

DEVOLUTION OF ALC REGISTRY SERVICES

Executive Summary

- 1 In early 2006 the New Zealand Seafood Industry Council (SeaFIC) requested that the Ministry of Fisheries (MFish) consider a proposal to devolve to them, as the Approved Service Delivery Organisation (ASDO), functions, duties and powers associated with the registration of Automatic Location Communicators (ALC). MFish has undertaken an extensive review of the risks and benefits of adopting this proposal.
- 2 MFish proposes to devolve to the ASDO the functions, duties and powers to register ALC Type Approvals and the function, duty and power to register ALCs. These functions, duties and powers can be devolved under Section 296A of the Fisheries Act (the Act) as they are primarily associated with the administration of commercial fisheries.
- 3 Certain functions, duties and powers of the Chief Executive of MFish were devolved to SeaFIC in the Fisheries (Transfer of Functions, Duties and Powers to the New Zealand Seafood Industry Council Limited) Order 2001 (The Transfer Order). This was renewed in October 2006 for a further five years.
- 4 If the Minister wants to revoke or amend the Transfer Order, SeaFIC, acting as the ASDO, has to agree to the recommendation by notice in writing under Section 296E of the Act (see Appendix I).
- 5 Currently, ALC registry functions, duties and powers are contracted from MFish to a Service Delivery Agency (SDA), Commercial Fisheries Services Ltd (FishServe).
- 6 The Chief Executive has the power to issue circulars that specify standards and requirements for ALC types that are approved for use in New Zealand. ALCs that have been approved are called “Type Approvals”, and are required by regulation 5(9) of the Fisheries (Satellite Vessel Monitoring) Regulations 1993 (VMS Regulations) to be recorded in a Type Approvals Register. The Chief Executive must register an ALC if it is the same as a type approved under the VMS Regulations.
- 7 The proposal by SeaFIC is a logical extension to the present situation, where all vessel registration functions, duties and powers (to which ALCs are linked) are currently devolved. As all contracted (SDA) and devolved (ASDO) services are managed by a single organisation¹, the ASDO already has access to the data for the ALC and Type Approvals registers. Devolution of these registers would therefore not be problematic.
- 8 The principle benefits from the proposal will be from efficiency gains in management processes and convenience for the fishing industry. Delivering vessel and ALC registry services together will minimise overlap and streamline registration processes (e.g. through the design of joint application forms and increased use of online services).

¹ SeaFIC subcontracts the delivery of registry services to FishServe while still retaining overall responsibility.

- 9 There are no increased risks to management through this proposal. Under the proposal, the Chief Executive would retain the power to issue circulars specifying ALC standards and requirements and the power to condition ALC registrations.

Summary of Options

Option 1 – Status quo

- 10 Retain the status quo, where all ALC functions, duties and powers are with the MFish Chief Executive. ALC registry services are contracted to FishServe as the SDA.

Option 2 – Devolve ALC registry services to the ASDO

- 11 The preferred option of MFish is to devolve to the ASDO the functions, duties and powers to register ALC Type Approvals and the function, duty and power to register ALCs.
- 12 To transfer the functions, duties and powers to register ALC Type Approvals and the function, duty and power to register ALCs to the ASDO, there are some key steps that would be necessary. Some are procedural and others require changes to regulations:
- Regulations 5(9), 6(1) and 6(3) (in relation to the cancellation of an ALC registration but excluding conditioning power) of the VMS Regulations would need to be added to the Fisheries (Transfer of Functions, Duties and Powers to the New Zealand Seafood Industry Council Limited) Order 2006 (the Transfer Order) (see Appendix II);
 - The Fisheries (Registers) Regulations 2001 would need to be amended to add a regulation that specifies the required content of a Type Approvals Register;
 - Section 16, Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001 would need to be revoked as the section relates to ALC application fees;
 - The SDA and ASDO standards and specifications would need to be amended in relation to ALC registry services.

Rationale for Management Options

- 13 ALCs are required to be carried and operated on board certain classes of fishing vessels (e.g. foreign-owned New Zealand fishing vessels) that are specified in the VMS Regulations.
- 14 ALCs transmit information about the vessel's identification and position to MFish via satellite in near real-time. This information is useful for ascertaining the vessels' location and can, in some cases, infer the vessel's activity.
- 15 In order to ensure that information is effectively transmitted from the vessel to MFish, vessels are required by regulation to carry and operate ALC types that meet specific

standards and requirements². These are specified by the Chief Executive and are called “Type Approvals”. Type Approvals are required to be recorded in a register.

- 16 ALC registration applications are currently processed by the SDA (FishServe) under contract to MFish. If an ALC registration application is for an ALC of the same type as a type approved by the Chief Executive, the SDA shall register the ALC subject to any conditions specified by MFish.
- 17 The accepted ALC registration certificate is forwarded to the ASDO, on an approved form, for issue with the vessel certificate of registration.
- 18 Although the SDA and ASDO are two different organisations, ALC and vessel registry services are both delivered by FishServe (i.e. fishers are required to pay two organisations for separate services, although the two are undertaken together by FishServe under contract/subcontract).
- 19 The rationale for the preferred option is to realise further efficiencies in the registration processes for ALCs and vessels. It is anticipated that the proposal would increase certainty and efficiency of delivery by grouping vessel and ALC registry services with the ASDO. The current registration process is no longer necessary in the fisheries management context, as vessel and ALC registrations are linked. The primary concern is to ensure that appropriate decisions are made about the vessel registration application with the ALC registration more mechanistic within the current VMS framework
- 20 Although the status quo is reasonably effective, further efficiencies could be realised through the linking of ALC and vessel registry services. If ALC registrations were also devolved, it would be possible for the ASDO to design joint application forms and provide online services, thereby removing some overlap.
- 21 The Chief Executive would retain the power to issue circulars specifying ALC standards and requirements. Standards and requirements ensure ALC compatibility with MFish’s monitoring regime and therefore directly impact the ability of MFish to receive important information on the location of commercial fishing vessels. As the Chief Executive is required to consult with Industry to issue circulars, and the type approvals seek to manage risks associated with the use of unsuitable ALCs, it would be inappropriate to devolve such an arrangement.
- 22 The Chief Executive would also retain the power to make the registration of any ALC subject to such reasonable conditions as he may specify in writing to the applicant. This is a core fisheries management role relating to the monitoring of fishing vessels and such roles are not generally considered appropriate for devolved delivery.

² Examples of ALC standards and requirements include: the place in which an ALC is to be installed, and method of installation; requirements as to the form, frequency and detail of information to be supplied in relation to vessels, including the place and time at which such information is supplied.

Assessment of Management Options

Option 1 – Status quo

- 23 The status quo provides the Chief Executive of MFish with control over all aspects of the management of ALCs. Chief Executive functions, duties and powers in relation to ALCs are listed in Appendix II.
- 24 The functions, duties and powers to register ALC Type Approvals, register ALCs, and cancel ALC registrations are contracted by MFish to the SDA (FishServe). The Chief Executive retains the functions, duties and powers to specify ALC standards and requirements, grant Type Approvals and condition ALC registrations.
- 25 The status quo is working reasonably effectively, but further efficiencies could be realised through the linking of ALC and vessel registry services.
- 26 The status quo is not convenient for the fishing industry, in that fishers have to apply on separate forms for vessel and ALC registrations and pay two separate organisations for these services. This situation is unnecessary, as vessels and ALCs are linked for the purposes of fisheries management, and would therefore be more efficiently registered together.

Option 2 - Devolve ALC registry services to the ASDO

- 27 Following analysis of the costs and benefits of the proposals, Option 2 is the preferred option of MFish.

Costs

- 28 Analysis of Option 2 reveals that there are no additional costs of production that MFish will have to outlay to devolve the functions, duties and powers to register ALC Type Approvals and the function, duty and power to register ALCs to SeaFIC.
- 29 The Ministry will not have to outlay capital for a computer system to manage the additional ALC registry services as there is an existing computer system that supports the flow of information from the ASDO to the Ministry. Costs are now covered by the industry through their levies to SeaFIC.
- 30 As ALC registration is a relatively small service, the impacts of the proposal on the costs charged to industry are anticipated to be negligible.

Benefits

- 31 It is anticipated that the proposal would increase efficiency of delivery by grouping vessel and ALC registry services with a single provider. Vessel registry functions, duties and powers are already devolved to the ASDO, and it is therefore a logical step to link vessel and ALC registrations more effectively by devolving ALC registry services.
- 32 Efficiency gains could be achieved through technological improvements (i.e. online services) and streamlining of registry services (i.e. joint vessel/ALC application

forms). Efficiency is not anticipated to be a significant benefit in monetary terms, but will make vessel and ALC registration less complicated for the fishing industry.

- 33 The proposal is to devolve administrative functions, duties and powers of the Chief Executive, and therefore does not pose a risk to the fisheries management framework. The ASDO has shown since 2001 that it has the systems, expertise and processes to efficiently deliver these services.

Preliminary recommendation

34 MFish recommends that the Minister of Fisheries:

- a) Agree to transfer the functions, duties and powers to register ALC Type Approvals and the function, duty and power to register ALCs to the ASDO (“the Transfer”) under Part 15A of the Fisheries Act 1996;
- b) Agree to add regulations 5(9), 6(1) and 6(3) (in relation to the cancellation of ALCs) of the Fisheries (Satellite Vessel Monitoring) Regulations 1993 to the Fisheries (Transfer of Functions, Duties and Powers to the New Zealand Seafood Industry Council Limited) Order 2006 to transfer the additional ALC registry functions, duties and powers to the ASDO;
- c) Agree to amend the Fisheries (Registers) Regulations 2001 to add a regulation that specifies the required content of a Type Approvals Register;
- d) Agree to revoke Section 16, Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001 as the section relates to ALC application fees.

Appendix I – Statutory Considerations

35 In considering the issues and options outlined in this paper, the following statutory considerations have been taken into account:

36 Section 296A of the Act defines 'specified functions, duties, or powers'-

- (a) Means any functions, duties, or powers of the chief executive, whether statutory or non-statutory in nature, that are—
 - (i) Exclusively associated with the administration of quota; or
 - (ii) Primarily associated with the administration of commercial fisheries;
or
 - (iii) Principally associated with the administration of fish farming; and
- (b) Includes the keeping of registers under sections 98, 124 and 186K; but
- (c) Does not include—
 - (i) Any functions, duties, or powers of the Minister; or
 - (ii) Any power conferred on fishery officers, honorary fishery officers, or examiners by or under the Fisheries Act 1983 or by or under this Act.

37 Section 296B (3) of the Act states that the Minister must not make a recommendation to transfer any specified function, duty or power to an ASDO unless the Minister is satisfied that—

- (a) The proposed approved service delivery organisation is representative of quota owners who have an interest in those functions, duties, or powers;
- (ab) if the recommendation relates to a function, duty, or power associated with the administration of fish farming, the proposed approved service delivery organisation is representative of fish farmers who have an interest in the function, duty, or power; and
- (b) The proposed approved service delivery organisation is a company incorporated under the Companies Act 1993; and
- (c) The proposed approved service delivery organisation has the financial,

management, and other resources to enable it to—

- (i) Assume responsibility for the carrying out of the functions, duties, or powers that are specified in the order; and
- (ii) Ensure that those functions, duties, or powers are carried out; and
- (d) The proposed approved service delivery organisation—
 - (i) Has provided the chief executive with a monetary deposit or bond in accordance with section 296D; or
 - (ii) Has established and is maintaining an alternative arrangement in accordance with section 296D; and
- (e) Standards and specifications have been issued in relation to the functions, duties, or powers.

38 Section 296E of the Act relating to the revocation of an order transferring functions, duties, or powers to approved service delivery organisation

- (1) The Governor-General may from time to time, by order in Council made on the recommendation of the Minister, revoke or amend an order made under section 296B.
- (2) The Minister may not make a recommendation under subsection (1) unless—
 - (a) The approved service delivery organisation named in the order has agreed to the recommendation by notice in writing to the Minister; or
 - (b) The requirements of subsection (3) have been satisfied and the Minister has complied with the requirements set out in subsection (4).
- (3) The requirements of this subsection are that the Minister must be satisfied that—
 - (a) The approved service delivery organisation has—
 - (i) Failed to comply with any applicable standards and specifications; or
 - (ii) Failed to comply with an applicable direction under section 296Q; or
 - (iii) Failed to maintain an alternative arrangement under section 296D (1(b)); or
 - (iv) Failed to comply with a requirement under section 296D (3) to increase the amount of a monetary deposit or bond; or
 - (b) There is a serious problem with the organisation within the meaning of section 296ZE(2).
- (4) The Minister must—
 - (a) Give the approved service delivery organisation notice in writing of the Minister's intention to make the recommendation, accompanied by a statement of the Minister's reasons for the proposed recommendation; and
 - (b) Give the approved service delivery organisation a reasonable opportunity to make submissions to the Minister in relation to the proposed recommendation; and
 - (c) Consider any submissions made by the approved service delivery organisation.

- 39 Section 296O of the Act states that the Minister may, from time to time, issue standards and specifications relating to the performance or exercise of specific functions, duties or powers by approved service delivery organisations, and may amend or revoke any standards and specifications issued.
- 40 The Fisheries (Satellite Vessel Monitoring) Regulations 1993 sets out the requirements for the authorisation and registration of ALCs.
- 41 The Fisheries (Registers) Regulations 2001 sets out the required content of a number of registers. This will need to be amended to include Type approvals if the proposal is implemented.
- 42 The Fisheries (Commercial Fishing) Regulations 2001 sets out fees for ALC applications.

Appendix II

43 The Chief Executive functions, duties and powers specified in the Fisheries (Satellite Vessel Monitoring) Regulations 1993 in relation to ALCs are:

- **Regulation 4:** The power to issue circulars specifying standards and specifications for approved ALC types;
- **Regulation 5:** The power to grant a Type Approval for an ALC if it meets the appropriate standards and specifications;
- **Regulation 5(9):** The requirement to record all Type Approvals in a register;
- **Regulation 6(1):** ALCs shall be registered if they are the same type as one of the types approved under regulation 5;
- **Regulation 6(3):** To make the registration of any ALC subject to reasonable conditions that he or she may specify in writing to the applicant, and the power to cancel the registration if it no longer complies with the standards and requirements.

