the procedures and directions issued by the Controller from time to time.

(2) All accidents occurring within the barrage area shall be reported in writing by the barrage operator immediately to the Controller who may direct such investigation as he may deem necessary in regard thereto.

(3) All reports of investigations on accidents in the barrage or shiplock or barrage area shall be submitted by the Controller, with his own recommendations and comments, to the Minister.

Continuous opening for traffic

6.—(1) Subject to paragraph (3), the shiplock shall be operated continuously for the passage of traffic in the river.

(2) Except for the purposes of regulating water levels on the river, the barrage shall not be closed to riverine traffic without the prior approval of the Controller.

(3) Where the shiplock is open for the purpose of preventing or alleviating or mitigating floods or controlling flood levels in the river or to improve quality of water therein, the barrage operator may, in the interest of navigation safety, issue an order that no vessels shall pass through the barrage for such period as he may deem fit or appropriate.

(4) It shall be the duty of the barrage operator to give adequate notice and by announcement in the press of any intended closure of the barrage to riverine traffic.

Barrage area

7.—(1)(a) No vessel, whether or not she intends to pass through the shiplock, shall enter and remain in the barrage area without the express permission of the barrage operator.

(b) Any vessel proceeding in, or sailing or passing through, the barrage area shall comply with orders or instructions issued by the barrage operator.

(c) The barrage operator may order or instruct any vessel whose presence in the barrage area is not authorized by him to leave the said area.

(d) The master of any vessel who fails to comply with any order or instruction issued by the barrage operator under subparagraph (b) or (c) shall be guilty of an offence and on conviction shall be liable to a fine of one thousand ringgit.

(2) The barrage operator, in consultation with the Controller, may place or erect buoys, beacons, signs, markers or instruments in the barrage area either to demarcate the limit or boundary thereof or for the purpose of guiding vessels into or out of the shiplock.

(3) No pipelines or cables or structures may be built or laid below water levels within the barrage area except with the prior written approval of the Controller.

(4) The extraction of sands or prospecting for minerals or other materials within the barrage area is prohibited.

(5) No fishing or water sports shall be permitted within the barrage area.

(6) No building, wharf, pier, ramp or other structures shall be built or constructed on the banks of the river within the barrage area without the prior written approval of the Controller.

(7) The barrage operator, acting with the approval of the Controller, may remove, demolish or dismantle any unauthorized building, wharf, pier, ramps or other structures built or erected on the banks of the river within the barrage area.

Holding area

8.—(1) The barrage operator may, in consultation with the Controller, place buoys, beacons, signs, markers or instruments in the river to demarcate the holding area in the river.

(2) The barrage operator shall not alter the limit or boundary of a holding area without the prior approval of the Controller.

PART III

PASSAGE THROUGH BARRAGE, *ETC.*

Restrictions on vessels

9. The barrage operator may, with the approval of the Controller, permit any vessel—

- (a) exceeding 500 gross tonnage; or
- (b) having a dimension in excess of—
 - (i) width — 23 metres;
 - (ii) length — 95 metres;
 - (iii) air draught — 15 metres;
 - (iv) water draught — 7 metres,

to pass through the shiplock on such terms and conditions as the Controller may impose.

Speed

10. All vessels entering or leaving the shiplock shall proceed at a speed of not more than 0.4 knot.

Request for passage

11.—(1) The master or the agent of a vessel other than a speed boat and small craft or pleasure craft, shall notify the barrage operator, at least one hour before the time when the vessel desires to pass through the barrage. Such notice shall be given through telecommunication facilities maintained by the barrage operator for the purposes of communication with vessels passing through the barrage.

(2) In the event of failure to comply with paragraph (1), the barrage operator may refuse permission for a vessel to enter the barrage area or to pass through the barrage.

(3) On receipt of the notification from the vessel, the barrage operator shall allocate a time for the passage of the vessel, and direct the vessel to a holding area to await its turn to enter the barrage area for its passage into the shiplock.

Priority

12. Notwithstanding regulation 11, the following vessels shall have priority over all other vessels for passage through the barrage:

- (a) vessels belonging to any department of the Federal Government or the Government of any State in the Federation; and
- (b) such vessels as the barrage operator may determine, on ground of emergency, ought to be accorded priority of passage.

Toll

13.—(1) Subject to paragraph (3), no vessel may enter the barrage area for passage through the barrage unless the vessel has paid the toll chargeable on that vessel, as prescribed in the Second Schedule.

(2) The rates of the toll prescribed in the Second Schedule shall not be altered by the barrage operator without the prior written approval of the Minister.

(3) The Minister may, by notification in the *Gazette*, exempt any vessel from the payment of toll.

Vessels within the holding area

14. Any vessel within the holding area shall—

- (a) comply with all orders or instructions issued by the barrage operator;

- (b) keep its engines operating or running, and proceed at such speed as may be directed by the barrage operator;
- (c) not drop any anchor unless so directed by the barrage operator;
- (d) during the hours of darkness, display such navigation lights as may be stipulated in the Sarawak Rivers (Traffic) Regulations, 1993 *[Swk. L.N. 130/93.]*;
- (e) not overtake any other vessel unless so directed by the barrage operator; and
- (f) accord precedence to any vessel which is granted priority to pass through the barrage under regulation 12.

Proceedings in barrage area

- 15.—(1) No vessel may enter the barrage area until and unless it has received instructions from the barrage operator to do so.
- (2) Within a barrage area, no vessel may overtake another unless directed by the barrage operator, except that priority shall be accorded to any vessel granted priority for passage through the barrage under regulation 12.
 - (3) No vessel may anchor within the barrage area.

Right to refuse passage

16. The barrage operator may order any vessel not to enter the barrage area or not to pass through the shiplock if he is of the opinion that—
- (a) the vessel is not navigated by or under the control of a person competent to navigate the vessel through the shiplocks;
 - (b) the vessel is not engine-driven;
 - (c) the vessel does not possess telecommunication equipment approved by the Department of Telecommunication, Sarawak, to enable her to receive instructions from the barrage operator;
 - (d) the vessel is not fitted with alarm bells and/or electrically operated horns;
 - (e) the vessel is, in the opinion of the barrage operator, not in a fit or proper condition to negotiate through the shiplock;
 - (f) the vessel has not paid the toll prescribed under regulation 13;

(g) the vessel is carrying passengers or cargo in excess of its authorized passenger or cargo load limits;

(h) the vessel is carrying dangerous cargo of the type or nature which is prohibited under regulation 21(2)(a) from being taken through the barrage; and

(i) the vessel is not insured against damage that may be caused to any property of the Board or barrage operator.

Passengers and crew

17.—(1) During the passage of the vessel through the shiplock—

(a) all passengers shall remain on board that vessel;

(b) sufficient number of crew of the vessel shall remain on deck for the purpose of safe handling of the vessel; and

(c) no passenger or crew member shall disembark from the vessel except in the case of emergency.

(2) Smoking by passengers and crew members on board of the vessel, while she is in the shiplock, is prohibited.

Position of vessel within shiplock

18. It shall be the duty of the master of the vessel to ensure that while the vessel is in the shiplock, she is properly secured onto fixed bollards and she stays within the markers indicated on the wall of the shiplock, designated as the space assigned to her in the shiplock. No movement or manoeuvring of the vessel while she is within the shiplock, shall be permitted unless expressly authorized by the barrage operator.

Vessel's engines in the shiplock

19. The engine of a vessel while it is inside the shiplock must not be placed on a "drive" position, and the barrage operator may order that the engine of such vessel be switched off, unless and until the vessel receives instructions from the barrage operator to proceed out of the shiplock.

Responsibility for damage

20. The owner and master of a vessel shall be liable for any damage caused by the vessel to the barrage, shiplock or any property of the Board or the barrage operator during the vessel's passage through the barrage area or holding area.

PART IV
SAFETY PRECAUTIONS

Dangerous goods

21.—(1) The barrage operator may—

(a) refuse the carriage on board of any vessel which is desirous to pass through the barrage, any goods which in his opinion would endanger or likely to endanger persons or property; or

(b) permit the entry of such goods subject to compliance with such terms and conditions as he thinks fit.

(2) The barrage operator, in consultation with the Controller, shall publish in the *Gazette* and in at least one local newspaper, and exhibit in a conspicuous place in the barrage, a list of goods—

(a) entry of which is prohibited by the barrage operator;

(b) entry of which is permitted only upon such terms and conditions as may be specified in the list published or exhibited under paragraph (1).

(3) The list referred to in paragraph (2) may be varied or amended from time to time by the barrage operator in consultation with the Controller.

Declaration of cargo

22.—(1) It shall be the duty of the master or agent of a vessel to declare to the barrage operator at the time when he makes a request under regulation 11(1), to pass through the barrage, any of the goods which is contained in the list published or exhibited under regulation 21(2).

(2) Any person who fails to comply with the requirements of paragraph (1) shall be guilty of an offence and upon conviction shall be liable to a fine of five thousand ringgit and imprisonment for one year.

Off-loading of dangerous goods

23.—(1) When any goods stipulated in the list published under regulation 21(2) as prohibited from being carried on board a vessel passing through the barrage, is on board a vessel, such goods shall be off-loaded therefrom before the vessel enters the barrage area.

(2) Any person who fails to comply with the requirements of paragraph (1) shall be guilty of an offence and upon conviction shall be liable to a fine of five thousand ringgit and imprisonment for one year.

Power of search and detention

24.—(1) The barrage operator or any person duly authorized by him in writing may board any vessel in the holding area, barrage area or in the shiplock, to inspect and search any goods carried on board the vessel which the barrage operator or the authorized person has reasonable grounds to believe, are goods stipulated in the list published or exhibited under regulation 21(2).

(2) The barrage operator or any person duly authorized by him may seize and detain any goods carried on board the vessels in contravention of this Part.

(3) Where any goods are seized or detained pursuant to paragraph (2), the person carrying out the seizure or detention shall compile a list thereof and tender the same to the Court at the time of prosecution of the offender.

(4) Upon conviction of the offender, the Court may order the goods seized or detained to be disposed of and the proceeds of such disposal shall be paid to the Board to defray the costs of seizure or detention or the storage thereof pending their disposal.

Tug boat

25.—(1) The barrage operator shall, at the request of the master of a vessel wishing to pass through the barrage, provide a tug boat to the master to assist in navigating the vessel through the barrage or shiplock.

(2) The master or owner shall pay for the services of the tug boat so provided by the barrage operator at the rate of two hundred ringgit per hour from the time of booking of the tug boat. Such payment shall be in addition to the toll charges levied under regulation 13.

(3) Any person who is in control of a tug boat provided to assist in navigating a vessel under paragraph (1) or (2), shall be deemed to be the agent of the master or owner thereof.

(4) It shall be the responsibility of the master of any vessel who desires to have the services of pilots to assist in the navigation of his vessel through the barrage or shiplock, to make his own arrangements to procure pilotage services.

PART V
RIGHTS AND RESPONSIBILITY OF
BARRAGE OPERATOR, *ETC.*, OVER
ACTS OR OMISSION OF VESSELS

Indemnity

26. The Board, Controller and barrage operator shall not be liable for any act, omission or default of a master or owner of a vessel passing through the barrage or within the holding or barrage area.

Liability of barrage operator, etc

27. The barrage operator or the Board or Controller shall in no case be liable for any loss or damage or injury to any vessel or any person or goods carried thereon unless such loss or damage or injury has been caused by the negligence or wilful misconduct of the barrage operator or any of his servant or agent or any servant of the Board.

Sinking of vessel

28. In the event of any vessel sinking within a shiplock or barrage area, the barrage operator shall be entitled to remove the vessel or the wreck from the shiplock or barrage area, as the case may be, and charge the costs of such removal or salvage to the master or owner of the vessel, and until and unless such costs are paid, the barrage operator shall be entitled to detain the vessel or the wreck.

Recovery of costs of salvage or removal

29.—(1) Where the costs of such removal or salvage of a sunken vessel in the shiplock or barrage area are not paid within twenty-one days from the date of demand for payment thereof, the barrage operator may, with the approval of the Controller, apply to the High Court for an order to sell the vessel or wreck by public auction.

(2) Such application shall be made by way of originating summons or by way of admiralty action, as may be appropriate, and the rules of Court relating to originating summons or admiralty action shall apply accordingly.

(3) The Court shall, at the time of making such order, give such directions as may be necessary for the purposes of carrying out the sale by public auction.

(4) Upon the sale of the vessel or wreck, the proceeds thereof shall be utilized to pay for—

(a) the costs of the sale, including the costs and expense of the auctioneer;

(b) the costs of the removal or salvage which shall be paid to the barrage operator; and

(c) the balance of the proceeds shall be paid out to the master or owner of the vessel.

(5) In making the order of sale, the High Court shall authorize an officer of the Court to execute the appropriate document of transfer of ownership of the vessel or vessels to the successful bidder and the Registrar of Ships shall, upon presentation of the said document, register the transfer of ownerships thereof subject to payment of the requisite fees, stamp duties and other costs of registration.

Damage to property by vessels

30.—(1) Where damage is caused by a vessel to the barrage, shiplock or any property of the Board or barrage operator, or where there is obstruction of the barrage or shiplock caused by any vessel, the barrage operator may order the immediate detention of the vessel.

(2) Such detention shall continue until and unless the owner or master thereof pays for the costs of the damage or furnishes security acceptable to the Board or barrage operator to cover all costs and expense of rectifying the damage.

(3) In the event that the owner or master fails to pay for the damage or furnish security in accordance with paragraph (2), the barrage operator, with the approval of the Controller, may proceed to apply for an order for the sale of the vessel, and the provisions of regulation 29(2), (3) and (4) shall apply.

PART VI MISCELLANEOUS

Disobedience of instructions

31. The master of any vessel who fails to obey or comply with any instructions or order given by the barrage operator while the vessel is in the shiplock, barrage or holding area shall be guilty of an offence, and, upon conviction, shall be liable to a fine of one thousand ringgit.

Appeal

32.—(1) Any person who is aggrieved with the decision of the barrage operator made pursuant to regulations 9, 16 and 21(1) may appeal to the Controller within seven days from the date of that decision. The decision of the Controller on such appeal shall be final.

(2) In all other cases, the instructions, order or decision of the barrage operator shall be final.

Interpretation

33. In the event of any dispute on the interpretation of these Regulations, such dispute should be referred to the Minister whose decision thereon shall be final.

General powers of Minister

34. To ensure the proper, efficient and safe operation and management of the barrage, shiplock and barrage area, the Minister may issue such directions, which are not inconsistent with the provisions of these Regulations, to the barrage operator and the Controller who shall duly give effect to the same.

Saravak Law

FIRST SCHEDULE

(Regulation 2)

SUNGAI SARAWAK BARRAGE AREA

That area along the Sungai Sarawak bounded by the following co-ordinates:

E2078976	N5174296
E2079536	N5173814
E2079857	N5173730
E2080156	N5173644
E2080863	N5173384
E2081149	N5174254
E2080605	N5174454
E2080114	N5174620
E2079869	N5174703
E2079145	N5174628

(A copy of the plan showing the precise location of the Barrage Area may be inspected at the office of the Controller of Sarawak Rivers, Sarawak.)

SECOND SCHEDULE

(Regulation 13)

RATE OF TOLL CHARGES

<i>Category of Vessel</i>	<i>Size/Length LOA(m)/Category</i>	<i>Toll Chargeable Per Passage Unless Otherwise Indicated</i>
(1) Speed Boat and Small Craft (in-clusive of Tambang)	—	RM 5.00
(2) Pleasure Craft	Below 30 metres	RM 5.00
	30 metres to 60 metres	RM 10.00
	Above 60 metres	RM 20.00
(3) Cargo Vessel	Below 30 metres	RM 10.00
	30 metres to 60 metres	RM 20.00
	Above 60 metres	RM 50.00
(4) Barge	Below 45 metres	RM 20.00
	45 metres to 60 metres	RM 40.00
	Above 60 metres	RM 50.00
(5) Tug	—	RM 20.00
(6) Passenger Vessel	—	RM720.00 per year
(7) Fishing Vessel	Vessel equipped with traditional fishing gears	RM 5.00
	Vessel of less than 15 gross tonnage (includ-ing fishing boat known locally as "kotak")	RM 7.00
	Vessel of 15 gross tonnage and above	RM 10.00

Made by the Minister and approved by the Yang di-Pertua Negeri this 31st day of October, 1997.

DATUK WONG SOON KOH,
Minister for Infrastructure Development