

Chair
Cabinet

Technical amendment to the Fisheries (Electronic Monitoring on Vessels) Regulations 2017

Proposal

1. I seek Cabinet's agreement to amend the application date of the Fisheries (Electronic Monitoring on Vessels) Regulations for the first three stages of the rollout of on-board cameras on commercial fishing vessels.

Background

2. The Fisheries (Electronic Monitoring on Vessels) Regulations 2017 (the Regulations) impose obligations on fishers to install and operate on-board cameras, and take effect in stages across the commercial fishing fleet from 1 October 2018.
3. The Regulations cannot be practically complied with by commercial fishers because circulars, which would specify the requirements for the installation, use and maintenance of the on-board cameras, have not yet been issued, and camera suppliers are not geared up to provide cameras and related equipment across the fleet.
4. The Government has acknowledged the issues raised by commercial fishers about the practicalities and implications of introducing digital monitoring of commercial fishing, such as technology readiness, privacy concerns and cost. I am committed to sorting out those issues before we start implementing cameras, because we want to take the time needed to get this important change programme right.

Issue

5. The Director-General of the Ministry for Primary Industries is able to exempt a person or vessel from compliance with the Regulations, if it is unreasonable or impractical for them to comply. In the absence of circulars setting out the requirements for on-board cameras, it is unreasonable and impractical for fishers to comply with these obligations. Accordingly, the Director-General exempted the vessels required to meet the obligations from 1 October 2018 (the first stage).
6. As the Regulations require an exemption to be no broader than is necessary to address the matters giving rise to the exemption, this exemption was granted

only to vessels covered by the first stage¹, and only for the period of the first stage, which concludes on 31 January 2019. From 1 February 2019, the Regulations will also apply to a range of other vessels².

s9(2)(h)

- [REDACTED]
- [REDACTED]

Proposed amendment to regulations

9. A technical amendment is needed to change the date that the Regulations apply for the first three stages that are identified in schedule 1 of the Regulations. I propose to change this date to 1 August 2019 as a holding position to address the immediate legal issue.
10. The proposed amendment will ensure that fishers are not subject to legal obligations they cannot practically or reasonably meet in the meantime.

Next steps

11. The fisheries change programme, to improve New Zealand's fisheries management system in light of technological advances and changing societal expectations about the sustainability of fishing, is well underway.
12. Consultation on improvements to the management of commercial fishing will start in February [REDACTED]. I anticipate seeking Cabinet policy decisions in May 2019 and introducing a Bill to implement those improvements later in 2019.

13. s9(2)(f)(iv)

- [REDACTED]
- [REDACTED]
- [REDACTED]

¹ Vessels used for surface longlining, and vessels less than 28 metres in length used for trawling.

² Including vessels used for bottom longlining and vessels greater than 7 metres in length used for trawling.

Timing and the 28-day rule

14. The technical amendment to the Regulations needs to be made by Executive Council prior to 31 January 2019 to avoid putting fishers in a situation where they cannot practically comply with legal obligations because the specific requirements have not been issued.
15. I am seeking a waiver of the 28-day rule. The purpose of the 28-day rule is to ensure that those affected by a law change are given time to understand and respond to the change. In this case, it is reasonable to seek a waiver to this rule as the changes delay rather than impose any requirements on industry and avoid a compliance and enforcement gap.

Compliance

16. The Regulations comply with:
 - 16.1. The principles of the Treaty of Waitangi.
 - 16.2. The rights and freedoms contained in the New Zealand Bill of Rights Act 1990.
 - 16.3. The principles and guidelines set out in the Privacy Act 1993.
 - 16.4. Relevant international standards and obligations.
 - 16.5. The Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

17. There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

18. The regulations have been certified by Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

19. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment as they have no or minor impacts on businesses, individuals or not for profit entities.

Publicity

20. Following Cabinet decisions, officials will communicate those decisions to relevant industry representatives. No media statement is planned.

Proactive release

21. I propose to release this paper proactively, with redactions as appropriate under the Official Information Act 1982 (such as the legal advice), within 30 business days of it being considered by Cabinet.

Consultation

22. As the proposed amendment is consistent with the expectations of commercial fishers and is needed urgently in order to avoid fishers being unable to comply with legal obligations, it is considered that consultation is not necessary.
23. Department of Prime Minister and Cabinet, Treasury, Department of Conservation and Ministry for the Environment have all been informed.

Recommendations

The Minister of Fisheries recommends that Cabinet:

1. **note** that the Fisheries (Electronic Monitoring on Vessels) Regulations 2017 came into force on 1 October 2018 and provide for a staged rollout of electronic monitoring of commercial fishing vessels using on-board cameras;
2. **note** that the Regulations cannot be practically complied with by commercial fishers because detailed requirements have not been set and suppliers are not geared up to provide equipment;
3. **agree** to amend the Regulations application date, as a holding position, to 1 August 2019 for the first three stages that are identified in schedule 1 of the Regulations;
4. s9(2)(f)(iv) [REDACTED]
5. **authorise** the submission to the Executive Council of the Fisheries (Electronic Monitoring on Vessels) Amendment Regulations 2019;
6. **note** that a waiver of the 28-day rule is sought:
 - a. so that the Regulations can come into force before 31 January 2019 in order to avoid a situation where fishers cannot practically comply with legal obligations;
 - b. on the grounds that the changes delay rather than impose any requirements on industry and avoid a compliance gap;

7. **agree** to waive the 28-day rule so that the Regulations can come into force on 31 January 2019.

Authorised for lodgement

Hon Stuart Nash
Minister of Fisheries

Proactive Release

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