

18 July 2022

Mr D Bolger  
Deputy Director General  
Fisheries New Zealand  
PO Box 10420  
Wellington

Dear Mr Bolger

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

1. Thank you for the opportunity to submit on the Fisheries (Electronic Monitoring on Vessels) Circular 2022 (the “Circular”).
2. Fisheries Inshore New Zealand Ltd (Fisheries Inshore) represent the majority of quota-owners and operators in the inshore and highly migratory finfish sectors of the NZ commercial fishing industry.
3. This submission is in Two Parts. Part One concerns the empowering regulations – “Fisheries (Electronic Monitoring on Vessels) Regulations 2017” and Part Two the proposed Circulars themselves.

**PART ONE – Fisheries (Electronic Monitoring on Vessels) Regulations 2017**

Regulations unfit

4. The Circular sets under the authority of the Fisheries (Electronic Monitoring on Vessels) Regulations 2017 and these must be examined and understood to be able to confirm the authority of the matters in the Circular.
5. As you are also aware the changes to those regulations occurred without any discussion or consultation with industry or to our knowledge any other parties. This is surprising given that it was well-known to the Ministry what was needed and the reassurances that are being given to submitters and the Select Committee on the Fisheries Amendment Bill on the use of processes for appropriate involvement.
6. I have discussed the regulations with MPI and have forwarded our initial thoughts on the appropriateness of the Fisheries (Electronic Monitoring on Vessels) Regulations 2017 (the “Regulations”) in their current form.

7. MPI discussed with me the process problems associated with amending the regulations and your need to have a power under which an operator could be made to carry additional cameras to improve coverage of on-board activity.
8. After greater consideration of their content, we consider them to be inappropriate as the empowering regulations for the circular and they must be changed.
9. The Regulations were enacted for the same delivery model used for electronic reporting and geospatial position reporting where the permit holder would secure a market solution that met the technical specifications set by government in the relevant regulations. Accordingly, those regulations specify the technical and operational requirements, require permit holders to meet those requirements, and set penalties for non-compliance. Part 2 in particular details an additional process a permit holder must undertake if he is in breach of regulation 9 or 10.
10. However, MPI has proceeded with a different delivery model where the Crown has entered into a contract with Spark for the supply of and installation of hardware and software and the transmission of imagery. That delivery option has fundamentally changed the obligations of permit holders in respect of electronic monitoring. In particular, obligations as to the quality and functionality of recording equipment and the transmission capability are redundant and the content relating Vessel-Specific Monitoring Plans must be amended / removed as appropriate to reflect the transfer of such obligations to Spark under its contract with Spark. The continued inclusion of redundant and inappropriate provisions in the Regulations render them unfit for purpose.
11. In particular, for the absence of doubt we consider the following provisions in the Regulations to be removed or amended:
  - a. Remove Regulation 6 (2) in that it applies to the provider of the cameras
  - b. Amend Regulation 7 in that, with the nature of the equipment being provided, the permit holder has no means to provide imagery as required and at best can only advise Spark of an issue in the transmission of imagery.
  - c. Delete Regulation 9 (2) in that it requires video recording to meet quality and resolution standards where those standards are determined by the contracted supplier
  - d. Amend Regulation 10 relating to the maintenance of the equipment. Permit holders can do no more than power the equipment, keep any cameras clean and advise Spark of any failures.
  - e. Delete Regulation 13 (1) (a) to ( e) relating to the matters as to system functionality to be included in circulars
  - f. Delete Regulations 16 – 25 1 Part 2 in that it refers to a vessel-specific monitoring plan in relation to multiple breaches of regulations 9 or 10.
  - g. Amend Regulation 26 to reflect the amended content of the regulations.
  - h. Amend Regulation 28 to include the lower level responsibilities for the permit holder
12. MPI indicated that Part 2 was necessary to allow them to place additional cameras on vessels where additional coverage might be needed to address behavioural issues. Considerable time and expense will be incurred in order to establish, have approved and have installed a vessel-specific plan. Part 2 is not the appropriate framework for that

response. MPI should look to other mechanisms in the Act rather than maintain an otherwise redundant Part of the Regulations to achieve its intentions.

13. We consider it would be appropriate in the Regulations to provide a contingency option for the dates by which fleets must provide video footage. With best endeavours and in these unsettled times, the supply and installation of video monitoring equipment on vessels may not proceed as contracted. Rather than changing the dates by a regulatory amendment, we would consider it appropriate to include a provision generally as follows “or as at such later date as advised by the Chief Executive Officer in writing to each permit-holder”.
14. MPI needs to amend the Regulations as soon as possible. It is not acceptable that a set of regulations, that are patently inappropriate for the current environment but contain obligations and penalties for the permit holder, are retained in the suite of current legislation.
15. Given the nature of the obligations and compliance issues contained in the Regulations, if MPI chooses not to amend the Regulations as soon as possible, we will explore avenues to have the Regulations struck down.

#### **PART TWO – The Fisheries (Electronic Monitoring on Vessels) Circular 2022**

16. In general, the content of the Circular is sensible and acceptable. We have the following comments:
17. The Circular makes reference to specific dates from which permit holders must use electronic monitoring equipment. As noted above in the Regulations part of this submission, we consider it would be appropriate to provide a contingency provision in the circumstances where the new service provider is unable to provide and install the contracted equipment by the due date.
18. The Circular makes reference to any lighting, natural or artificial, must not cause a reduction in image quality or clarity. Permit holders cannot feasibly be held to account for any reduction in natural lighting that impacts on image quality or clarity, e.g. heavy rainfall, snow, fog, lightning, night-time.
19. MPI has not provided any guidance to industry as to the ability of the cameras to operate in low light or poor visibility conditions or night-time conditions. In respect of artificial lighting, vessels will implement deck lighting sufficient to meet their operational including health and safety needs. That might involve low level lighting to reduce the prospect of seabird interactions. Cameras will need to be placed so as not to compromise the operational lighting of the vessel. In the absence of information of the capability of the cameras to operate in low light or poor visibility conditions or night-time conditions, it is not possible to assess the appropriateness of the provisions on lighting.
20. In Schedule 1 of the Regulations, clause 2 gives an automatic temporary exemption where a vessel has commenced a fishing trip prior to the date from which video footage is to be provided. The temporary exemption expires at the end of that trip and video footage must be provided for subsequent trips. Clause 11 of the Circular appears to remove that exemption and requires a vessel to have video monitoring operational at the commencement any trip during which the operational date becomes effective. The Circular needs to be amended to reflect the Regulations (or MPI should make explicit changes to the regulations, if that is now your position).
21. Clause 15 should be amended by limiting the requirement of the permit holder to switch the electronic monitoring equipment to standby mode before powering down the vessel.

The clause should be further amended to include the vessel master in the requirement as the permit holder may not be present on the vessel at the time of powering down the vessel.

22. The retrieval of video footage and compliance with Clause 15 (3) is dependent on actions to be undertaken by the new service provider once the permit holder has advised the service provider of his inability to upload information. It is unreasonable that the permit holder may be held liable and may have committed an offence as a consequence of the service provider failing to retrieve the video footage from the vessel.

#### **Queries**

23. Any queries in respect of this submission should be addressed to Tom Clark and Laws Lawson.
24. We are available to assist MPI to resolve any issues raised in this submission.

A handwritten signature in blue ink, appearing to read 'Laws', with a long horizontal flourish extending to the right.

Laws Lawson  
Executive Chairperson  
Fisheries Inshore New Zealand