



Seafood New Zealand

Submission on the Fisheries (Electronic Monitoring on Vessels) Circular 2022

18 July 2022

1. Seafood New Zealand Ltd welcomes the opportunity to submit on the *Fisheries (Electronic Monitoring on Vessels) Circular 2022 (Circular)*.
2. Seafood NZ is a professional organisation delivering industry-good services for the wider benefit of the seafood industry, an industry that had export earnings of \$1.87 billion in 2021 and generates \$5.2 billion in total economic output. Seafood NZ plays a role in developing and presenting the seafood industry's responses on legislative and regulatory proposals.
3. Seafood NZ works closely with several other bodies that also represent the interests of specific parts of the seafood industry: Sector Representative Entities. These include NZ Rock Lobster Industry Council, Paua Industry Council, Deepwater Group, and Fisheries Inshore New Zealand.
4. This submission is in Two Parts. Part One concerns the empowering regulations; Part Two the proposed Circulars themselves.

PART ONE – EMPOWERING REGULATIONS

Regulations unfit

5. The Circular is issued pursuant to the authority contained in R13 of the *Fisheries (Electronic Monitoring on Vessels) Regulations 2017 (Regulations)*. These Regulations were promulgated based on a delivery model where permit holders would go to market and secure a technology solution that met various technical specifications set by government. This is the delivery model that was used for electronic reporting and geospatial position reporting. Therefore, the Regulations specify the technical requirements, oblige permit holders to meet those requirements, and set penalties for non-compliance.
6. We now have a delivery model for electronic monitoring that is completely different, i.e., government will contract with a single principal supplier that owns and supplies all hardware, firmware, software, and will also be responsible for data transfer. In effect, the Crown is a sole monopoly supplier of all electronic monitoring and can set specifications via its contractual relationship with Spark.

7. As a consequence of this change, many of the Regulations are redundant and make no sense in their current form. Further, the Regulations place obligations on permit holders that are impossible for them to meet and specify penalties that will apply to permit holders for breaches of those obligations. This is inappropriate, unfair, and unreasonable.

Regulatory changes required

8. We highlight the following regulations as requiring either revocation or amendment to reflect the new electronic monitoring regime. This is not an exhaustive or complete list but illustrate the point that the Regulations do fit with the delivery model.
9. Regulation 6 sets out obligations of permit holders and is largely redundant as it requires the permit holder to meet various specifications that are outside their control and are a function of the contracted service between MPI and Spark.
10. Regulation 8 requires that permit holder and vessel master comply with Regulations 9-11 which specify various requirements that are outside their control.
11. Regulation 9 specifies what electronic monitoring equipment must record and makes the permit holder and vessel master responsible for recording those data. This is outside the control of the permit holder or vessel master as (we assume) it's specified in contract between MPI and Spark.
12. Regulation 10 requires that electronic monitoring equipment be maintained so that it can record what's required in R9(2), *inter alia*, "estimate the size and quantity of the fish, aquatic life, or seaweed" caught and that it works reliably. Given that MPI will specify precisely what will be placed on a vessel, the permit holder and master have no capacity to influence what data are collected. Further, the requirement for the equipment to work reliably is solely reliant on what MPI and Spark place on the vessel, its reliability is outside the control of the permit holder.
13. Regulation 13 sets out the various matters that can be specified in the Circulars. Given these relate to the specific equipment to be used or data to be collected, there is no reason to have all of these requirements in Circular (and require permit holders to meet these) as many will be subject to the contractual relationship between MPI and Spark.
14. Regulation 16 sets out when the chief executive may permit a vessel-specific monitoring plan. This is when the chief executive has reason to believe there have been breaches of Regulations 9 or 10. For reasons set out above, these breaches are unlikely to be the fault of the permit holder or vessel master given the Crown is the monopoly provider.
15. Regulations 17-25 set out the various requirements and responsibilities regarding vessel-specific monitoring plans and should be amended to reflect the new supplier regime.
16. Regulation 26 sets out offences and penalties. As discussed above, many of the offences are outside the control of the permit holder or vessel master and are a direct result of what MPI will require to be installed on vessels, and the reliability of that technology. Specifying fines of \$100,000, and \$1,000 per day for an ongoing offence, cannot be sustained when the failure is the fault on MPI's contractor.
17. Regulation 27 sets out the defences that apply and needs to be re-drafted based on appropriate penalties. If technical or mechanical failures occur, that is a failure of MPI's

contractor (who is also responsible for conducting adequate maintenance). These are outside the control of the permit holder and should therefore not be elements of any defence.

18. Regulation 28 sets out infringement offences for any delay in providing footage. This may be outside the control of the permit holder or vessel master as it is a function of the technology.

Standing Orders

19. Standing Order 327 sets out grounds that the Regulations Review Committee should consider when deciding whether to draw a regulation to the attention of the House. These include regulations that:

- trespass unduly on personal rights and liberties
- appear to make some unusual or unexpected use of the powers conferred by the enactment under which it is made
- for any other reason concerning its form or purport, calls for elucidation

Remedy

20. It is our view that the Regulations are fundamentally flawed, inconsistent with established principles, and fall within several of the grounds whereby the Regulations Review Committee can draw a regulation to the attention of the House.

21. We consider the Regulations should be re-drafted to reflect the proposed delivery model, and properly reflect the roles and responsibilities of Spark, the permit holder and vessel master. Offences, penalties and defences must subsequently be drafted accordingly.

PART TWO – FISHERIES (ELECTRONIC MONITORING ON VESSELS) CIRCULAR 2022

Proof-of-concept vessels

22. In general terms, the proposed Circulars appear sensible and will assist in advancing electronic monitoring. We make the following comments to either increase clarity or to raise questions regarding issues that are not initially clear.
23. Clause 6 applies to proof-of-concept vessels and specifies that the new service provider's equipment must be used from 30 November 2022. We assume that if there is some delay for any reason that there will be an exemption provided under R14?
24. Clause 7 concerns the maintenance of electronic monitoring equipment (which is defined in R2 with reference to R6(1)). Clause 7(2) then goes on to specify lighting requirements. We raise two questions regarding this.
25. First, it is not clear from the definition of electronic monitoring equipment in R6(1) that lighting is captured within that definition. If lighting is part of the camera system and installed with that system, it may be caught by R6(1)(d). However, if the lighting in question is existing deck lighting that is already installed on the vessel this is unlikely to be regarded as electronic monitoring equipment and so may be outside the scope of Clause 7(2).

26. Second, Clauses 7(1) and 7(2) require lighting to be “appropriate” and “not cause a reduction in image quality and clarity”. How is the appropriateness of lighting to be determined and by whom? How are those onboard to know whether the lighting is appropriate? If the lighting is supplied as part of the electronic monitoring system, then one assumes this will be fit for purpose as determined by MPI and Spark. If that is the case it is unclear why there should be a requirement on the permit holder to ensure it’s appropriate. Conversely, if the lighting is existing deck lighting, a) does this need to be upgraded, by whom, and at who’s cost? If it’s deemed not “appropriate” what happens then?
27. Clause 8 provides specifics regarding the process to report faults. Some clarification is sought about whether fishing can commence or continue under those circumstances without the need for an exemption under R14.
28. Clause 10(6) specifies that a storage device is considered received when scanned by the courier service. We assume this means when scanned upon collection from the permit holder, not scanned upon receipt by MPI. Clarification would be appreciated.

New service vessels

29. Clause 11 sets out a fundamental requirement. This mirrors those in R6, 7, 8, 9 and others. We consider these substantive requirements should be specified in the Regulations and that the content of Clause 11 is not within the scope of the power to make Circulars under R13.
30. Clause 12 concerns various operational requirements of electronic monitoring equipment. We reiterate the comments made above at paragraphs 24-26 regarding Clause 7.
31. Clause 13 provides specifics regarding the process to report faults. Some clarification is sought about whether fishing can commence or continue under those circumstances without the need for an exemption under R14.
32. Clause 15 provides specifics associated with the provision of footage. Clause 15(1) states that “... the permit holder must ensure that the electronic monitoring equipment can upload the video footage and associated information via the network transfer by ensuring the electronic monitoring equipment is switched to standby mode before powering down the vessel.”
33. There are two requirements here. One to “ensure that the electronic monitoring equipment can upload the video footage and associated information via the network transfer” and another to “[ensure] the electronic monitoring equipment is switched to standby mode before powering down the vessel.”
34. The second requirement is a reasonable obligation to impose on the permit holder. It can readily be actioned. However, the first requirement cannot be assured, and the permit holder has no capacity to ensure the data are uploaded via the network transfer. That is a function of the technology itself and should not be a requirement placed upon the permit holder.
35. As drafted, by ensuring the second obligation is completed, the first should follow. We suggest Clause 15(1) be amended as follows: “... the permit holder must ensure ~~that the electronic monitoring equipment can upload the video footage and associated information via the network transfer by ensuring~~ the electronic monitoring equipment is switched to standby mode before powering down the vessel.”

36. Or perhaps the alternative formulation: "... and in order to allow the electronic monitoring equipment to upload the video footage and associated information via the network transfer, the permit holder must ensure the electronic monitoring equipment is switched to standby mode before powering down the vessel."
37. The balance of Clause 15 specifies the requirements to meet R7. We welcome the flexibility provided and the acceptance that it will not always be possible for data to be uploaded via a network connection in remote locations. We question what will happen if data are not able to be uploaded or retrieved by the new service provider? Must an exemption be sought under R14? Is there some dispensation that can quickly and easily be applied where best endeavours have been made to provide the data as required?

Jeremy Helson
Seafood NZ