

Chair
Cabinet Economic Development Committee

Proposed regulatory amendments to support electronic catch and position reporting and innovative trawl technologies in the commercial fishing industry

Proposal

1. This paper seeks agreement to a number of proposed regulatory amendments relating to the commercial fishing industry. The proposed amendments are largely technical changes that facilitate the implementation of electronic catch and position reporting and innovative trawl technologies.

Executive Summary

2. In 2017, new regulations were made under the Fisheries Act 1996 to authorise the roll-out of the Digital Monitoring programme (consisting of electronic catch and position reporting, and on-board cameras) and to enable innovative trawl technologies for commercial fishing.
3. During implementation, a number of technical issues with the new regulations were raised by the industry. In April 2018 Cabinet approved consultation on proposed amendments to address these issues [CBC-18-MIN-0047 refers].
4. The proposals aimed to clarify the intent of the regulations and to remove any ambiguities. The consultation document also proposed a phased rollout of the new electronic catch and position reporting requirements across the remainder of the fishing fleet and land-based fishers.
5. Twenty eight submissions were received during the consultation. Most submissions supported the intent of the proposals, but some common implementation concerns were raised. Many submissions also raised broader concerns outside the scope of consultation, such as the use of on-board cameras. No concerns were raised over the proposed changes to innovative trawl technologies.
6. No issues have been raised that I consider would warrant significant changes to the proposed approach, but a few minor technical changes are merited.

7. I also seek agreement to a phased rollout of the new electronic catch and position reporting regulations for the remaining permit holders. The rollout would be made up of additional tranches, starting with permit holders who had the highest holdings of Annual Catch Entitlement (ACE) on 30 September 2017, and finishing with permit holders who held the least ACE (or none). Each tranche has a starting date, from which the affected permit holders may comply, and a finishing date, from which they must all comply.
8. Submitters were supportive of a phased roll-out and I am keen to seek the views of the Committee on the potential options:
 - a. Starting from 14 December 2018 (there would be nine tranches, finishing on 1 December 2019); or
 - b. Starting from 14 January 2019 (there would be eight tranches, also finishing on 1 December 2019).

Background

9. In 2017, new regulations were made under the Fisheries Act 1996 to authorise the roll-out of the Digital Monitoring programme (consisting of electronic catch and position reporting, and on-board cameras) and to enable innovative trawl technologies for commercial fishing. These contribute to the goal of ensuring the long-term sustainable use of New Zealand's fisheries.
10. Digital Monitoring modernises New Zealand's commercial fisheries reporting and monitoring mechanisms, by introducing:
 - a. electronic catch reporting, which requires the completion and transmission of electronic catch reporting of all commercial catch. This will provide more accurate and timely information to support more sustainable management decisions and compliance monitoring;
 - b. electronic position reporting, which requires automated geospatial position reporting of the location of vessels or fishers to provide more detailed information on fishing activity; and
 - c. on-board cameras, which relates to the placement and operation of cameras across the industry, in order to ensure accurate catch reporting and change fishers' behaviour to improve compliance and add value.
11. Innovative trawl technologies have the potential to improve the overall sustainability of fisheries and the ability of fishers to derive maximum benefit from their catch by improving catch quality, but their use can sometimes be prevented by current legal requirements. These improvements can be achieved by, for example:
 - a. reducing bycatch of undersized fish and quantity of unwanted fish (e.g. by improving the size and species selectivity of trawl gear);
 - b. reducing accidental bycatch of non-fish species, including marine mammals and seabirds, and the adverse effects on seabed aquatic life; and
 - c. reducing damage to fish caught in trawls (e.g. through contact with other fish and the gear) especially when large volumes are caught in a tow.

12. Implementation of the new regulatory requirements is underway:
 - a. electronic catch and position reporting were implemented on trawl vessels over 28 metres in length from 1 October 2017 — introduction across the rest of the fleet was deferred and is proposed in this paper to commence from either December 2018 or January 2019;
 - b. the amended Fisheries (Commercial Fishing) Regulations 2001 enable the approval of innovative trawl nets – one approval, for the use of new trawl nets developed by Precision Seafood Harvesting, in specified fisheries, was given on 24 May 2018.
13. During implementation of the electronic catch and position reporting regulations, practical issues were raised regarding the operation of new requirements. On 28 April 2018 the Cabinet Business Committee noted that a number of issues had been raised that would require amendments to the regulations to facilitate their wider implementation, and agreed to the release of a consultation document to form the basis for public consultation on proposed amendments to the regulations [CBC-18-MIN-0047 refers].
14. A range of amendments to regulations were proposed. These fell into four main categories:
 - i. technical amendments to facilitate the introduction of electronic catch reporting, position reporting and innovative trawl technologies, including greater clarity around what will happen in different operational circumstances;
 - ii. protecting potentially commercially sensitive information associated with fishing locations by limiting the precision of information available to permit holders where they are not the fisher;
 - iii. adding new infringement offences and penalties, as a consequence of changes to some reporting requirements, and changing some penalties to better match the approach applied across other fisheries regulations; and
 - iv. providing the ability to amend the conditions of an approval for an innovative trawl net to mitigate potential sustainability risks.
15. The consultation document also proposed a phased rollout of the new reporting requirements across the remainder of the fishing fleet and land-based fishers. Currently, the new requirements would be imposed on all remaining fishers from 1 October 2018. Detailed proposals for the timing and basis on which the rollout would occur have been developed since the consultation document was released.

Comment

Results of consultation

16. Consultation took place from 9 May to 8 June 2018. During this time, Fisheries New Zealand also held discussions with the Implementation Advisory Group, a multi-stakeholder group established to advise Fisheries New Zealand on the implementation of Digital Monitoring, including representation from the commercial fishing industry, Te Ohu Kaimoana, environmental NGOs and government agencies, and two meetings with members of commercial Sector Representative Entities.
17. Twenty eight submissions were received during the consultation. There were 15 from commercial fishers, six from commercial Sector Representative Entities, three from larger fishing companies, two from service providers, one from Te Ohu Kaimoana, and one from two members of the public.
18. Most submissions supported the intent of the proposals, but some implementation concerns were raised. No concerns were raised over the proposed changes to innovative trawl technologies.
19. The main themes to emerge from the submissions, that related directly to the proposed changes, were:
 - a. impracticality of some proposed reporting requirements, such as when to record data for Fish Catch Reports and when information from Licensed Fish Providers is to be provided;
 - b. ambiguity in some situations, such as what happens if equipment fails or when a position reporting device needs to be operating; and
 - c. support for a phased rollout of requirements, in principle, with some suggested mechanisms and timeframes.
20. A number of points raised in submissions related to technical details that are set out in circulars made under the regulations, such as when a position reporting device needs to be operating. These points will be addressed in revisions to the circulars, to be made once the amended regulations are in place.
21. A number of submissions raised matters that were outside the scope of the proposed technical amendments, have already been dealt with, or are to be addressed in future Cabinet papers.
22. Fisheries New Zealand will continue to engage fully with industry on the technical details to be set out in the revised circulars and in guidance material.

Proposed amendments

23. After considering the submissions received, I propose amendments to the following regulations:
 - a. Fisheries (Reporting) Regulations 2017, for electronic catch reporting,
 - b. Fisheries (Geospatial Position Reporting) Regulations 2017, for position reporting,
 - c. Fisheries (Commercial Fishing) Regulations 2001, for innovative trawl technologies, and
 - d. Fisheries (Infringement Offences) Regulations 2001.
24. The proposed amendments to these regulations are attached as Appendix One. The majority are unchanged from the consultation document but the following are of particular interest to fishers.

Protecting information on fishing locations

25. From consultation, fishers did not want high resolution (to 10 metre accuracy) data made available to permit holders. Where the permit holder and the fisher are different people, the requirement on the permit holder to provide high resolution catch location data could reveal information that the fisher considers to be commercially sensitive.
26. I propose making the fisher responsible for entering the high resolution data. The permit holder would remain responsible for ensuring that the data has been provided at high resolution, but would see the data only at low resolution (to 10 kilometre accuracy).
27. Some fishers were concerned with having to provide Fisheries New Zealand with such high resolution data regardless. This concern will be addressed in a revision of the administrative circulars that amongst other more administrative issues, will specify the resolution of data in more detail.

Changes to offences and penalties

28. The electronic reporting regulations and the infringement offences regulations require amendment as a consequence of some of the changes to electronic catch reporting. The penalties for offences have been adjusted to ensure they are consistent with the penalties applied for other reporting offences with similar consequences.
29. The Ministry of Justice has been consulted on the intention to amend offences and penalties and Fisheries New Zealand will continue to work with the Ministry of Justice during the drafting process to ensure new and amended offences and penalties are appropriate and proportionate.

Timing of landing reports

30. Table one sets out further amendments that relate to timing of landing reports and the need to notify the Ministry for Primary Industries if a position reporting device is removed from a vessel.

Table One: Proposed revisions to the regulatory amendments as a result of consultation

Original proposal	Issue	Revised proposal
Require information from Licensed Fish Receivers to be provided in a landing report no later than 5 days from the day of landing.	The 5-day cut-off is not feasible for a number of fishers. (This information is sometimes provided in conjunction with other returns.)	Extend the cut-off to 15 days (as applied to many fishers under the 2001 reporting regulations).
The fisher must notify MPI whenever a position reporting device is removed from a vessel.	A device may be frequently removed, e.g. to download daily data. The intention is that MPI knows when a shared device is being moved from one vessel to another.	The fisher must notify MPI if a position reporting device is removed from a vessel only if the device is to be used on another vessel or is no longer to be used on the vessel.

Phasing in of electronic catch and position reporting obligations

31. Given the impracticality for the industry to implement electronic catch and position reporting for more than 1000 fishers at once, I propose phasing the roll-out of electronic catch and position reporting requirements in a number of tranches.
32. I propose that the tranches be based on the tonnage of the Annual Catch Entitlement (ACE) held by a permit holder on 30 September 2017. This date is the latest date on which the ACE holding should most closely represent the size of a fishing operation.
33. The first tranche would provide for permit holders with the highest ACE holdings to commence electronic catch and position reporting over a period of more than three months, to provide time to address any unforeseen implementation issues. The remaining tranches would each provide for permit holders with progressively lower (or no) ACE holdings to commence electronic catch and position reporting over a one month period.
34. Permit holders with larger ACE holdings are mostly large companies that are likely to be more able to manage the changes and require lower levels of support, because of their fleets' inherent ability to integrate technological change. They will help to build momentum and support the remainder of the fleet.

35. The position reporting obligations fall on skippers, who may not be permit holders. Their obligations would come into effect when they fish under a permit held by someone who is subject to the electronic catch reporting requirements. This means that both electronic catch and position reporting would begin on a vessel at the same time.
36. A number of permit holders contract the catch reporting function to skippers, and some skippers fish under more than one permit. To avoid skippers having to meet dual reporting requirements (electronic and paper-based), I propose that the holders of all permits under which the vessel fishes would become subject to electronic catch reporting requirements for that vessel.
37. Under this approach, some permit holders would report electronically earlier than determined through their ACE holdings. This is operationally preferable to requiring skippers to undertake dual reporting at sea.
38. Two options are proposed for the rollout of the new reporting requirements:
 - a. the first tranche commences on 14 December 2018 and lasts until 31 March 2019. There are eight further tranches, from 1 April 2019 to 30 November 2019, with all permit holders required to meet the new requirements from 1 December 2019; or:
 - b. the first tranche commences on 14 January 2019 and lasts until 30 April 2019. There are seven further tranches, from 1 May 2019 to 30 November 2019, with all permit holders required to meet the new requirements from 1 December 2019.
39. While the differences appear minor, there are advantages and disadvantages with either approach:
 - a. the first option builds an early momentum to commence much-needed improvements to New Zealand's fisheries management system. However, this option introduces a new system just prior to Christmas, which will be more challenging across the sector, for example if vessels have technical issues to be addressed; however
 - b. the second option introduces a new system when the sector should be better resourced to implement it, but delays the commencement of the new reporting regime until 2019.
40. I invite the views of my colleagues as to which approach is preferred.

Proposed changes to innovative trawl technology regulations

41. No concerns were raised by submitters on proposed amendments to the enabling innovative trawl technology regulations. On that basis I recommend proceeding with proposed changes outlined below.

Ability to amend the conditions of an approval for an innovative trawl net

42. The Director-General of MPI currently has the ability to impose terms and conditions when granting an approval for an innovative trawl net. The proposed change would allow the terms and conditions of an approval to be amended, added to or removed subsequent to an approval being granted.
43. This change is necessary as issues may become apparent during full commercial use of a new net, as opposed to during gear trials that supported development of the net. It would give Fisheries New Zealand the ability to respond dynamically to issues and variables, not known at the time the approval was granted, that could hold risks to sustainability or where conditions of an approval are not working as intended.
44. This power would also apply to approvals granted prior to the change coming into effect.

Create an offence for breaching an innovative trawl net approval

45. Breaching a trawl net condition currently results in the approval becoming void. This could mean that a low level breach results in a significant impact on the fisher.
46. Creating a new offence for failing to comply with conditions enables penalties to be set in line with severity of the breach, which could be used instead of voiding an approval.

Clarification of implications of a breach to an innovative trawl net approval

47. Further to the above, the regulations currently state the approval is void if any of the terms and conditions are not complied with. The proposed change clarifies that all fishers can rely on an approval so that, where one fisher does not comply with an approval's conditions, the approval is only voided for the non-compliant fisher.

Implementation

48. Engagement with the industry on new requirements is needed to ensure fishers will be able to meet the new reporting requirements with minimal disruption to their businesses. Fisheries New Zealand is planning a series of meetings around the country to answer fishers' questions, provide guidance material and demonstrate the technology fishers will require.
49. Also, engagement with technology providers will support the development of hardware and software products that will be needed when new requirements come into effect.
50. Te Ohu Kaimoana and the commercial Sector Representative Entities will be consulted on any amendments needed to the circulars setting out the technical detail.

51. Timing for the introduction of the new requirements will depend on the approach adopted for rollout:

Table Two: Milestones for introduction of new regulatory requirements

Milestone	December 2018 start	January 2019 start
PCO drafts amendments	Mid-September – late October 2018	Mid-September – late October 2018
Cabinet considers amended regulations	Early November 2018	Early November 2018
Gazettal of amended regulations	Mid-November 2018	Mid-November 2018
Date regulations take effect	13 December 2018	13 December 2018
Tranche 1 of rollout commences	14 December 2018	14 January 2019
Final tranche complete	1 December 2019	1 December 2019

52. During the rollout, engagement with fishers will facilitate their understanding of how to comply with the new requirements, for their fishing operations. Fishers will be encouraged to talk to Fishery Officers who are trained in the new requirements. When breaches of the regulatory requirements occur, the current MPI graduated response model will be applied, taking into account the transition to a new regime. The aim will be to ensure a smooth transition for fishers and Fisheries New Zealand.

Consultation

53. The following government departments were consulted in the development of the draft Cabinet paper: the Ministry for Business, Innovation and Employment, Department of Conservation, Department of Internal Affairs (Government Chief Privacy Officer), Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Justice, Te Puni Kokiri, the Treasury, Maritime New Zealand. The Department of Prime Minister and Cabinet has been informed.

Financial Implications

54. The technical changes to regulations will have little or no financial implications. The extended rollout will incur costs relative to the date currently in the regulations. MPI and Fisheries New Zealand are reprioritising funding for this.

Legislative Implications

55. Amendments will be needed to the following regulations:
 - a. Fisheries (Reporting) Regulations 2017,
 - b. Fisheries (Geospatial Position Reporting) Regulations 2017,
 - c. Fisheries (Commercial Fishing) Regulations 2001, and
 - d. Fisheries (Infringement Offences) Regulations 2001.

Regulatory Impact Analysis

56. The regulatory impacts of Digital Monitoring and enabling innovative trawl technologies were set out in the MPI Regulatory Impact Statements "*Integrated Electronic Monitoring and Reporting System*" and "*Enabling Innovative Trawl Technologies*", published in May 2017, to support the passage of the new regulations. [EGI-17-MIN-0053 refers.]
57. These proposals involve only minor adjustments to the regulations. Any impacts should be largely positive, as they should reduce compliance or enforcement costs associated with uncertainty over obligations.
58. The proposals are substantially the same as those outlined in the discussion paper "*Amendments to Regulations to Support Digital Monitoring and Innovative Trawl Technologies in the commercial fishing sector*". [CBC-18-MIN-0047 refers]. The consultation process did not identify any adverse impacts that may be more than minor.
59. The Regulatory Quality Team at the Treasury has determined that the regulatory amendments proposed in this paper are exempt from the Impact Analysis requirements on the grounds that they are likely to have only minor impacts on businesses, individuals or not-for-profit entities.

Publicity

60. As it is important that the fishing industry and technology providers have enough time to prepare for the introduction of electronic catch and position reporting, I intend to issue a media statement announcing the proposed amendments to the regulations.
61. I also intend to publish this paper on the Fisheries New Zealand website. This release will support engagement with industry to ensure fishers are aware of when they must commence reporting and are able to meet the new reporting requirements with minimal disruption to their businesses.
62. Every permit holder will receive a letter confirming when they will be required to commence electronically reporting. Regional meetings are also planned to provide guidance material, answer questions on the new obligations and support vendors demonstrating the technology fishers will require.

63. My officials will also engage with technology providers to ensure that hardware and software products are available by the time the new requirements come into effect.

Recommendations

64. The Minister of Fisheries recommends that the Committee:

1. **Note** that Fisheries New Zealand has undertaken public consultation on proposed amendments to the regulations relating to electronic catch and position reporting and enabling innovative trawl technologies.
2. **Agree** to a phased rollout of electronic catch and position reporting obligations over the remainder of the commercial fleet and land-based fishers, commencing with permit holders who had highest Annual Catch Entitlement (ACE) holdings on 30 September 2017, then requiring permit holders with progressively lower ACE holdings to comply with the obligations.
3. **Agree** to a rollout period that **either**:
 - 3.1. Commences on 14 December and finishes on 1 December 2019, with nine tranches;or
 - 3.2. Commences on 14 January 2019 and finishes on 1 December 2019, with eight tranches.
4. **Agree** that amendments, as described in the appendix to this paper, be made to the Fisheries (Reporting) Regulations 2017, Fisheries (Geospatial Position Reporting) Regulations 2017, Fisheries (Commercial Fishing) Regulations 2001, and Fisheries (Infringement Offences) 2001.
5. **Invite** the Minister of Fisheries to issue drafting instructions to the Parliamentary Counsel Office to draft the agreed regulatory amendments.
6. **Agree** that the Minister of Fisheries may approve minor changes to the amendments that do not impact on policy.
7. **Note** that the Minister of Fisheries will publish a copy of this paper, on the website of Fisheries New Zealand, to support the industry in preparing for the new regulatory requirements.

Authorised for Lodgement

Hon Stuart Nash
Minister of Fisheries

Appendix One: Detail of proposed regulatory amendments

All revisions herein considered technical changes unless annotated otherwise.

Fisheries (Reporting) Regulations 2017

- Add a definition of “product state” to clarify that information on processed fish must be recorded.
- Amend to ensure fish removed from a vessel to a holding container on land are reported as landed.
- Amend the definition of “permit holder” to remove extension to a person who is not involved in reporting, and clarify the permit holder obligations for event reports.
- Add “trip start” and “trip end” to the event reports required to be completed and provided.
- Create two sets of parallel reporting requirements, whereby the fisher is required to enter catch location data to 4 decimal places, while the permit holder is responsible for ensuring the data is provided but can only see the data to 1 decimal point, to protect any commercial sensitivity.
- The following changes for catch, processing, disposal and landing reports:
 - for fish catch reports, amend the current requirement for specific types of information to be recorded immediately after fishing starts and ends such that the information can be provided at a time that is most appropriate to each fishing method;
 - amend the requirement for estimated catch details to be recorded on fish catch reports from within 4 hours after fishing ends to within 8 hours after fishing ends;
 - amend the requirements for completing and providing non-fish or protected fish species catch reports. If a species that must be reported is taken when fishing, one report per fishing event must be completed and provided when the corresponding fish catch is due. If a species that must be reported is taken when not fishing, a report must be completed and provided before the close of the day on which the permit holder became aware of the catch;
 - amend the requirements for processing reports to reflect such that they are completed and provided before the close of the day following the day covered by the report or, if the processing starts on one day and ends on another day, before the close of the day on which the processing ends;
 - where disposal reports are required to be completed by operators of vessels who are also required to complete processing reports, change the obligation such that reports must be completed daily or at the same time the relevant processing report is due;

- where disposal reports are required to be completed by all other fishers, change the obligation such that one report needs to be completed and provided for all disposal incidents associated with fish caught during a fish catch event at the same time the relevant fish catch event report is due;
- for landing reports, change the obligations for recording, completing and providing information except for Licensed Fish Receiver information such that the information is completed as soon as landing is finished and provided by the end of the day on which it was recorded; and
- change the obligation for recording and completing Licensed Fish Receiver information to be no later than 15 days after landing is finished.
- Require Monthly Harvest Returns to be provided electronically, so that all information provided by fishers will be electronic.
- Clarify that fish that are not required to be recorded in a Monthly Harvest Return should not be so recorded.
- Remove the requirement on those required to provide returns to retain a copy of an electronic report for seven years.
- Provide for the Director-General to give directions to fishers that notify of an accident or mechanical or technical failure, to allow any risks to be managed.
- Amend the obligation to provide processing reports to add vessel size or class as criteria for requiring processing reports, to reduce unnecessary reporting requirements.
- Amend the offences and penalties provisions to:
 - create an offence for failure to provide a trip report;
 - create an offence for failure to comply with instructions following an accident or a mechanical or technical failure;
 - remove the offence of failing to retain reports for seven years; and
 - move the failure to record the information required in a report or return from a medium penalty offence to a high penalty offence.
- Amend the schedule of transitional provisions to provide for a phased rollout of the reporting requirements across permit holders not already subject to them, commencing on either 14 December 2018 or 14 January 2019, with permit holders who held the greatest value of ACE on 30 September 2017, and finishing on 1 December 2019.
- Provide for the Chief Executive to have the ability to manage the implementation of those who are to be brought in under the phased rollout.

Fisheries (Geospatial Position Reporting) Regulations 2017

- Allow for circulars to state the requirements for when a device is required to be operated, to remove ambiguities for different kinds of fishing vessel.
- Require a fisher to notify the chief executive if a device is removed from a vessel only if it is to be used on another vessel or no longer used on the vessel.
- Provide for the chief executive to give directions to fishers that notify of a device failure, to allow any risks to be managed.
- Amend the offences and penalties provisions to:
 - create an offence for failure to comply with instructions following an accident or a mechanical or technical failure.
- Amend the schedule of transitional provisions to align with the rollout of the new reporting requirements under the Fisheries (Reporting) Regulations 2017, placing an obligation on the fisher to meet the requirements of these regulations when fishing under the permit of a person subject to the new reporting requirements.
- Provide for the Chief Executive to have the ability to manage the implementation of those who are to be brought in under the phased rollout.

Fisheries (Commercial Fishing) Regulations 2001

- Give the chief executive the ability to amend, add or remove the terms and conditions of a trawl net approval (including approvals granted prior to the amendment coming into effect), to respond to previously unknown risks to sustainability.
- Amend the regulations to clarify that all fishers can rely on an approval so that where one fisher does not comply with an approval's conditions, the approval is only voided for the non-compliant fisher.
- Create a new offence (in regulation 84) for failing to comply with any terms and conditions set in a trawl net approval. This will be a high penalty offence.

Fisheries (Infringement Offences) Regulations 2001

- Add, amend or delete offence descriptions to reflect changes to reporting requirements.