



Fisheries (Electronic Monitoring on Vessels) Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 10th day of July 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 297 and 304 of the Fisheries Act 1996 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Fisheries (Electronic Monitoring on Vessels) Regulations 2017.

2 Commencement

These regulations come into force on 1 October 2018.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Fisheries Act 1996

associated information means the information specified in a circular as information that must be detected and recorded under regulation 9(1)(d)

bycatch mitigation measure means a measure or device adopted or used for the purpose of preventing, or reducing the likelihood of, fish, aquatic life, or seaweed being caught by fishing that is not intended to catch that fish, aquatic life, or seaweed

circular means a circular issued by the chief executive under regulation 13

electronic monitoring equipment means the equipment described in regulation 6(1)

fishing trip or **trip** has the meaning given by regulation 3 of the Fisheries (Reporting) Regulations 2017

hand-gathering has the meaning given by regulation 9 of the Fisheries (Amateur Fishing) Regulations 2013

permit means a fishing permit issued under section 91 of the Act or a high seas fishing permit issued under section 113H of the Act

permit holder means—

- (a) a person who holds a fishing permit issued under section 91 of the Act:
- (b) a person who holds a high seas fishing permit issued under section 113H of the Act

purse seining means the use of a purse seine net as defined by regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

5 Application

These regulations do not apply in relation to—

- (a) a vessel from which fishing is done only by hand-gathering;
- (b) a vessel that is a tender used only for purse seining.

Part 1**Installation and use of electronic monitoring equipment***Obligations of permit holders***6 Electronic monitoring equipment must be installed on vessels**

- (1) A permit holder must ensure that, when a vessel is used for fishing under the permit holder's permit, the vessel has electronic monitoring equipment comprising—
 - (a) 1 or more video cameras; and
 - (b) any sensors or other devices needed to detect and record associated information; and
 - (c) an electronic system that is capable of recording the video and associated information; and
 - (d) any electrical systems, components, or software needed to support the things described in paragraphs (a) to (c).
- (2) The permit holder must ensure that the electronic monitoring equipment—
 - (a) complies with any technical requirements specified in a circular; and
 - (b) is installed in accordance with any requirements specified in a circular.
- (3) A video camera need not be capable of recording sound.

7 Video recording and associated information must be provided to chief executive

For each fishing trip undertaken by a vessel, the permit holder under whose permit the fishing was done must provide to the chief executive the video and associated information recorded under regulation 9(1)—

- (a) no later than the 15th day of the month after the month in which the fishing trip ends; and
- (b) in accordance with any requirements specified in a circular.

*Obligations of permit holders and masters of vessels***8 Regulations 9 to 11 apply to permit holders and masters of vessels**

The following persons must ensure that the obligations set out in regulations 9 to 11 are complied with:

- (a) the permit holder who holds the permit under which the vessel is fishing; and
- (b) the master of the vessel.

9 Fishing, transportation, and associated information must be recorded

- (1) The electronic monitoring equipment on a vessel must be used to—
 - (a) record the fishing done from the vessel; and
 - (b) record any fish, aquatic life, or seaweed taken; and
 - (c) record any transportation of fish, aquatic life, or seaweed on the vessel (whether or not it was taken under the permit holder's permit); and
 - (d) detect and record associated information in accordance with any requirements specified in a circular.
- (2) The video recording must enable the chief executive to, with reasonable accuracy and to the extent specified in a circular,—
 - (a) identify—
 - (i) the type of fish, aquatic life, or seaweed taken or transported; and
 - (ii) the types and features of fishing gear used; and
 - (iii) any bycatch mitigation measures adopted or used; and
 - (b) estimate the size and quantity of the fish, aquatic life, or seaweed taken or transported.
- (3) Any requirements in a circular issued under regulation 13(1)(f) must be complied with.

10 Electronic monitoring equipment must be maintained

- (1) A vessel's electronic monitoring equipment must be maintained so that the equipment—
 - (a) is able to produce video recordings of sufficient quality to enable regulation 9(2) to be met; and
 - (b) is able to accurately detect and record the associated information; and
 - (c) works reliably.
- (2) The maintenance must be done in accordance with any requirements specified in a circular.

11 Chief executive must be notified of technical failure, etc

- (1) As soon as practicable after a person becomes aware that the person is unable to comply with a requirement under any of **regulations 7, 9, and 10** due to a mechanical or technical failure of electronic monitoring equipment, the person must notify the chief executive that the person is unable to comply with the requirement and of the reason.

- (2) The notice must be given in accordance with any requirements specified in a circular.

General obligation

12 Electronic monitoring equipment must not be interfered with or obstructed

A person must not interfere with the electronic monitoring equipment, or obstruct the view from a camera, on a vessel in a way that prevents or hinders compliance with a requirement under this Part.

Chief executive's powers

13 Circulars specifying requirements relating to electronic monitoring

- (1) The chief executive may issue, amend, or revoke circulars for 1 or more of the following purposes:
- (a) specifying, for the purpose of regulation 6(2)(a), technical requirements for electronic monitoring equipment, including requirements for how video recordings and associated information must be stored (for example, on a hard drive or by transmission to a remote data storage facility):
 - (b) specifying, for the purpose of regulation 6(2)(b), requirements for the installation of electronic monitoring equipment, for example, requirements relating to—
 - (i) the location and number of video cameras:
 - (ii) the location and number of sensors or other devices:
 - (iii) a video camera's required field of view:
 - (iv) the location and capacity of lights to illuminate the activities being recorded:
 - (c) specifying, for the purpose of regulation 7(b), requirements for providing video recordings and associated information to the chief executive, for example, requirements relating to—
 - (i) the kind of device or computer operating system that must be used:
 - (ii) the computer file format of video recordings or associated information:
 - (iii) specifications for the encryption and security of those computer files:
 - (d) specifying, for the purpose of regulation 9(1)(d),—

- (i) the associated information that must be recorded (for example, the date, time, and location of fishing or readings from sensors that monitor the fishing gear used):
 - (ii) how and when the associated information must be recorded:
 - (e) specifying, for the purpose of regulation 9(2), the extent to which the matters described in that regulation must be capable of being identified or estimated, for example,—
 - (i) the level of taxonomic or other classification at which fish, aquatic life, or seaweed must be capable of being identified:
 - (ii) the types and features of fishing gear that must be capable of being identified:
 - (iii) the bycatch mitigation measures, including a type or feature of a measure, that must be capable of being identified:
 - (iv) whether the quantity of fish, aquatic life, or seaweed must be capable of being estimated in terms of weight or numbers:
 - (v) whether a matter need not be capable of being identified or estimated at all:
 - (f) specifying, for the purpose of regulation 9(3), requirements relating to—
 - (i) activities on a vessel that may hinder or assist compliance with regulation 9(2), for example,—
 - (A) requirements relating to catch handling practices:
 - (B) requirements specifying areas on a vessel where activities must be carried out or areas that must be kept clear:
 - (C) requirements relating to the use of lights to illuminate activities being recorded:
 - (D) requirements relating to the operation of the electronic monitoring equipment generally:
 - (ii) the performance of electronic monitoring equipment under marine operating conditions:
 - (g) specifying, for the purpose of regulation 10(2), requirements for the maintenance of electronic monitoring equipment:
 - (h) specifying, for the purpose of regulation 11(2), requirements for giving notice of a mechanical or technical failure.
- (2) Before issuing, amending, or revoking a circular, the chief executive must consult, to the extent practicable in the circumstances, any persons considered by the chief executive to be representative of the classes of persons likely to be substantially affected by the circular.
- (3) The chief executive must publish, on an Internet site maintained by or on behalf of the Ministry,—

- (a) notice of the issue, amendment, or revocation of a circular; and
- (b) an up-to-date version of the circular.

14 Exemptions

- (1) The chief executive may exempt a person or vessel from compliance with all or any of the requirements under this Part if the chief executive—
 - (a) is satisfied that it is unreasonable or impracticable for the person or vessel to comply with those requirements; and
 - (b) is satisfied that the exemption is no broader than is reasonably necessary to address the matters giving rise to the exemption; and
 - (c) has had regard to the purpose of these regulations.
- (2) An exemption—
 - (a) must be in writing; and
 - (b) must specify a date on which it expires; and
 - (c) may be granted subject to any conditions that the chief executive may reasonably impose; and
 - (d) may be amended or revoked to reflect changed circumstances.

Part 2

Vessel-specific monitoring plans

15 Obligation to comply with vessel-specific monitoring plans

- (1) If a vessel-specific monitoring plan has been approved for a vessel under this Part, the following persons must ensure that the plan is complied with:
 - (a) the permit holder who holds the permit under which the vessel is fishing; and
 - (b) the master of the vessel.
- (2) If a requirement specified in a vessel-specific monitoring plan is different from a requirement specified in a circular, the permit holder and master need not ensure compliance with the requirement in the circular.

Submission and approval of vessel-specific monitoring plans

16 When vessel-specific monitoring plans must be submitted to chief executive

- (1) This regulation applies if the chief executive has reason to believe that, in relation to a particular vessel, there have been 2 or more breaches of regulation 9 or 10 within the immediately preceding 12 months.

- (2) The chief executive may, by written notice to the permit holder under whose permit the vessel is used for fishing, require the permit holder to submit a vessel-specific monitoring plan.
- (3) The notice must—
 - (a) identify the alleged breaches and set out the reasons for the chief executive's decision to require the permit holder to submit a plan; and
 - (b) set out the matters that the plan must address.

17 Contents of vessel-specific monitoring plans

- (1) A vessel-specific monitoring plan may specify any requirements that may be specified in a circular, including requirements relating to—
 - (a) the capacity of a device used to store video recordings and associated information;
 - (b) the number and placement of video cameras;
 - (c) practices for checking the proper functioning of electronic monitoring equipment;
 - (d) the maintenance of electronic monitoring equipment;
 - (e) catch handling practices;
 - (f) areas that must be kept clear to ensure that a video camera has an unobstructed field of view.
- (2) A requirement specified in a vessel-specific monitoring plan may be different from (including more stringent than) a requirement that is specified in a circular.

18 Process for approval of vessel-specific monitoring plans

- (1) The process for approving a vessel-specific monitoring plan is as follows:
 - (a) the chief executive must decide whether to approve a plan within 30 days after receiving it from a permit holder;
 - (b) the chief executive may require the permit holder to amend the plan or provide additional information if the chief executive considers that the amendment or information is needed to satisfy the test under regulation 19 (*see* regulation 22 for the amendments that may be required);
 - (c) as soon as practicable after deciding whether to approve the plan, the chief executive must give the permit holder written notice of—
 - (i) the decision; and
 - (ii) if the decision is not to approve the plan, the reasons for the decision.
- (2) If the chief executive requires the permit holder to amend the plan or provide additional information,—
 - (a) the chief executive must notify the permit holder in writing of—

- (i) the required amendment or information; and
 - (ii) a reasonable period in which the permit holder must provide the amended plan or required information; and
- (b) the period described in subclause (1)(a) stops running when the chief executive gives notice under paragraph (a) of this subclause and starts again when the chief executive receives the amended plan or required information; and
- (c) the chief executive may decide not to approve the plan if an amended plan or the required information is not received by the end of the period notified under paragraph (a)(ii) of this subclause.

19 Decisions on approval of vessel-specific monitoring plans

The chief executive must approve a vessel-specific monitoring plan if the chief executive is satisfied that compliance with the vessel-specific monitoring plan—

- (a) is practicable; and
- (b) will materially assist compliance with regulation 9 or 10 (as relevant).

20 Fishing prohibited pending implementation of vessel-specific monitoring plans

- (1) A vessel that is the subject of a notice under regulation 16 must not be used for fishing during a period that—
 - (a) starts on a date specified in the notice (which must be no earlier than 5 working days after the notice is sent); and
 - (b) ends when the chief executive notifies the permit holder in writing that he or she is satisfied that an approved vessel-specific monitoring plan has been implemented.
- (2) The prohibition does not apply if—
 - (a) the chief executive has given notice of his or her intention to place observers on the vessel under section 224(1) of the Act; and
 - (b) the required number of observers are on board the vessel.

Obligation of permit holders to inform masters

21 Permit holders must take reasonable steps to inform masters of certain matters

- (1) A permit holder who receives a notice under regulation 16 or 23 must take all reasonable steps to inform any master of the vessel to which the notice relates of—
 - (a) the notice; and
 - (b) whether the prohibition under regulation 20 or 24 applies.

- (2) After receiving notice that a vessel-specific monitoring plan or an amended plan is approved for the vessel, the permit holder must take all reasonable steps to make a copy of the plan or amended plan available to any master of the vessel.

Amendments required by chief executive

22 Amendments that chief executive may require

For the purposes of regulations 18(1)(b) and 23(2), the chief executive may require only that a vessel-specific monitoring plan be amended to contain matters that may be specified in a plan under regulation 17.

23 Amendments required by chief executive after vessel-specific monitoring plans approved

- (1) This regulation applies if the chief executive considers that the circumstances for which a vessel-specific monitoring plan has been approved have changed in a way that would prevent the plan from meeting the test under regulation 19 if it were applied again.
- (2) The chief executive may, by written notice to the permit holder under whose permit the vessel is used for fishing, require the permit holder to amend the plan.
- (3) The notice must—
 - (a) set out the reasons for the chief executive’s decision to require the permit holder to submit an amended plan; and
 - (b) set out the matters that the amended plan must address.
- (4) The permit holder must submit an amended plan within 30 days after a date specified in the notice (which must be no earlier than 5 working days after the notice is sent).
- (5) Regulations 18 and 19 apply in relation to the amended plan as if it were a new plan required under regulation 16 (and with any other necessary modifications).

24 Circumstances where fishing prohibited pending implementation of amended vessel-specific monitoring plans

- (1) A vessel that is the subject of a notice under regulation 23 must not be used for fishing if—
 - (a) the permit holder who receives the notice fails to comply with regulation 23(4); or
 - (b) the chief executive decides not to approve the amended vessel-specific monitoring plan submitted by the permit holder.
- (2) The chief executive must notify the permit holder in writing if the prohibition applies.

- (3) The prohibition—
 - (a) starts on a date specified in the notice under subclause (2) (which must be no earlier than 5 working days after the notice is sent); and
 - (b) ends when the chief executive notifies the permit holder in writing that he or she is satisfied that an approved amended vessel-specific monitoring plan has been implemented.
- (4) The prohibition does not apply if—
 - (a) the chief executive has given notice of his or her intention to place observers on the vessel under section 224(1) of the Act; and
 - (b) the required number of observers are on board the vessel.

Amendments voluntarily submitted by permit holders

25 Permit holders may submit amended vessel-specific monitoring plans

- (1) A permit holder may, at any time after a vessel-specific monitoring plan is approved, submit an amended plan to the chief executive for approval.
- (2) Regulations 18 and 19 apply in relation to the amended plan as if it were a new plan required under regulation 16 (and with any other necessary modifications).

Part 3 **Offences**

26 Offences and penalties

- (1) A person commits an offence if the person fails to comply with any of regulations 6, 7, 9 to 12, 15, 20, 21, and 24.
- (2) A person who commits an offence against this regulation is liable on conviction—
 - (a) to a fine not exceeding \$100,000; and
 - (b) if the offence is a continuing offence, to a further fine not exceeding \$1,000 for each day on which the offence continues.
- (3) Conduct that constitutes an offence under regulation 28 does not constitute an offence under this regulation.

27 Defences

- (1) It is a defence to a prosecution for an offence against regulation 26 if the defendant proves that 1 or more of the defences set out in this regulation apply.

General defence

- (2) The first defence is that—

- (a) the offence occurred as a result of an accident, or a mechanical or technical failure (other than a mechanical or technical failure of a nature that could have been avoided with adequate maintenance); and
- (b) the defendant acted reasonably in the circumstances.

Electronic monitoring equipment fails after fishing trip starts

- (3) The second defence relates to a failure to comply, in respect of a fishing trip, with any of regulations 7, 9, and 10. The defence is that—
 - (a) the failure arose only because of a mechanical or technical failure of electronic monitoring equipment (other than a mechanical or technical failure of a nature that could have been avoided with adequate maintenance) that occurred after the start of the fishing trip; and
 - (b) the defendant complied with regulation 11; and
 - (c) the defendant took all reasonable steps to repair the equipment.

Master not aware of vessel-specific monitoring plan or need for one

- (4) The third defence relates to a master's failure to comply with regulation 15, 20, or 24. The defence is that the master did not know, and could not reasonably have been expected to know, of—
 - (a) the existence of the approved vessel-specific monitoring plan, in the case of a breach of regulation 15; or
 - (b) the circumstances giving rise to the application of the prohibition under regulation 20 or 24, in the case of a breach of regulation 20 or 24.

Infringement offences

28 Infringement offences

- (1) A person commits an infringement offence for the purposes of sections 260A to 260C of the Act if the person fails to comply with regulation 7(a), but provides to the chief executive the video recordings and associated information required by that regulation—
 - (a) in a period starting on the 16th day of the month in which the video and associated information is due and ending on the 20th day of that month;
 - (b) in a period starting on the 21st day of the month in which the video and associated information is due and ending on the 15th day of the following month.
- (2) A person who commits an infringement offence—
 - (a) against subclause (1)(a) is liable to—
 - (i) an infringement fee of \$400; or
 - (ii) a fine imposed by a court not exceeding \$800;
 - (b) against subclause (1)(b) is liable to—

- (i) an infringement fee of \$750; or
- (ii) a fine imposed by a court not exceeding \$1,500.

29 Infringement notices

An infringement notice issued under section 260A of the Act for an infringement offence against these regulations must be in the form set out in Schedule 2 of the Fisheries (Infringement Offences) Regulations 2001.

30 Infringement offence reminder notices

An infringement offence reminder notice issued under section 260B of the Act for an infringement offence against these regulations must be in the form set out in Schedule 3 of the Fisheries (Infringement Offences) Regulations 2001.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

1 When these regulations apply in relation to different vessels

- (1) These regulations apply in relation to vessels as follows:

Regulations apply on and from	if the vessel is used for this fishing method	and the overall length of the vessel is
1 October 2018	Surface longlining	Any length
	Trawling	<28 m
1 February 2019	Bottom longlining	≥7 m
	Danish seining	Any length
	Purse seining	Any length
	Set netting	≥7 m
1 July 2019	Potting	Any length
	Trawling	≥28 m
1 October 2019	Dredging	Any length
	Trolling	Any length
1 April 2020	Bottom longlining	<7 m
	Set netting	<7 m
	Any other fishing method	Any length

- (2) If a vessel is used for more than 1 fishing method, a person must comply with these regulations only in relation to each fishing method to which these regulations have started to apply.

Example

A vessel 21 m in overall length is used for trawling and set netting. Beginning on 1 October 2018, a person must comply with these regulations in relation to any trawling done from the vessel. However, the person does not need to comply in relation to set netting done from the vessel until 1 February 2019.

- (3) In this clause,—

bottom longlining means the use of a line to which 7 or more hooks (whether baited or not) are attached, and that is sunk using weights

Danish seining has the meaning given by regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001

dredging means the use of a dredge as defined by regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001

fishing method has the meaning given by regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001

potting means the use of—

- (a) a pot (whether baited or not) that is capable of catching and holding fish, aquatic life, or seaweed; or
- (b) any other similar device that—
 - (i) is capable of catching, holding, or storing fish, aquatic life, or seaweed; and
 - (ii) is not used for another fishing method

set netting means the use of a set net as defined by regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001

surface longlining means the use of a line—

- (a) to which hooks (whether baited or not) are attached; and
- (b) that is suspended by floats; and
- (c) that is not anchored to the sea floor

trawling has the meaning given by regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001

trolling has the meaning given by regulation 9 of the Fisheries (Amateur Fishing) Regulations 2013.

2 Temporary exemption for fishing trip underway when these regulations start to apply

- (1) This clause applies if a vessel has commenced, but not completed, a fishing trip when these regulations start to apply to the vessel.

- (2) While the vessel is at sea on that occasion, the permit holder under whose permit the vessel is fishing, and the master of the vessel, need not comply with these regulations.
- (3) The exemption expires at the end of the fishing trip.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 October 2018, provide for the electronic monitoring of vessels used to fish under permits issued under section 91 or 113H of the Fisheries Act 1996. When a vessel is on a fishing trip under one of those permits,—

- the fishing and fish taken must be filmed; and
- the transportation of fish on the vessel (whether taken under the permit or not) must be filmed; and
- associated information must be recorded.

Part 1 provides for the following matters regarding the installation and use of electronic monitoring equipment:

- the requirements for permit holders to—
 - ensure that electronic monitoring equipment is installed (*regulation 6*); and
 - provide video recordings and associated information to the Director-General of the Ministry for Primary Industries (the **Director-General**) (referred to in the regulations as the chief executive) (*regulation 7*);
- the requirements for permit holders and masters of vessels to—
 - record the required matters and ensure that the video recordings are sufficiently clear (*regulation 9*); and
 - maintain electronic monitoring equipment (*regulation 10*); and
 - notify the Director-General if there is a mechanical or technical failure that prevents them from being able to comply with *regulation 7, 9, or 10* (*regulation 11*);
- a general requirement not to interfere with or obstruct electronic monitoring equipment (*regulation 12*);
- the Director-General's powers to—

- issue circulars dealing with various matters, including technical requirements for electronic monitoring equipment and how the equipment must be installed (*regulation 13*); and
- grant exemptions from the need to comply with requirements in *Part 1* (*regulation 14*).

Part 2 provides for the following matters regarding vessel-specific monitoring plans:

- the requirement for the holder of a permit under which a vessel fishes and the master of the vessel to comply with any approved plan for the vessel (*regulation 15*);
- the power of the Director-General to require a permit holder to develop and submit a plan for a vessel if the Director-General has reason to believe that, in relation to the vessel, there have been 2 or more breaches of *regulation 9 or 10* within the last year (*regulation 16*);
- the contents of a plan, which can include any requirements that the Director-General would be able to specify in a circular (whether or not the plan's requirements are more stringent than the general requirements specified in circulars at the time) (*regulation 17*);
- the process and criteria for approving a plan submitted by a permit holder (*regulations 18 and 19*);
- a prohibition on using a vessel for fishing until the Director-General has approved a plan for the vessel and is satisfied that it has been implemented (*regulation 20*);
- matters relating to the amendment of a plan after it has been approved. Amendments may be required by the Director-General in certain circumstances or submitted voluntarily by a permit holder (*regulations 22 to 25*).

Part 3—

- provides for offences and penalties for the breach of certain regulations (*regulation 26*); and
- sets out a general defence and specific defences for the breach of certain regulations (*regulation 27*); and
- specifies some offences as infringement offences (*regulation 28*).

These regulations do not apply to a vessel that is used only for hand-gathering or a vessel that is a tender used only for purse seining. The dates on which these regulations start to apply to other vessels are staggered, as set out in *Schedule 1*.

Regulatory impact statement

The Ministry for Primary Industries produced a regulatory impact statement on 29 May 2017 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 13 July 2017.

These regulations are administered by the Ministry for Primary Industries.