



Fisheries (Geospatial Position Reporting) 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 296B, 296ZI, 297, and 304(1) of the Fisheries Act 1996—

- (a) on the advice and with the consent of the Executive Council; and
- (b) in relation to the item in Schedule 2 of these regulations relating to the Fisheries (Transfer of Functions, Duties, and Powers to Commercial Fisheries Services Limited) Order 2013, on the recommendation of the Minister for Primary Industries made after complying with section 296B of the Fisheries Act 1996.

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Regulations

- 1 Title**
These regulations are the Fisheries (Geospatial Position Reporting) Regulations 2017.
- 2 Commencement**
These regulations come into force on 1 October 2017.
- 3 Interpretation**
In these regulations, unless the context otherwise requires,—
Act means the Fisheries Act 1996
commercial fisher has the same meaning as in regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001
fishing trip has the same meaning as in regulation 3 of the Fisheries (Reporting) Regulations 2017
foreign licensed fishing vessel means a foreign fishing vessel licensed under section 83 of the Act
geospatial position reporting device means a device that complies with the appropriate standards and requirements specified by the chief executive under regulation 6
New Zealand fishing vessel means any fishing vessel registered under section 103 of the Act
purse seine net has the same meaning as in regulation 3 of the Fisheries (Commercial Fishing) Regulations 2001.
Compare: SR 1993/354 r 2
- 4 Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

5 Obligation to carry and operate geospatial position reporting device

- (1) A geospatial position reporting device must be carried and operated on board—
 - (a) New Zealand fishing vessels; and
 - (b) foreign licensed fishing vessels; and
 - (c) registered fish carriers; and
 - (d) any other kind of vessel used for commercial fishing, except tenders deployed from any vessel using any purse seine net.
- (2) A geospatial position reporting device must be carried and operated by commercial fishers who are fishing without a vessel referred to in subclause (1).
- (3) Every operator and master of a vessel (except a tender deployed from any vessel using any purse seine net) must ensure that the geospatial position reporting device carried on that vessel operates continuously while that vessel is being used for fishing or transportation.
- (4) Every commercial fisher referred to in subclause (2) must ensure that the geospatial position reporting device operates continuously from immediately before the fishing trip starts until that fishing trip ends.

Compare: SR 1993/354 r 3

6 Circulars specifying standards and requirements relating to geospatial position reporting devices

- (1) The chief executive may issue, amend, or revoke a circular that specifies technical details relating to geospatial position reporting devices, including—
 - (a) the place in which a geospatial position reporting device is to be installed and the method of installation;
 - (b) requirements as to the form, frequency, and detail of information to be supplied to the chief executive in relation to vessels or commercial fishers required to carry a geospatial position reporting device, and the places and times at which the information is to be supplied;
 - (c) the manner in which geospatial position reporting devices are to be registered in accordance with regulation 7;
 - (d) the minimum standards and requirements for the operation of geospatial position reporting devices;
 - (e) the minimum standards and requirements for the system used to transmit information from geospatial position reporting devices.
- (2) Different standards and requirements may be specified for different types of geospatial position reporting devices.
- (3) Before issuing, amending, or revoking a circular, the chief executive must consult, to the extent practicable, any persons considered by the chief executive to be representative of the classes of persons likely to be substantially affected by the circular.

- (4) 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.

Compare: SR 1993/354 r 4

7 Registration of geospatial position reporting devices

- (1) The chief executive must register a geospatial position reporting device if a person applies in writing in an approved form and pays the prescribed fee (if any).
- (2) An application for registration must be supported by—
 - (a) any information that may be specified for the purpose under regulation 6; and
 - (b) any additional information that the chief executive may specify in writing to the applicant.
- (3) The chief executive may make the registration of any geospatial position reporting device subject to any reasonable conditions that he or she may specify in writing to the applicant.
- (4) The chief executive may cancel the registration of any geospatial position reporting device if there is no longer any need to register the device (for example, because the device has been or is to be replaced or the vessel on which it was carried has been or is to be sold) and notify the holder that the registration has been cancelled.

Compare: SR 1993/354 r 6

8 Responsibilities under these regulations

Every operator and master of a vessel referred to in regulation 5(1) and every commercial fisher referred to in regulation 5(2) must ensure that—

- (a) a geospatial position reporting device is carried and operated in accordance with regulation 5; and
- (b) the geospatial position reporting device is carried and operated in accordance with requirements specified under regulation 6; and
- (c) the geospatial position reporting device transmits information in accordance with the standards and requirements specified by the chief executive under regulation 6; and
- (d) the geospatial position reporting device is registered under regulation 7; and
- (e) by the most practicable means and at the first reasonable opportunity,—
 - (i) the chief executive is notified if a geospatial position reporting device is removed from the vessel or the commercial fisher is no longer engaged in commercial fishing; and

- (ii) the chief executive is notified if a geospatial position reporting device fails to work properly.

Compare: SR 1993/354 r 7

9 Offences and penalties

- (1) A person commits an offence if the person,—
 - (a) without an exemption from the chief executive, removes from a vessel or fish carrier any geospatial position reporting device that is required to be carried and operated; or
 - (b) without an exemption from the chief executive, fails to carry and operate any geospatial position reporting device in accordance with these regulations; or
 - (c) interferes with any geospatial position reporting device to such an extent that the device no longer complies with the standards and requirements specified under regulation 6; or
 - (d) fails to notify the chief executive of any matter required by or under these regulations to be notified to the chief executive; or
 - (e) fails to register a geospatial reporting device under regulation 7.
- (2) However, a person does not commit an offence against subclause (1)(a) if the person removes the device following notification under regulation 8(e)(i) or (ii).
- (3) A person who commits an offence against subclause (1) 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.

Compare: SR 1993/354 r 8

10 Defences

It is a defence to prosecution for an offence against regulation 9(1) if the defendant proves 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.

Compare: SR 1993/354 r 9

11 Exemptions

- (1) If the chief executive is satisfied that it is unreasonable or impracticable for any person or vessel to comply with any requirements prescribed by or under these

regulations, the chief executive may exempt that person or vessel from compliance with all or any of those requirements.

- (2) An exemption under subclause (1)—
 - (a) must be in writing; and
 - (b) may be granted subject to any conditions that the chief executive may reasonably impose and has effect according to its terms; and
 - (c) may be amended or revoked to reflect changed circumstances.

Compare: SR 1993/354 r 10

12 **Revocation**

The Fisheries (Satellite Vessel Monitoring) Regulations 1993 (SR 1993/354) are revoked.

13 **Consequential amendments to other enactments**

Amend the enactments specified in Schedule 2 as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

r 4

Part 1

Provisions relating to these regulations as made

1 **Interpretation**

In this Part, **former regulations** means the Fisheries (Satellite Vessel Monitoring) Regulations 1993.

2 **Existing registered devices**

Automatic location communicators registered under regulation 6 of the former regulations must be treated as if they were registered as geospatial position reporting devices, subject to the same terms and conditions (if any), under regulation 7 of these regulations.

3 **Certain vessels may comply with former regulations or these regulations between 1 October 2017 and 31 March 2018**

- (1) This clause applies to every vessel referred to in regulation 5(1), except a vessel that has an overall length that exceeds 28 m and is being used in fishing with a trawl net.
- (2) On and from 1 October 2017 until the close of 31 March 2018,—
 - (a) compliance with the applicable requirements of the former regulations is sufficient compliance with these regulations; and

- (b) there is no need to comply with any requirement in these regulations that was not in the former regulations.

4 Temporary exemption for voyage or fishing underway at commencement of these regulations

- (1) This clause applies if a vessel or fish carrier referred to in regulation 5(1) or a commercial fisher referred to in regulation 5(2) has commenced, but not completed, a fishing trip when these regulations come into force.
- (2) While the vessel or carrier is at sea on that occasion,—
 - (a) compliance with the applicable requirements of the former regulations is sufficient compliance with these regulations; and
 - (b) there is no need to comply with any requirement in these regulations that was not in the former regulations.
- (3) While the commercial fisher is fishing on that occasion, the commercial fisher is not required to comply with these regulations.
- (4) The exemption expires at the end of the fishing trip.
- (5) If the vessel was not required by the former regulations to carry and operate an automatic location communicator, it is not required to carry and operate a geospatial position reporting device while the exemption continues in force.

Schedule 2

Consequential amendments to other enactments

r 13

Fisheries (Commercial Fishing) Regulations 2001 (SR 2001/253)

In regulation 3, revoke the definition of **automatic location communicator**.

In regulation 3, insert in its appropriate alphabetical order:

geospatial position reporting device has the same meaning as in regulation 3 of the Fisheries (Geospatial Position Reporting) Regulations 2017

In regulation 76A(2), replace “carrying and operating an automatic location communicator on board a New Zealand fishing vessel that is being used” with “using a New Zealand fishing vessel”.

In Schedule 2, revoke clause 16.

Fisheries (Demerit Points and Civil Penalties) Regulations 2001 (SR 2001/283)

In Schedule 1, item 16(10), replace “automatic location communicators” with “geospatial position reporting devices”.

Fisheries (Transfer of Functions, Duties, and Powers to Commercial Fisheries Services Limited) Order 2013 (SR 2013/333)

In the Schedule, Part 2, replace paragraph (7) with:

Fisheries (Transfer of Functions, Duties, and Powers to Commercial Fisheries Services Limited) Order 2013 (SR 2013/333)—*continued*

- (7) in the Fisheries (Geospatial Position Reporting) Regulations 2017,—
- (a) regulation 7(1):
 - (b) the power in regulation 7(4) to cancel the registration of a geospatial position reporting device:
 - (c) the function, duty, or power to receive applications and notify decisions, amendments, and revocations under the regulations.

In the Schedule, Part 3, replace paragraphs (18) to (20) with:

- (18) to receive applications to register geospatial position reporting devices:
- (19) to receive applications for exemptions under the Fisheries (Geospatial Position Reporting) Regulations 2017:
- (20) to notify the holder of a registered geospatial position reporting device of the cancellation of the registration:

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 2017, revoke and replace the Fisheries (Satellite Vessel Monitoring) Regulations 1993 (the **former regulations**).

These regulations update terminology used in the former regulations and replace some requirements. In particular, these regulations replace a requirement to use automated location communicators with a requirement to use geospatial position reporting devices. The new requirement applies to New Zealand fishing vessels, foreign licensed fishing vessels, registered fish carriers, other vessels used in commercial fishing, and land-based fishing operations.

Under the former regulations, only some fishing vessels were required to provide the Ministry for Primary Industries (the **Ministry**) with detailed position reporting. For example, vessels over 28 m long or vessels used in the orange roughy or scampi fisheries had to carry and use automated location communicators, but the requirement did not apply to many smaller vessels and did not apply at all to land-based commercial fisheries. The position of events will be recorded automatically and securely transmitted to an agreed standard. This information will provide verification of fishing activity location for all commercial fishers. These regulations also include provision for situations where equipment malfunctions.

Regulation 1 relates to the Title.

Regulation 2 provides that the regulations come into force on 1 October 2017. However, provisions in *Schedule 1* enable vessels to comply with the applicable requirements in either the former regulations or these regulations during the period between 1 October 2017 and 31 March 2018, except vessels that have an overall length that exceeds 28 m and are being used in fishing with a trawl net. The latter vessels must comply with these regulations on and from 1 October 2017.

Regulation 3 defines certain terms used in the regulations.

Regulation 4 provides that the transitional, savings, and related provisions set out in *Schedule 1* have effect according to their terms.

Regulation 5 replaces regulation 3 of the former regulations and specifies the vessels and persons required to carry and operate a geospatial position reporting device. A device must be carried and operated by—

- New Zealand fishing vessels (without the exceptions in the former regulations):
- foreign licensed fishing vessels:
- registered fish carriers:
- other vessels used for commercial fishing:
- commercial fishers who fish without a vessel (for example, fishing inshore without a vessel for eel, rock lobster, or paua).

Regulation 6 replaces regulation 4 of the former regulations with a similar provision. This regulation empowers the chief executive of the Ministry to issue circulars specifying the standards and requirements that apply to geospatial position reporting devices. Before issuing a circular, the chief executive must consult any persons considered by him or her to be representative of the classes of persons likely to be substantially affected by the circular.

Regulation 7 replaces regulation 6 of the former regulations with a similar provision. This regulation provides for the registration of geospatial position reporting devices on application made to the chief executive, but does not carry over the former requirement that the chief executive assess whether the device complies with the relevant technical standards.

Regulation 8 replaces regulation 7 of the former regulations with a similar provision. This regulation makes the operator and master of a vessel or fish carrier referred to in *regulation 5(1)* and every commercial fisher referred to in *regulation 5(2)* responsible for ensuring compliance with the requirements of these regulations.

Regulation 9 replaces regulation 8 of the former regulations with a similar provision. This regulation prescribes offences and penalties for specified breaches of the regulations. A person who commits an offence against these regulations is liable on conviction to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for each day during which the offence is continued.

Regulation 10 replaces regulation 9 of the former regulations with a similar provision. This regulation provides that a person has a defence to prosecution for an offence against these regulations if the person can prove that 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), so long as the person acted reasonably in the circumstances.

Regulation 11 replaces regulation 10 of the former regulations with a similar provision. This regulation empowers the chief executive to grant an exemption from the obligation to comply with a requirement of these regulations in any case if satisfied that it is unreasonable or impracticable for any person or vessel to comply with the requirement.

Regulation 12 revokes the former regulations.

Regulation 13 and Schedule 2 consequentially amend 3 fisheries legislative instruments to align them with new terminology and relevant cross-references in these regulations.

Schedule 1 contains transitional and savings provisions. That schedule provides that—

- automatic location communicators registered under regulation 6 of the former regulations must be treated as if they were registered under these regulations:
- vessels referred to in regulation 5(1), except vessels that have an overall length that exceeds 28 m and that are being used in fishing with a trawl net, can comply with the applicable requirements in either the former regulations or these regulations during the period 1 October 2017 to 31 March 2018:
- a fishing vessel or fish carrier that is at sea when these regulations come into force can operate as if the former regulations were still in force, so that there is no need to comply with any new requirements in these regulations until the vessel or carrier returns to port:
- a commercial fisher who is fishing when these regulations come into force need not comply with these regulations until the end of the fishing trip.

Regulatory impact statement

The Ministry for Primary Industries produced a regulatory impact statement on 30 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>

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These regulations are administered by the Ministry for Primary Industries.