

Devolution of Fisheries Administrative Services in New Zealand – A Case Study

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Introduction

With the introduction of a property rights framework in New Zealand's fisheries in the mid 1980s, and with the concurrent imposition of cost recovery regimes on the fishing industry, there has been an increasing focus on the methods by which statutory services could be delivered, and who should undertake this delivery.

The administration of the quota management system has previously been the responsibility of the Ministry of Fisheries. Since 1999 these services have increasingly been delivered by an industry owned company – firstly by way of contract and latterly (since late 2001) by devolving a number of those functions directly to the industry.

Such a change in governance arrangements requires active participation of both government and industry to ensure that each party's respective risks can be effectively managed. In this paper we describe the principles driving the devolution of services, the approach undertaken by the respective parties, the challenges that arose and were resolved between the parties during this process and an assessment of where devolution may lead in the future from both a Government and delivery company perspective.

Historical influences behind devolution

The quota management system was introduced in New Zealand in 1986. Initially a relatively simple system over the next 8 years the system changed significantly – including a change from fixed tonnage allocations to proportional quota allocations, introduction of a comprehensive cost recovery regime, and the establishment of 'defence' mechanisms (such as deemed values and by-catch trade-off systems) in an attempt to manage by-catch issues and poor quota portfolio management.

In support of these major change in fisheries management the Ministry of Fisheries (or its statutory predecessor – the Ministry of Agriculture and Fisheries) was required to establish appropriate support systems and processes – including quota registry, enhanced reporting (including catch and effort and reporting catch against quota) and monitoring of commercial catches, permitting and vessel registrations. For the balance of this paper we call these support systems "registry systems"

By 1992-93 the Government had indicated that it wished to amend the Fisheries Act to reduce some of the complexities introduced over the previous 6 years and to introduce greater flexibility to fisheries managers and commercial fishers. A number of reports to the Minister were prepared and by 1994 a Fisheries Bill had been introduced suggesting significant amendment to the Act.

Serious lobbying against some elements of the proposals in this Bill led to major changes to the initial policies indicated in the 1994 Bill and eventually, after much debate a revised Act was passed in 1996 – the Fisheries Act 1996. This Act provided clear indications that the QMS was to be the primary fisheries management regime within New Zealand but indicated that greater stakeholder involvement and collective management arrangements in fisheries management decisions should be encouraged.

This Act clearly indicated that the existing registry systems – which by this stage were almost a decade old – would need to be replaced to support the new legislative environment. Any such development would take some time to implement so that Act allowed for a phased commencement of its provisions¹.

¹ The Purposes and Principles, measures relating to sustainability decisions, cost recovery provisions and the management of customary fishing practices were commenced immediately the Act was passed. The balance of the Act was to be commenced once registry systems were implemented. The Ministry's goal, at that stage, was to fully commence the Act by the end of 1998.

The Ministry, over the next year, proceeded to develop its implementation programmes. These programmes all assumed that the Ministry would continue to deliver all registry services itself for the foreseeable future. Critically the development of these plans was done with little reference to stakeholder needs and requirements.

By mid-1997 the Ministry had developed its implementation plans and began discussing these with both stakeholders (primarily industry leaders) and the Government itself. A range of estimates prepared by the Ministry of Fisheries assessed this cost as being in the order of \$30 million to \$35 million, with an increase in annual ongoing costs of \$6 million. In an environment of strict control of Government expenditures and a number of expensive and public failures of Government information technology projects in other Departments these costing estimates gave the Government of the day significant pause.

The Industry itself had focussed on the operational elements of the Act to determine their practicality. Significant concerns about the new legislative environment and the business compliance costs which would be imposed (in addition to the above Governmental costs) were raised with the Minister.

In early 1998 the Minister, concerned about the costs of implementation, the ongoing business compliance costs associated with complying with the new rules and wishing to foster effective partnerships between the Government and stakeholders directed the Ministry to cease work on implementing the registry provisions of the Act and appointed an independent reviewer to provide advice on further amendments to the 1996 Act.

The Minister also confirmed at this time that providing administrative registry services was not a core role of the Government and indicated, subject to the independent reviewers report, that devolving or contracting registry services to an industry owned company would be considered.

In 1999 an amendment to the Act was passed through Parliament. Amongst other things this Amendment provided for devolution of certain services to an industry based company and simplified many of the operational elements of the QMS.

What is devolution

In simple terms devolution, as provided in the Fisheries Act 1996, means the transfer of specified functions, duties and powers to an Approved Service Delivery Organisation (ASDO) to perform or exercise those functions, duties and powers. In effect, once appointed, the ASDO is statutorily accountable for the delivery of the stated services as if the statutory obligation was imposed directly on the ASDO. To manage inappropriate actions and to minimise Crown risk the ASDO must act in accordance with standards and specifications approved by the Minister. In such a case the Ministry of Fisheries is statutorily barred from the provision of those services (with the exclusion of standard setting advice and monitoring of performance by the ASDO against those standards.

The Act imposes some pre-conditions on any company wishing to be appointed as an ASDO including:

- The proposed ASDO must be representative of quota owners;
- The proposed company is an incorporated company
- The proposed ASDO has the financial, management and other resources to assume responsibility for the stated services and ensure that they are carried out;
- The proposed ASDO has provided the Crown with a monetary bond or similar security against failure;
- Standards and specifications must have been issued for the services proposed to be devolved.

As the Ministry is not responsible for the delivery of these services it follows that the cost of delivery would not be incurred by the Crown. The Act provides scope for the ASDO to impose and collect levies from the commercial fishing industry to fund its operation.

Failure to comply with Crown standards may lead to the imposition of civil penalties (up to a maximum of \$500,000 per annum). Additionally, as the statutory body responsible for the delivery of the services, the ASDO may face legal action from any person (including the Crown) who believes the legal obligations imposed on the ASDO have not been complied with.

To ensure that information collected and managed by the ASDO can be made available to the Crown for advice, fisheries management decisions and enforcement actions the Act provides that standards and specifications can

establish protocols and mechanisms to transfer information between the ASDO and the Ministry on a daily basis.

To ensure that other interested parties can be assured that services are delivered adequately and appropriately the Act provides that the Minister shall consult extensively with interested stakeholders on his desire to appoint an ASDO and on any proposed standards and specifications to be imposed.

The Act also provides scope for the Minister to provide formal directions to the ASDO about the delivery of any service. The intention of this reserve direction power was to ensure that Government fisheries management policy could be implemented immediately whilst formal standards and specifications are consulted on and implemented.

What services should be devolved

The Ministry had determined early in 1999 that the delivery of administrative registry services was not a core role of the Government. In support of this process, in August 1999, the Ministry arranged a contract with Commercial Fisheries Services Limited (CFS), an industry owned company, to deliver registry services required by the 1983 Fisheries Act.

However, devolution is a different paradigm. To devolve a service means that Ministry/Government is one step further removed from the delivery of the services. Under a contract, when a service is not being delivered consistent with the Government's wishes it is relatively easy to direct the contractor to deliver in accordance with the Government's desire. The maxim "he who pays, says" is particularly appropriate in a contract environment. In a devolved model such a direct intervention is neither desirable nor possible. The Government could, presumably, establish new standards and specifications defining its wishes more explicitly in respect of any service or ultimately use its legislative or regulatory powers to ensure that a devolved service is delivered in accordance with its desires. This process is however rather time consuming. It follows therefore that the decision on which services are appropriate for devolution is critical.

In making its assessment of whether devolved delivery was appropriate the Ministry tested each eligible service² against a risk based framework. This risk assessment was not empirical in nature but was a subjective assessment informed by consultation with stakeholders. Each eligible service was tested against the following risks:

- Can inappropriate conflicts of interest associated with devolving a service to quota owner companies be satisfactorily managed by the Crown through Specifications?
- Can appropriate standards and specifications be developed in respect of the service?
- Can an effective monitoring and auditing regime be developed in respect of the service?
- Can Crown risks and Crown interest relating to the devolution of the service be managed.

Crown risks and Crown interest in the last bullet point was further defined as:

- Whether the service is considered a core component of the Government's stewardship role. Stewardship was defined as the "overall responsibility for the integrity of the fisheries management framework established by the Act"
- Whether the service establishes a fisheries management policy;
- Whether the service establishes a regulatory framework;
- Whether the service creates or allocates access rights;
- Whether the Crown can be assured that information required for
 - Policy development
 - Rule setting
 - Monitoring the effectiveness of policy settings;
 - Compliance with rules
 - Service delivery; and
 - Enforcement

can be adequately managed and provided to the Ministry is the service is delivered by a devolved agency

² The Fisheries Act 1996 prescribes that only chief executive powers (i.e. not ministerial powers) could be devolved and only if those services were "exclusively associated with the administration of quota" or "primarily associated with the administration of commercial fisheries". The Ministry only made assessment of a limited number of registry services when recommending whether a service should be devolved or not.

After analysis the Minister decided that the following registry based services were suitable for devolved delivery

- Quota/ACE Trading
- Within season ACE and ACE generation
- Client registration
- Catch balancing
- Licensed Fish Receiver licensing
- Fishing vessel registration
- Registration of caveats and mortgages
- Management of registers

This comprises some 30%-35% of the total quantity of administrative registry services required under the Fisheries Act 1996. The balance of services are generally appropriate for delivery under a contractual arrangement with the Ministry. In practice both sets of services are actually delivered by the same organisation

Implementation – a confluence of events

By 2000 both the industry and the Ministry had already attempted to commence projects designed to build systems and processes to support the registry provisions of the new Act – both had failed to gain any traction and indeed had created great distrust between the two protagonists. The Act had been in place for 3 years and there was still no accepted strategy to build and implement systems to support the new Act's requirements.

The Ministry had developed implementation plans which, in the industry's, (and indeed the Government's), view were overcomplicated, took too long to implement and were overly expensive. The Government was increasingly wary of investing significant capital monies into high-risk IT projects in an environment where a number of high-profile Government IT projects had spectacularly and publicly failed. Both the Government and the Industry were aware that the increased ongoing operating costs supporting these new systems would eventually be charged to the industry through cost recovery levies. The Ministry was either unable or unwilling to amend its implementation process to accommodate industry concerns.

As noted earlier, this impasse led to Ministerial intervention through the establishment of an independent review of the Act and a decision to stall all implementation activities being undertaken by the Ministry.

By early 1999 the industry (through a subsidiary company – Commercial Fisheries Services Limited) had decided to take the bull by the horns and decided to build their own registry system. This process was undertaken without active support of the Ministry meaning that industry systems had to make educated guesses about the Ministry's proposals on standards and specifications. There remained significant risks at this time that the Government proposal on devolving services would not be supported by appropriate legislative support. The industry felt that the Ministry was imposing unreasonable roadblocks whilst the Ministry considered the industry initiative ill-advised and pre-emptive.

So – by the end of 1999 both the industry and Ministry had expended significant resources and efforts in progressing implementation – both processes had failed to gain any traction.

By early 2000 both the Ministry and industry leaders recognised that a continuation of this process could not succeed. Both parties also recognised that a number of events meant that a joint programme might be successful including:

- A recognition that irrespective of which approach taken to implement the Act the industry would be required to pay for its implementation – either through cost recovery levies or direct investment.
- The Government did not want to invest in significant capital investments whereas the Industry had available capital it was willing to invest in such systems.
- Both the industry and Ministry were committed to devolving registry services – The industry in the view that such an approach would lead to cost savings, efficiencies and the opportunity for further 'value-add' services, the Ministry as it had already determined that the delivery of administrative registry services was not a core role of the Crown.
- The Ministry had already outsourced the delivery of registry services provided under the 1983 Act and therefore had little internal capacity to undertake a significant implementation programme.

- A recognition by both parties that, whilst there were minor differences of opinion on the correct approach to be taken in implementing the system, neither party could undertake the task without the other.

Therefore, early in 2000, industry leaders and the Ministry agreed to establish a joint project (the New Registry Programme). The goal of this programme was:

- to implement the 1996 Act in full by 1 October 2001 in a fashion compliant with both the Act and standards and specifications ;
- to enable devolution of as many registry services as possible by 1 October 2002;
- to establish a contract between the Ministry and CFS for the remaining services by the same date.

To support this programme a steering committee involving industry and Ministry senior leaders was established and an active management programme involving industry and Ministry officers was established. Early escalation procedures were established to resolve the inevitable conflicts (which in practice turned out to be relatively minor in nature) which could occur during the 18 month project.

To ensure that competing objectives and potential conflicts of interest were managed clear responsibilities for the Ministry and the industry were determined.

The Ministry would be responsible for:

- developing standards and specifications to an output level (leaving the industry company some flexibility in its processes and systems design);
- developing regulatory proposals required to enhance the operation of the Act;
- Determining which services could be devolved and which would be contracted by the Ministry of Fisheries;
- Providing advice of the company to be appointed as an ASDO

The industry would be responsible for:

- Establishing process and system design parameters
- Determining all implementation funding decisions
- Engaging with industry users on systems design and processes

Result

Has the devolution of services proved successful?

In many ways it is too early to tell. The new governance arrangements have only been in place for 9 months and there remains some bedding down of new systems and the new regulatory regime.

As devolution occurred concurrently with the full commencement of the new Fisheries Act it is impossible to compare performance and pricing however there are a number of immediate benefits that have been identified from the new governance arrangements. Firstly, and critically, the ability to devolve services encouraged the fishing industry to invest in new systems and provided a clear financial focus to implement the Act in full on 1 October 2001. The programme was implemented on time, within budget and with greater functionality than was originally contemplated. As described in this paper it is extremely unlikely if this result could have been achieved by either the Ministry or industry without devolution.

Other areas where advantages have been seen from devolving services include:

- Capacity for value-added services to the industry which was not previously possible;
- A reduction in the number of complaints about poor or inefficient service;
- A retrenchment in the number of staff required to deliver services (currently through attrition)
- Resolution of service delivery issues quickly and promptly (however this may be through the personalities involved rather than the governance model established).

Whilst these immediate advantages are significant the jury is still out in respect of the day-to-day operation of the devolution model. Tensions which exist include:

- When (and if) the industry company is sued by a stakeholder for failure in delivery of a service will the Crown be dragged into the litigation by virtue of its statutory role as standard setter;
- When (and if) the Crown determines that the standards for a service need to be raised will the current goodwill between the company and the Ministry be retained;
- If the Crown imposes sanctions for performance failure will the current goodwill between the company and the Ministry be retained;
- If any conflict between the statute and the standards and specifications is detected, who will be held liable for any losses incurred by a stakeholder;
- If the Minister imposes a direction on the ASDO will such a direction be fully complied with by the ASDO – particularly when such a direction imposes costs on the ASDO.

Conclusion

Devolution, in the NZ model, has occurred for a limited number of administrative registry services. The opportunities created by devolution have allowed industry and the Government to achieve immediate goals (such as the development of new systems and commencement of the Fisheries Act 1996).

The new governance model requires significant commitment (and risk) from both the Government and the industry to be successful. Relationships must be maintained over the long term for the devolution model to be judged a success.

After only 9 months of operation there have been no significant issues which suggest that the devolution model cannot be successful over the long term however there remain latent risks which have not yet had to be faced.