

RG 4 Vessel Monitoring Requirements

About this guide

This guide is for all holders and operators of Fishery Access Licences required to have VMS installed on boats used to carry out fishing activities under the licence

This guide outlines the regulatory approach the VFA will take for breaches of VMS requirements and for granting temporary approvals to fish without an operating VMS unit in special circumstances.

Document history

This guide was issued in 1 July 2020 and is based on legislation and regulations as at the date of issue.

Previous versions:

- 15 May 2020

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Fisheries Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Overview

The VFA will work collaboratively with industry to implement VMS in each fishery. This will involve a focus for the first 6 months on education and facilitation (i.e. the education phase).

During this education phase, any proposed enforcement action by a fisheries officer (i.e. official warning, infringement notice or prosecution) must be approved by a VFA Regional Manager or above.

Requirement to have an approved VMS unit installed – Reg 77, 470 & 471

All prescribed access licence holders and their operators are required to have a VFA-approved VMS unit installed in any boat used under the licence prior to leaving a port or mooring unless authorised by the VFA.

The unit must be linked to the boat it is installed in on the AFMA VMS platform and a test operation will be conducted to ensure it is working properly.

Compliance approach where approved VMS unit not installed

As the VFA is supplying VMS units and has provided adequate warning of the requirement, it will take a strict approach to fishers engaging in any fishing activity authorised by the licence without an approved and activated VMS unit installed in their boat.

Unless special circumstances apply, a fisher detected commercially fishing without an approved VMS unit installed in the boat will receive an infringement notice for a first offence.

Requirement to specify and maintain method of communication - Reg 472

The regulations require that fishers have onboard the vessel a mobile phone that the VFA can call at any time that it needs to communicate with the operator when they are on the boat and acting under the licence.

After the VMS unit is installed, and at least 5 business days before the boat is used for fishing after installation, the licence holder must inform the VFA in writing of that telephone number. The notification can be via email to commercial.licensing@vfa.vic.gov.au or by letter to:

Licensing & Quota Services
Victorian Fisheries Authority
PO Box 4509
Melbourne VIC 3001

The notification must include, the name of the responsible person (operator), registration number of the boat that the VMS system is installed on, and the telephone number of the approved communication method.

The operator must make all reasonable efforts to respond in a timely manner to communications from the VFA.

When the operator is engaged in underwater dive fishing, they must check their phone for messages before entering the water and each time they reboard the boat.

Engaging in a commercial fishing trip without VMS unit operating – Reg 473(d) and (f)

The licence holder and the nominated operator must ensure that a VMS unit installed in a boat is fully operational and reporting positional information to the AFMA Trackwell system, before undertaking a commercial fishing trip, and at all times during the trip.

Penalties associated with vessel monitoring systems

Interfering or tampering with, or damaging, the correct operation of a vessel monitoring system installed on a boat used for carrying out an activity authorised under a fishery licence contravenes Fisheries Regulation 477(1)	An offence against regulation 477(1) of the Fisheries Regulations	\$826
Licence holder fails to install a vessel monitoring system of the type approved by the VFA and which is installed and operated in the prescribed manner approved by the VFA contravenes Fisheries Regulation 77(2)	An offence against section 53(1) of the <i>Fisheries Act 1995</i> constituted by a failure to comply with regulation 77(2) of the Fisheries Regulations	\$496
Person acting on behalf of licence holder, fail to install a vessel monitoring system of the type approved by the VFA and which is installed and operated in the prescribed manner approved by the VFA contravenes Fisheries Regulation 77(2)	An offence against section 53(4) of the <i>Fisheries Act</i> constituted by a failure to comply with regulation 77(2) of the Fisheries Regulations	\$496

Compliance approach where installed VMS unit not operating

Where a fisher is detected with a VMS unit installed and registered, but not reporting to the VFA, the VFA will focus on advice and education during the education phase.

Unless special circumstances apply, the VFA will take the following action:

First breach	Advice and education material provided
Second breach	Official warning
Third breach	Infringement notice

Where a fisher can demonstrate that they had an honest and reasonable belief that the unit was reporting, no enforcement action will be taken for the breach.

The VFA considers the following steps reasonable for ascertaining that the unit is reporting:

- check that the visual indicator light indicates that the VMS unit is working correctly;
 - and/or log into a smartphone app to ascertain if the unit is reporting (if available)
- before commencing the trip.

Requirements if operator cannot confirm VMS unit is fully operational

VFA contact details

If you have any questions about the VMS system or administration including registering a VMS unit on a vessel	Commercial Licensing Unit (business hours)	03 8392 6860 Commercial.licensing@vfa.vic.gov.au
If your VMS is not working and you are seeking approval to manually report during your fishing trip	Operations Duty Officer (24 hours)	0419 844 781

VMS unit non-operational prior to commencing trip

If the operator is unable to confirm the VMS unit is fully operational via the visual indicator light or smartphone app, they can contact the VFA Operations Duty.

If the unit is not reporting, they may use a spare unit or transfer a unit from another boat. The transfer must be registered with the VFA by contacting Commercial Licensing Unit during business hours and before the start of the trip.

The Operations Duty Officer will authorise the operator to undertake a fishing trip if the installed VMS unit is not fully operational if satisfied that there are special circumstances to justify the authorisation. In this case the Operations Duty Officer will consider special circumstances apply if satisfied that:

- a replacement unit is not available and or the replacement unit is not able to be registered with VFA Licensing Commercial Licensing during business hours;
- the unit was installed correctly;
- the fisher has taken reasonable steps to have the device repaired or replaced at the next opportunity; and
- the operator is low risk (i.e. has a history of compliance).

The process for requesting approval is outlined in the appendix.

VMS Unit ceases to operate during trip

If the fisher becomes aware that the VMS unit has ceased working during a fishing trip, they must immediately contact the Operations Duty Officer.

The Operations Duty Officer will grant approval to continue fishing if satisfied there are special circumstances justifying the granting the approval. In this case the duty officer will consider special circumstances apply if satisfied that:

- the unit was operating prior to the boat leaving port; and
- the operator is low risk (has a history of compliance).

Conditions of authorisation to operate without VMS fully operational

Where the Operations Duty Officer grants an authorisation to engage in fishing activities with a VMS unit that is not fully operational, they will impose conditions on the authorisation, including that:

- the operator only undertakes fishing activities within areas specified (reef codes or area codes);
- the fisher manually reports their position by SMS on specified timeframes; and
- the fisher provides a pre-landing notification by SMS.

An authorisation will only be granted for the current fishing trip. Additional authorisations must be sought for any subsequent fishing trips.

Note: The duty officer only has power to grant an authorisation in circumstances where a VMS unit is installed on the boat but is not operational. For approval to engage in commercial fishing activity without a unit installed, the licence holder must apply to the VFA for a written exemption. This is done through the Commercial Licensing Unit.

Cases of multiple offences or deliberate non-compliance

Where the VFA detects other offences in addition to VMS breaches, or believes the breach is deliberate, it may take enforcement action outside of the approach outlined above.

Internal review of infringement notices

As in any case where an infringement notice is issued by a fisheries officer, the fisher may seek an internal review of the infringement in accordance with the *Infringements Act 2006*. Further information on fisheries infringement notices and available grounds for seeking an internal review are set out at

<https://vfa.vic.gov.au/enforcement/fisheries-infringement-notices>.

Definitions

Operator means the person specified on the licence for the purposes of section 39(1) or 39(2) of the *Fisheries Act 1995* as the person authorised to carry out the fishing activities authorised by the licence.

Education phase means the period from 1 July to 31 December 2020

Prescribed fishery licence means:

- (a) an Abalone Fishery Access Licence;
- (b) a Giant Crab Fishery (Western Zone) Access Licence;
- (c) a Rock Lobster Fishery Access Licence.

Request for Authorisation to Fish Without Operational VMS

1. Call VFA Operations Duty Officer 0419 844 781
2. Provide Operator Name, Access Licence Number and Boat registration number
3. Provide Fishery you will be operating in
4. What is the VMS problem and what has operator done to remedy VMS problem?
5. Is the vessel in port or at sea?
6. Has authorisation been sought previously? If so, reason for previous request?
7. What abalone reef codes / fishery area codes do you intend to fish on the trip? (From VFA maps)

Standard Conditions

If an authority is granted, it will be subject to the following standard conditions:

- (a) Authority is limited to one fishing trip
- (b) May only fish in abalone reef codes or fishery area codes specified
- (c) If operating E-catch fishery - must set up trip on e-catch before leaving the port or mooring area
- (d) Must send SMS to 0419 844 781 when arriving at new reef code or area code with the following details:
 - a. VFA issued Boat registration mark
 - b. Arrived at (Reef code or area code identifier)
- (e) Must send pre-landing report by SMS to 0419 844 781 at least 1 hour prior to the boat entering a port or mooring area with the following details:
 - a. VFA boat registration mark;
 - b. The port or mooring area the boat will enter;
 - c. The estimated time the boat will enter the port or mooring area;
 - d. Whether any fish will be landed

Special Conditions

The duty officer may also impose additional special conditions