

27 March 2025

Fisheries Policy Team
Ministry for Primary Industries
Wellington

By email: fish.reform@mpi.govt.nz

Tēnā koutou

Proposed amendments to the Fisheries Act: consultation document

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide the Ministry for Primary Industries (**MPI**) with feedback on proposed amendments to the Fisheries Act 1996 (**Act**).¹
- 1.2 This submission has been prepared with input from the Law Society's Environmental and Human Rights and Privacy Committees.² The submission:
 - (a) Focuses primarily on Part 2 of the consultation document, which relates to onboard camera footage, and Official Information Act and privacy issues.
 - (b) Comments, more briefly, on implementation options proposed in Part 1 for new catch-limit setting proposals for fisheries where there is low information.

2 General comments: onboard cameras

- 2.1 Onboard cameras on commercial fishing vessels are an important accountability tool to monitor the industry's compliance with fishing regulations. As the consultation document says, camera footage is used to independently verify information provided by commercial fishers on matters such as protected species interactions, catch, and discards. Cameras improve the quality of data available to inform fisheries management. As is clear from Part 3 of the consultation document, cameras can also enable changes in regulatory requirements that are desired by the industry, such as allowing fishers to return by-caught or uneconomic species to the waters where they were found rather than landing them.³ In other words, cameras have a role to play in streamlining the

¹ Ministry for Primary Industries *Proposed amendments to the Fisheries Act: Consultation Document* (Fisheries New Zealand Discussion Paper No 2025/03, February 2025).

² More information about these committees is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

³ Above n 1 at [266]: the introduction of onboard cameras has enabled the opportunity to consider more flexible options within the landing and discard rules.

regulatory framework and improving efficiency. Their continued and, perhaps, expanded use is an assumption underlying some of the consultation document's proposals.

- 2.2 Cameras also engage privacy interests. To achieve their purpose, they need to be used whenever vessels are conducting relevant fishing activity.⁴ They also record people's behaviour, not all of which is relevant for regulatory purposes. The cameras are government-owned. They are installed on private property and workspaces, including where some fishers live onboard a vessel for days or weeks at a time.⁵ The protections that are needed to safeguard individual privacy and protect legitimate commercial interests require careful analysis.
- 2.3 In the Law Society's view, the consultation document raises important considerations about the scope of camera coverage and grounds on which footage may be released. Re-examining whether the correct balance is being struck in the use of onboard cameras to monitor fishing activity is justified. The Law Society would support more safeguards, and more procedural clarity about the approach taken by MPI to address privacy concerns. It is cautious about proposals for a blanket exclusion of camera footage from the OIA.

3 Camera footage protections for onboard cameras

Camera footage and the Official Information Act

- 3.1 Camera footage is subject to release under the Official Information Act 1982 (**OIA**). The consultation document considers options for enhanced protections to provide certainty for fishers regarding the privacy and commercial sensitivity of camera footage, including, potentially, excluding footage from the OIA.⁶

Do you agree with the problem/issue?

- 3.2 In part. For the following reasons, the Law Society agrees that balancing privacy, confidentiality and commercial interests against the interest in promoting public and regulatory transparency is challenging in the fisheries context.
- (a) Cameras capture all activity within their set field of view, which will be maximised to be effective for regulatory purposes. Consequently, the footage captured will often include personal as well as commercially sensitive information (for example, gear or method innovations).
 - (b) The OIA provides a framework for balancing the public interests in transparency with the need to keep sensitive information confidential, including through grounds to withhold private and commercially sensitive information.
 - (c) However, the presumption under the OIA is that information is available and should be released unless there is good reason not to.
 - (d) The assessment of whether to release or withhold information under the OIA is made by MPI. When determining when something is a privacy concern or

⁴ Above n 1 at [194].

⁵ For example, the consultation document notes that fishing trips for bottom longline vessels are typically 6–8 weeks in length: above n 1 at [222].

⁶ Above n 1 from [192].

commercially sensitive, the fisher concerned can only be consulted and provide their view. This raises two issues:

- (i) First, where MPI decides to release footage, there is limited recourse for the fisher concerned. Outside of seeking urgent court intervention (noting that, irrespective of a fisher's concerns, MPI remains subject to the time limits set out in the OIA), there is little meaningful action that could be taken to prevent release. Once information is released in good faith by MPI, it bears no liability for any harm or loss that arises from disclosure.
- (ii) Second, footage can be extensive. It is not clear from the consultation document how practicable it has been in the past for MPI to pixelate or blur private and commercially sensitive information, where such concerns have been raised by a fisher.⁷ In this regard, onboard fishing camera footage differs significantly from documentation or 'snippets' of CCTV footage.
- (e) The position under the OIA differs from that under the Privacy Act. Under the Privacy Act, the position is that personal information should not be released unless there is a good reason for doing so. As noted, there is a likelihood that personal information entirely unrelated to the purposes of collection (such as the activities of fishing personnel when not working) is being caught by fishing cameras. In this context, the OIA is an uncomfortable fit with the Privacy Act. Managing the risk of footage that is private being publicly released is a legitimate concern, and it is valid to question whether the OIA strikes the right balance. However, a decision to exclude footage from the OIA should not be taken lightly.

Which of the proposed options do you prefer and why? Are there any options we haven't considered?

3.3 The consultation document presents two options:

- (a) Option 1 would work to develop and strengthen MPI's approach under the OIA.
- (b) Option 2 would amend the Fisheries Act, to exclude all camera footage from the OIA.

3.4 In weighing the options, the Law Society notes that there are several considerations:

- (a) In likelihood, the realities of the fishing industry and fishing operations will make it unworkable to reduce privacy intrusions to any great extent by collecting less extensive amounts of footage (for example, by restricting the field of view or prescribing set hours of collection). Fishing may occur 24/7 and cameras need to capture all data. If field of view is restricted, dumping of fish can occur from other parts of the vessel.
- (b) A ship's deck at different times may serve as both a working area and a living area. Still, in the Law Society's view filming of it is distinguishable from filming in or of the vessel's living and eating quarters. The personal activity inevitably

⁷ See, particularly: Ombudsman "[Request for video footage recorded during an investigation](#)" (Case Notes, 1 September 2016), in which "MPI estimated it would take several thousand hours of work to anonymise ... footage by pixelating faces and other measures to protect privacy".

captured from time to time may be compared with personal activity widely captured by public security cameras, including of privately-owned areas such as building lobbies and entry points. The latter category of footage is not excluded from the OIA. In both cases, there is some price in personal privacy to be paid in serving a public interest.

- (c) The number of OIA requests to MPI has not been unduly large (10 to date).
- (d) Notwithstanding the concerns summarised at [3.2] above, it does appear the OIA has enabled private information and commercially sensitive information to be withheld.⁸
- (e) Fishers are more likely to comply with regulations where they know footage could be released. It is clear from the discussion material that the fishing industry is alive to reputational risks. The ability for footage to be publicly scrutinised provides a meaningful compliance incentive.

3.5 Clarifying when cameras must be used (another option consulted on in the document — see further below) is relevant and is noted below as one factor that could weigh in favour of Option 1. However, in the Law Society's view more is needed. It suggests that an augmentation of Option 1 (termed Option 1A) might go further towards expressly acknowledging the Privacy Act tensions that arise. As a fallback position, Option 2 is also discussed.

Option 1A:

- 3.6 The consultation document outlines methods for releasing information that MPI has adopted in situations where commercial fishers have requested footage of their own operations. MPI has provided access including through secure viewing onsite, video clips or written summaries.⁹ The Law Society queries whether these could suggest avenues for the design of a clear protocol that strengthens the status quo by clarifying how MPI will respond to requests under the OIA that risk disclosing personal information and other sensitive material.¹⁰
- 3.7 Whereas, in the consultation document, Option 1 is framed as “greater recognition for MPI’s present approach”, the focus of this option would be a potential increase in safeguards for privacy and commercial sensitivity by limiting *how* information is made available. (These suggestions may repeat what is in fact occurring and what Option 1 as presented would intend; however, this is not clear from the consultation document and does not appear to be clearly set out in MPI’s present *Guidelines*.¹¹)
- 3.8 In addition to, for instance, requiring secure viewing of footage onsite rather than simply releasing raw footage, the Law Society would recommend, wherever practicable:
- (a) anonymising identifying details through blurring or pixelation;
 - (b) obscuring or cutting out footage of personal activity unrelated to fishing activity;

⁸ Above n 1 at [202].

⁹ Above n 1 at [203].

¹⁰ Privacy Act 2020, s 7: “personal information” means information about an identifiable individual.

¹¹ Ministry for Primary Industries [Guidelines for the Release of Fisheries Information](#) (May 2023).

- (c) providing, where appropriate, a representative sampling of material relevant to the request (thereby making anonymisation, where needed, more likely to be practicable).¹²

- 3.9 As proposed, MPI would work under Option 1 to review its *Guidelines* in consultation with the Ombudsman, to ensure that they are robust. The Law Society suggests consultation with the Office of the Privacy Commissioner (**OPC**), in addition to the Ombudsman, would assist in gaining insight on any tensions which could arise and developing a rigorous approach. The Law Society understands that OPC is consulted if the Ombudsman is going to form a final opinion that information should not have been withheld under section 9(2)(a) of the OIA.
- 3.10 In the Law Society's view, an augmented approach of this kind could achieve greater certainty around treatment under the OIA of onboard camera footage and assurance to industry and individuals working in the industry, to address their concerns. Adopting such an approach may do more to reflect the reality that there is both a legitimate public interest in large portions of the footage caught by onboard cameras, as well as, at times, legitimate privacy and confidentiality concerns.

Option 2:

- 3.11 Option 2 would amend the Fisheries Act to exempt footage collected from the OIA. Section 18(c)(i) of the OIA would then apply, which states that the making available of the information requested would be contrary to the provisions of a specified enactment.
- 3.12 In the Law Society's view, there are risks of diminished public confidence in this approach. Because it would apply to all footage, it would reduce transparency very substantially, far exceeding the capture by cameras of personal activity and irrelevant material. However, it appears MPI considers that the public interest in the fisheries information can be met through other means (such as proactive reporting) without the release of footage.
- 3.13 If this approach is adopted, provision should be made for MPI to refer to the grounds in Information Privacy Principle (**IPP**) 11 of the Privacy Act when considering whether and when footage should be made available for certain purposes (regardless of having exempted it from the OIA). IPP11 sets limits on disclosure of personal information but provides grounds for disclosure in certain limited circumstances.¹³

Amendments to the scope of onboard cameras

Do you agree with the problem/issue? If not, why not?

- 3.14 The consultation document proposes amendments to the scope of onboard cameras for some vessels. On this largely operational issue, the Law Society comments only that it seems an odd arrangement that only boats of the ideal configuration (not too big or small) have cameras, meaning that the people operating them are subject to more privacy intrusions and other consequences such as threats to commercial sensitivity than the very small and very big boats.

¹² See further n 7 above.

¹³ Privacy Act 2020, s 22.

- 3.15 The concern from a legal and regulatory perspective is that creeping inconsistency in onboard camera requirements based on vessel size or net set-up has the potential to undermine any public interest argument in requiring and making available under the OIA continuous footage from other vessels. Enabling ad hoc exceptions will have the effect of raising legitimate legal questions about the necessity of continuous information-gathering in other contexts. If it is true that sufficient public transparency can be achieved by other means (such as an observer's presence, or MPI's regular reporting of summarised findings from camera footage), this will invite the question of why the transparency and regulatory requirement cannot be met without footage in other cases, even if these are not in fact an equivalently comprehensive or objective substitute.¹⁴ It also could create a loophole for operators to avoid having cameras on board by choosing where possible to operate from smaller or larger boats that are exempt from the camera requirements.

Which of the proposed options do you prefer and why? Are there any options we haven't considered?

- 3.16 In the Law Society's view, the potential to incrementally undermine credibility and consistency of the camera regime is a strong argument in favour of ensuring the most consistent and complete coverage possible. Very strong justification should be demanded for allowing exceptions — such as the present inability to fit cameras to small vessels noted in the consultation document.
- 3.17 For the large vessels — particularly for bottom longline vessels — the justification for inconsistency appears unconvincing. The Law Society recommends retaining the status quo.¹⁵

Clarifying when cameras must be used

- 3.18 As outlined in the consultation document, to meet the purposes for onboard cameras, footage needs to record fishing and related activity. However, the current regulations have a wide scope and could require vessels to use cameras when fishing or related activity is not occurring.

Do you agree with the problem/issue? If not, why not?

- 3.19 Yes, for the reasons earlier discussed. In the Law Society's view, this question is inseparable from the concerns identified about extensive information being collected and dealt with under the OIA. The greater the extent of this, the greater will be the importance of reassessing the ability under the OIA to appropriately handle the information. Conversely, tailoring requirements to record footage to ensure that camera footage is less likely to include inappropriate and irrelevant material will:
- (a) assist in reducing (though not eliminating) the scope of collateral capture of individuals' personal information or activity, that is protected by the Privacy Act; and

¹⁴ See further the consultation document at [223]: within the EEZ, observer placement has averaged around 30 per cent over the last three years, with observer coverage mandatory outside the EEZ for CCAMLR fisheries.

¹⁵ Above n 1 at [234].

- (b) be a relevant factor in considering which is the appropriate option above.
- 3.20 To achieve this, the Law Society supports more clarity around vessels' obligations to operate camera systems.
- Which of the proposed options do you prefer and why?*
- 3.21 The consultation document presents two options:
- (a) Option 1: require onboard cameras to operate port-to-port.
 - (b) Option 2: require onboard cameras to operate during fishing and transit to and from fishing locations.
- 3.22 Option 1 in the Law Society's view appears unduly broad. It is doubtful how well-connected it would be with the purposes identified. Footage would be recorded every time a fisher is in view of a camera regardless of whether fishing was occurring.¹⁶ In addition to port-to-port monitoring where applicable, other vessels at sea passing through an area subject to camera monitoring would need to operate a camera system, even if the vessel does not undertake any fishing in that area. The Law Society is unsure of the reasons and public interest for requiring continuous non-fishing footage simply because of the areas a vessel is in.¹⁷ The broad scope of footage under this option is particularly problematic if footage is to remain subject to the OIA.
- 3.23 In the Law Society's view, Option 2 is therefore likely to be more appropriate, because it is better-connected with regulatory purposes. Under Option 2, onboard cameras would need to record fishing and related activities. It appears from the consultation document that considering restricting the times of operation to when relevant activity is occurring is a viable option, although it is unclear how compliance will be monitored.¹⁸ The Law Society invites MPI to consider the interaction between the different sets of options, here and above, in assessing and discussing with the Ombudsman and OPC what mix of options strikes an effective and acceptable balance.

4 Managing low information stocks – setting catch limits

- 4.1 In Part 1 of the paper, three "implementation options" are set out for catch limit setting in a low knowledge scenario.¹⁹ A new catch limit setting provision for low information stocks is proposed, considering that the present sections 13(2A) and 14 of the Act are unworkable for active catch limit management in this situation because there are information barriers. The options proposed are:
- (a) The catch limit setting provision can only be applied to stocks listed in a new schedule to the Fisheries Act, amended as needed by way of Orders in Council. This replicates the existing system for "alternative TAC setting provisions"

¹⁶ Above n 1 at [252].

¹⁷ If it is because the vessel is, for example, in transit through reserve areas, or monitoring vessels' interactions in the presence of vulnerable protected species, this could be a relevant factor and should be clarified. If so, the Law Society notes that a location-based filming requirement could equally be introduced as an aspect of Option 2, in addition to the activity-based aspect).

¹⁸ Above n 1 at [255].

¹⁹ Above n 1 at [98]–[103].

outlined in section 14. Addition or removal of stocks on the schedule would be done by Order in Council and would require prior consultation.

- (b) Listing stocks on a Notice which could be amended by the Minister, following consultation.
- (c) Providing a broad Ministerial discretion to use the new catch limit provision if a stock meets certain tests.

4.2 The Law Society refers MPI to the Society's recent submissions on other consultations, expressing concerns about proposals amounting, cumulatively, to an extensive concentration of Ministerial powers.²⁰ It recommends the Option 1 approach because:

- (a) Although amending the Schedule does involve enabling the Executive to modify an Act of Parliament, providing for this to occur at the level of the Governor-General in Council (the highest level of delegation) is appropriate.²¹
- (b) Any minor impact of a Cabinet process on the ability to make changes swiftly is not such as to justify the alternatives of simple Ministerial delegation, in the Law Society's view. Cabinet approval is not a formality to be lightly dispensed with, nor need it involve significant time.
- (c) Option 1 is consistent with the approach already contained in the Act.
- (d) It advances certainty and transparency, compared to the other options.

5 Next steps

5.1 We hope this feedback is useful. Please feel free to get in touch with me via the Law Society's Senior Law Reform and Advocacy Advisor, Claire Browning (claire.browning@lawsociety.org.nz) if you have any questions or wish to discuss this feedback further.

Nāku noa, nā



David Campbell
Vice President

²⁰ See particularly feedback by the Law Society on the since-enacted Fast-Track Approvals Bill 2024: [Fast-track-Approvals-Bill.pdf](#) (18 April 2024); and conservation land management reform: [DOC-Modernising-conservation-land-management.pdf](#) (27 February 2025).

²¹ See generally Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 15.1. The consultation document points to other relevant factors, including the intention that the new provision would “better meet the purpose of the Fisheries Act than setting a catch limit in accordance with section 13”: above n 1 at [93.2].