



Fisheries (Commercial Fishing) Amendment Regulations (No 2) 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 24th day of August 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 297(1) of the Fisheries Act 1996, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Fisheries (Commercial Fishing) Amendment Regulations (No 2) 2009.
- 2 Commencement**
These regulations come into force on 1 October 2009.
- 3 Principal regulations amended**
These regulations amend the Fisheries (Commercial Fishing) Regulations 2001.
- 4 Interpretation**
Regulation 3 is amended by revoking the definition of **seabird scaring device** and substituting the following definition:
“**seabird mitigation measure** means a measure or device carried, used, or adopted (as the case may require) for the purpose of avoiding or mitigating the effect of fishing-related seabird mortality, such as (but not limited to)—
“(a) using, adopting, or avoiding a particular fishing practice:
“(b) using or carrying a seabird scaring device”.
- 5 Seabird scaring devices required for tuna longlining**
Regulation 58(1) is amended by inserting “, for the purpose of avoiding or mitigating the effect of fishing-related seabird mortality,” after “ensure that”.
- 6 New heading and regulations 58A and 58B substituted**
Regulations 58A to 58C are revoked and the following heading and regulations substituted:

*“Avoidance or mitigation of fishing-related
seabird mortality*

**“58A Circulars may authorise or require seabird mitigation
measures**

- “(1) The chief executive may, by notice in the *Gazette*, issue, amend, or revoke a circular—
- “(a) authorising or requiring a particular seabird mitigation measure to be carried, used, or adopted (as the case may require) in relation to any specified vessel or class of vessel, if that measure is reasonably necessary to avoid or mitigate the effect of fishing-related seabird mortality:
 - “(b) specifying the standards and requirements (if any) applying in respect of any seabird mitigation measure authorised or required under paragraph (a).
- “(2) Before issuing, amending, or revoking a circular the chief executive must consult, to the extent that is practicable in the circumstances, with any persons or organisations that the chief executive considers to be representative of the classes of persons or organisations likely to be substantially affected by the circular.
- “(3) A circular may specify different standards and requirements in respect of different types of seabird mitigation measure, including, in relation to any specified vessel or class of vessel,—
- “(a) a specified fishing practice or method:
 - “(b) a specified fishery or area.

“58B Responsibility for compliance

- “(1) The operator or master of a vessel to which this regulation applies must comply with any seabird mitigation measure authorised or required by any circular issued under regulation 58A(1)(a).
- “(2) The operator or master must also ensure that a seabird mitigation measure—
- “(a) complies with any standards and requirements specified under regulation 58A(1)(b); and
 - “(b) is carried, used, or adopted (as the case may require) in accordance with those standards and requirements.

- “(3) The operator or master must permit a fishery officer or observer to inspect at any reasonable time any seabird mitigation measure that is authorised or required by circular to be carried, used, or adopted (as the case may require) in relation to that vessel.”

7 Offences

- (1) Regulation 84(2) is amended by omitting “58C(2) or (3)” and substituting “58B(2) or (3)”.
- (2) Regulation 84(3) is amended by omitting “58C(1)” and substituting “58B(1)”.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 October 2009, amend the Fisheries (Commercial Fishing) Regulations 2001 to extend the means by which the chief executive is able to ensure that better measures are taken to avoid or mitigate the effect of fishing-related seabird mortality.

To achieve this extension, the regulations replace the definition of seabird scaring device with the defined term seabird mitigation measure, which encompasses measures as well as devices authorised or required for the purpose of avoiding or mitigating fishing-related seabird mortality. The regulations empower the chief executive to issue circulars authorising or requiring, in respect of a specified vessel or class of vessel, that any specified seabird mitigation measure be used that is reasonably necessary to avoid or mitigate the effect of fishing-related seabird mortality.

The responsibility for compliance with requirements under these provisions rests with the operator or master of a vessel. An offence in relation to *new regulation 58B(1)* attracts a penalty on summary conviction of a fine not exceeding \$100,000; and an offence in relation

to *new regulation 58B(2) and (3)* attracts a penalty on summary conviction of a fine not exceeding \$20,000 (unless the circumstances set out in regulation 85(3) apply).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 27 August 2009.
These regulations are administered by the Ministry of Fisheries.
