



Vessel Monitoring Rules Amendments

REPORT ON PUBLIC CONSULTATION – OCTOBER 2023

In recognition of the deep history and culture of this island, we acknowledge the palawa people as the traditional and original owners and ongoing custodians of land and sea country of lutrawita/Tasmania and pay respects to their elders past and present.



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Introduction

This report has been prepared by the Department of Natural Resources and Environment Tasmania (NRE Tas)'s Fisheries Compliance and Licensing Branch to report to the Minister on the public consultation process undertaken regarding the draft *Fisheries Amendment (Vessel Monitoring Systems) Rules 2023* (the draft amendments). The draft amendments will amend vessel monitoring provisions for commercial fishing vessels contained in Part 3 of the *Fisheries Rules 2019*.

The intention of the draft amendments is to provide for a contemporary VMS program and to support improved administrative and compliance processes. Key proposed changes resulting from the draft amendments were:

- Enabling NRE Tas to receive VMS data using the mobile telecommunications network, resulting in better management of its VMS airtime costs.
- Improving administration of NRE Tas's VMS program by enabling it to require VMS to be used in a fishery by issuing a published notice.
- Enabling commercial fishing supervisors to seek authorisation from a fisheries officer to continue fishing, subject to terms and conditions, if their approved VMS unit stops working while undertaking a fishing trip.
- Requiring supervisors to ensure that a means of communication is carried, maintained and available for communication on the vessel while being used for fishing. This ensures that the supervisor can be contacted in the event that their approved VMS unit stops working.
- Enabling NRE Tas to provide approval for the supervisor to switch off the approved VMS unit under a broader range of circumstances.

Public consultation on the draft amendments was open between 6 September and 13 October 2023. This report makes recommendations following consideration of the submissions received through the public consultation process for the Minister's approval.

Consultation Process

Tasmania's marine fisheries are managed under the *Living Marine Resources Management Act 1995* (the Act). The Act provides that the Minister may make rules in respect of (a) a management plan; or (b) a fishery in respect of which there is no management plan; or (c) any other matter under the Act. Section 33(3) of the Act provides that the Minister must (a) consult with the relevant fishing body before making any rules under subsection (1)(b) or (c); and (b) notify any proposed rules by public.

The draft amendments were advertised by public notice in accordance with section 33(3)(b) of the Act. The public notice appeared in the Tasmanian Government Gazette, *The Mercury*, *The Examiner* and *The Advocate* on 6 September 2023.

Consultation documents were made publicly available on the Tasmanian Government's Fishing Tasmania website on 6 September 2023. These documents included a Fact Sheet, a list of FAQs



and copies of the draft amendments and the *Fisheries Rules 2019*. Submissions regarding the draft amendments were invited by COB 6 October 2023.

NRE Tas notified each of the relevant fishing bodies by hardcopy letter and email. The relevant fishing bodies that were notified were:

- Tasmanian Seafood Industry Council;
- Tasmanian Commercial Divers Association;
- Tasmanian Rock Lobster Fishers Association Ltd (TRLFA);
- Tasmanian Abalone Council; and
- Scallop Fishermen’s Association of Tasmania.

The Australian Fisheries Management Authority (AFMA) and Parks Australia were also notified as they are key partners with NRE Tas under the National Vessel Monitoring System.

NRE Tas also presented the draft rules at a series of commercial rock lobster port meetings held in collaboration with the TRLFA during the consultation period. The consultation period was extended until 13 October 2023 to allow for completion of these meetings. These meetings were held at King Island, Stanley, Kermandie, Hobart, Eaglehawk Neck, Triabunna, St Helens and Launceston.

Consultation Overview

The purpose of each draft rule is summarised below, the draft rules are attached to this report for reference.

| Rule | Purpose/comments |
|--|--|
| 24. Interpretation | <p>The draft rules omit definitions for <i>approved location communicator</i> and <i>vessel monitoring system</i> from existing rule 3 and substitute amended definitions into draft rule 24(1).</p> <p>Rule 24(1) amends the definitions for <i>approved VMS unit</i>, <i>operating</i> and <i>vessel monitoring system</i> with the intent of ensuring a more contemporary use of VMS including removing the constraint for a vessel monitoring system to receive data by satellite only. This will enable the NRE Tas to receive VMS data using the mobile network, resulting in better management of its VMS airtime costs and improved quality of data.</p> |
| 25. Approved VMS unit | <p>Rule 25(1) enables the Secretary to determine matters relating to the use of an <i>approved VMS unit</i> through a published ‘VMS Notice’. This will reduce NRE Tas’s administrative burden and increased reliability in the process for requiring VMS to be used by vessel supervisors.</p> |
| 26. Requirements in relation to VMS notice | <p>The existing rules for the use of VMS by a supervisor have been substituted by rule 26.</p> <p>Rule 26(1) creates an offence for a fishing supervisor to take fish from a vessel that is subject to a <i>VMS Notice</i> without having an operating <i>approved VMS unit</i>.</p> <p>Rule 26(2) creates an offence for a fishing supervisor to fail to operate a vessel in accordance with a <i>VMS Notice</i>.</p> |

| | |
|---|--|
| | Rule 26(3) amends existing offence provisions for interfering with or removing an <i>approved VMS unit</i> . |
| 27. Exemption from requirements in relation to VMS notice | Rule 27(1) enables NRE Tas to exempt a fishing licence holder from complying with a <i>VMS Notice</i> . The intent of this rule is to enable a licence holder to continue fishing in circumstances where an <i>approved VMS unit</i> cannot be fitted to their vessel outside of their control within a required timeframe such as during a roll-out of VMS to a large fishing fleet. |
| 28. Responsibilities in respect of approved VMS unit | <p>Rule 28(1) creates a requirement and associated offence provision for a fishing supervisor to carry and maintain a means of communication while a vessel subject to a <i>VMS Notice</i> is being used for fishing.</p> <p>Rule 28(2) amends the existing rule relating to a fishing supervisor's requirement to notify the Secretary when an <i>approved VMS unit</i> is not operating as required by a <i>VMS Notice</i>. The proposed rule enables a fisheries officer to receive that notification.</p> <p>Rule 28(3) enables a supervisor to seek authority from a fisheries officer to continue fishing when the <i>approved VMS unit</i> is not operating as required. The rule enables a fisheries officer to provide that approval subject to terms and conditions and creates an offence for a fishing supervisor to fail to comply with those conditions.</p> |
| 28A. Temporary non-operation of approved VMS unit | <p>Rule 28A(1) largely mirrors existing rule 27(3) enabling the Secretary to give written approval to a supervisor to not operate an <i>approved VMS unit</i>.</p> <p>Rule 28A(2) creates a power for the Secretary to determine terms and conditions of the written approval to not operate an <i>approved VMS unit</i>.</p> <p>Rule 28A(4) creates an offence provision for a supervisor to fail to comply with the specified terms and conditions provided in a written approval to not operate an <i>approved VMS unit</i>.</p> |

Submissions

Three written submissions were received from the relevant fishing bodies and are attached to this report.

Tasmanian Rock Lobster Fishers Association (TRLFA)

Submission 1 was received from the President of the TRLFA on 6 September 2023. This submission addressed rule 28(1) only and stated that the rule would effectively require supervisors to purchase and maintain a satellite phone while fishing in remote areas without mobile phone coverage in order to comply with the rule. The submission did not support the rule and stated that this would impose a significant financial burden upon fishers.

Submission 2 was received from the CEO of the TRLFA on 13 October 2023. The TRLFA acknowledged the need to update the rules relating to VMS and supported the intent of all proposed rule amendments. The TRLFA submission proposed an alternative to rule 28(1) to



ensure that a mobile phone would be sufficient to comply with the rule, subject to the availability of mobile phone network coverage.

Tasmanian Seafood Industry Council (TSIC)

Submission 3 was received from the Chief Executive of the Tasmanian Seafood Industry Council (TSIC) on 6 October 2023. TSIC's submission addressed concerns regarding costs to fishers associated with VMS on commercial fishing vessels and proposed financial assistance be made available for fishers who are required in future to fit an operate VMS.

TSIC expressed concern regarding rule 28(1) and the necessity for fishers to carry a satellite phone to comply with the rule. TSIC suggested that the cost associated with this requirement should not be wholly borne by fishers.

TSIC expressed concern regarding the issuing of a published VMS notice under rule 25 which would enable the Secretary to require a fishery to fit VMS without industry consultation.

Other relevant fishing bodies

The Tasmanian Commercial Divers Association advised NRE Tas that the body did not intend to provide a submission as they stated they were represented within TSIC's submission.

The Tasmanian Abalone Council advised NRE Tas that the body did not intend to provide a submission but that it supports TSIC's submission, in particular matters raised regarding future ongoing costs to fishers associated with the installation and operation of VMS.

The Scallop Fishermen's Association of Tasmania advised NRE Tas that the body did not intend to provide a submission.

Commonwealth Agency partners

Members of AFMA's VMS team met online with NRE Tas and provided valuable feedback on the draft rules. Parks Australia advised that they supported the draft rules but did not intend to provide a submission.

Recommendations

Rule 24. Interpretation

Issue raised: The TRLFA fully supported the rule. TSIC did not raise any issue with the rule.

Recommendation I: NRE Tas recommends that rule 24 is retained.

Rule 25. Approved VMS unit

Issue raised: The TRLFA submission fully supported the proposed rule. The TSIC submission raised concern that the proposed rule enabled the Secretary to require VMS in a fishery without industry consultation.

Discussion: Existing rule 24 of the *Fisheries Rules 2019* already enables the Secretary to determine that a vessel monitoring system is required to be used by a supervisor while using a licence in a fishery. There is no current requirement for industry consultation.

While a statutory consultation process is not prescribed to require VMS under the rules, NRE Tas undertakes consultation with industry bodies as a courtesy prior to requiring VMS in a fishery.

Recommendation 2: NRE Tas recommends that rule 25 is retained.

Rule 26. Requirements in relation to VMS notice

Issue raised: The submissions received did not address proposed rule 26. AFMA provided advice regarding rule 26(3) that the rule apply to the fishing supervisor only to ensure that AFMA employees and VMS service providers re not captured in the rule.

Recommendation 3: NRE Tas recommends that rule 26(3) be amended to apply to the supervisor only and that rules 26(1), (2) and (3) are retained.

Rule 27. Exemption from requirements in relation to VMS notice

Issue raised: The submissions received did not address rule 27.

Recommendation 4: NRE Tas recommends that rule 27 is retained.

Rule 28. Responsibilities in respect of approved VMS unit

Issue raised: The TRLFA and TSIC submissions either did not support rule 28(1) requiring a supervisor to carry and maintain a means of communication while fishing. The main reason identified for this was the inability for a fisher to maintain mobile phone coverage in remote locations. AFMA also identified this as an impractical rule for fishers engaged in underwater diving activities. The TRLFA fully supported proposed rule 28(2).

Recommendation 5: NRE Tas recommends withdrawing rule 28(1) due to the impracticalities and concerns raised by industry and retaining rules 28(2) and 28(3).

Rule 28A. Temporary non-operation of approved VMS unit

Issue raised: The submissions received did not address proposed rule 28A.

Recommendation 6: NRE Tas recommends that rule 28A is retained.



Attachment I – Submissions received

Submission 1.

Karl Krause – President Tasmanian Rock Lobster Fisheries Association Ltd
Received by email on 7 September 2023

Hi Mark

As for the compulsory communication device in case VMS stops working, I think this is totally unreasonable to put the financial impost onto the fishers. Some of our vessels have HF radios as part of our current AMSA surveys, but not all vessels require this. Satellite phones are not usually left on to receive calls at random and are only turned on to make calls as required if you have one. A cheap SATELLITE PHONE will set you back approx. \$1200 plus minimum of \$70/month plus calls. MARINE STARLINK costs \$3740 for the hardware, \$310 shipping plus \$300/month. That's \$4050 upfront just in case VMS breaks down.

This is an unacceptable financial impost to our industry and I cannot support this proposal. Please call if you would like to discuss this.

Regards Karl

Submission 2.

Rene Hidding – CEO Tasmanian Rock Lobster Fishers Association Ltd
Received by email on 13 October 2023

Dear Dr Dutton

The following is the TRLFA's submission to the proposed Rule Changes to the Fisheries Rules 2019.

1. Preliminary comment

The Tasmanian Rock Lobster Fishers Association is pleased to be offered the opportunity to comment on the proposed changes.

We also appreciate the extension of time provided, to allow for us to canvass the views of our Members during the recent October round of Port Meetings.

2. Port Meetings consultation

Officers from the Marine Compliance Division were present at each of the eight Port Meetings that were conducted, which provided for a clear explanation of the proposed changes, as well as the facility of answering a wide range of detailed questions on general matters relating to the functional operation of the Vessel Monitoring System across our fleet.

3. Executive Summary

The TRLFA is appreciative of the professional outcomes of the free-of-charge rollout of some 150 Vessel Monitoring Systems, including the installation of them by approved specialists.

While some of our vessel supervisors may still express some confusion over some operational matters, the simplicity of the System continues revealing itself, over time.

We acknowledge that, following that successful VMS roll-out, the Fisheries Rules 2019 now need to be updated.

We support the intent of all the proposals, subject to some comments as expressed below.

4. Future reviews.

We also take the opportunity to encourage the Rock Lobster Fishery Manager and the Marine Compliance Division to conduct a wider review of the Rock Lobster Rules, in due course, to identify possible simplifications available following the successful rollout of the VMS in our fishery.

When the President and CEO first encouraged Members to accept the need for a VMS system, there were references made as to the likely possibility of a relaxation of some rules, due to the features of the operations of a VMS system.

5. Responses to the proposed amendments.

-Data to be transmitted via the mobile phone network.

We have no views on the efficacy of one communications system over another.

However, if the overall costs of the operation of our VMS can be reduced in a way that does not lower the value of the data, then that has our full support.

We take it that this proposal is not necessarily being advanced as a budget matter, rather that it is about making more funds available to improve the depth of quality data.

-Publication of a Public Notice to formalise the requirements of VMS being extended to other fisheries.

We have no issues with this.

-Enabling fishing supervisors to seek authorisation to continue a fishing trip in the event of a malfunction of the on-board VMS device.

We approve of the extension of this facility down to the level of Fisheries Officer.

There exists a reasonable number of public servants and officials who carry that title, a fact which substantially increases the likelihood of a speedy resolution of the fishing supervisor's operational dilemma.

-Requiring fishing supervisors to ensure that a means of communications is carried, maintained and available for communication on the vessel while it is being used for fishing.

This matter caused wide discussions across the fleet, due to the necessary breadth of the description of a mobile phone.

Many TRLFA members took this to mean a device, or groups of devices, that provided communication coverage anywhere in the Tasmanian wild fishery areas.

We were told by members that "Sat-phones" are very expensive to buy and operate, as is the Star-link system.

A proposed solution along these lines would be functionally incapable of being complied with, in a practical sense.

On the other hand, wireless communications via VHF/UHF/HF seemed a reasonable option except for the fact that the chance of finding a fisheries officer sitting in front of an array of such devices during working hours, let alone at night or over a weekend, seems remote.

After discussions with senior officials of the Marine Compliance division, it became clear that the only device that came close to being capable of a reasonable level of compliance with this draft Rule, is a humble mobile phone which can operate on the 3/4/5G broadband system.

The only obvious complication is the unavoidable fact that there exist some quite large areas, such as the remote south-west coast, that have no mobile phone coverage.

Further discussions with the Marine Compliance division, and later with our fishers, revealed that a practical protocol to deal with that circumstance would be simple to establish.



To be clear, however, such practical protocols would need to be included in the Rules, rather than an unwritten code of practice.

It is noted that there appears to be no formal requirement to carry a mobile phone on board any fishing vessel while fishing. This is in spite of a number of Rules requiring various Reporting requirements (Intention to unload, Intention to commence fishing, transit reports etc) which could only be possible by a mobile phone.

It therefore seems appropriate that the sub-ordinate legislation covering the generic commercial fisheries Tasmania, such as these Fisheries Rules 2019, should require words such as these-

“the carriage of an approved device, such as a mobile phone, which is maintained in a way that provides for contact between the supervisor and the Department 24 hours per day, subject only to coverage limitations”
.....as just one example.

In practical terms, this means that any mandated “contact” between the supervisor of a vessel and the fishery’s regulator is capable of being complied with in any number of ways, which then would include a mobile phone.

Of course, it should be the supervisor’s responsibility that a functioning mobile phone be on board while fishing and be both switched on and charged. That should also be mandated in the Rules rather than a Code, or similar.

We reserve the right to express further views on these matters, in the future, outside of the timeframe of this specific Review.

Rene Hidding
Chief Executive Officer – TRLFA Ltd

Submission 3.

Julian Harrington – Chief Executive Tasmanian Seafood Industry Council Received by email on 6 October 2023

Introduction

The Department of Natural Resources and Environment Tasmania has proposed amending the *Fisheries Rules 2019* around VMS (vessel monitoring systems) requirements. The proposed amendments affect whether and how VMS is rolled out and managed within a Tasmanian fishery.

Expected Changes in Current Reporting Requirements

When implemented into a fishery, VMS potentially provides 24/7 tracking of fishing vessels. TSIC expects such close oversight to be accompanied by a reduction in other reporting requirements such as phone reporting.

Implementation Concerns

TSIC has concerns over the proposed amendments as currently written.

Costs to Fishers

Currently within our wild catch fisheries, only rock lobster fishers and abalone divers are required to have VMS on their vessels. Both are high value sectors. TSIC is concerned that fishers working in lower value sectors will be burdened by one-time high costs of purchasing and installing a VMS unit, as well as ongoing costs associated with running and maintaining a VMS unit.

A regulatory impact assessment is needed to consider the effect of VMS enforcement across Tasmania’s fisheries. TSIC recommends establishment of a VMS Assistance Program to address purchase and installation costs of a VMS unit into fishing vessels, as is in place in Western Australia. In addition, TSIC recommends ongoing financial assistance for fishers to run and maintain their required VMS units.

At least one sector body has expressed concerns about the requirement for fishers to be contactable at all times. Such a requirement may necessitate a satellite phone for fishers whose work takes them beyond

normal mobile range. Consideration needs to be given to how this “always contactable” requirement is enforced. TSIC notes the irony of a system which looks to manage VMS airtime costs more effectively potentially resulting in higher costs for some fishers. If a satellite phone is needed for compliance, the cost should not be wholly borne by affected fishers.

Accidental Breaches

Positioning data sent by VMS units has no nuance. The presence of VMS units on all vessels opens greater opportunities for apparent compliance breaches, which may have a rational explanation. TSIC is concerned that VMS data will result in such events always being met with police compliance investigations and fines, rather than a more measured approach.

Industry Consultation

Rolling out VMS requirements industry-wide is a big task and can only be effective with industry assistance and consultation. TSIC worries that under Rule 25 Approved VMS Unit, the Secretary can publish notice of VMS requirements for fisheries without industry consultation. TSIC does not support Rules that do not require industry consultation before published notice is given.

General Comments

The Tasmanian Seafood Industry Council (TSIC) understands and supports good compliance and enforcement of Fisheries Rules. VMS is a tool that helps management of these rules, without obviating the need for adequate police and compliance presence. VMS potentially provides round the-clock, real-time monitoring of fishing vessels. It does not replace the need for ongoing policing; it makes management and enforcement easier.





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