

FISHERIES SERVICES

NEW ZEALAND

1. Please provide information on the extent to which services to the fishing industry are provided by the public or private sector. If the service is provided by public authorities, please state whether there is a cost recovery scheme in place, or how the service is paid for.

The provision of services across the fisheries value chain is undertaken by a range of providers within both the private and public sectors.

Crucial initial infrastructure development to support fishing, such as the construction of port facilities and transportation infrastructure to enable seafood products to be landed and moved to the market, were established originally through public works projects as a mechanism necessary to develop a fishing industry. Port infrastructure is now largely maintained and operated by private service providers which charge fees for their use. The Government retains control of some companies, including the three main electricity generators, and maintains significant state ownership in the transport sector.

The New Zealand Ministry of Fisheries plays a core role in the administration of a number of services crucial to the operation of the New Zealand fishing industry. The cost of providing these services is largely recovered from rights holders in the fishing industry under cost recovery rules enacted under the Fisheries Act 1996. The principles under which cost recovery occurs are defined in the Fisheries Act 1996 and require recovery where a commercial fisher benefits directly from the delivery of that service or where the service is provided to manage a risk or adverse effect cause. The cost recovery rules limit cost recovery to the costs associated with fisheries and conservation services, such as research and registry services. Under this model, public good services in fisheries management, such as policy advice and Crown prosecutions, are not cost recovered from the fishing industry. On average 40-45% of the annual NZ\$80-\$85 million Government expenditure on managing fisheries is cost recovered from the New Zealand fishing industry.

Services required by the Minister of Fisheries to administer his obligations under the Fisheries Act 1996 can be delivered either by the Ministry of Fisheries itself, providers contracted by the Ministry or, in certain circumstances, by devolving responsibility to a private company. Where contracted or devolved, the private service providers are closely monitored and contractually bound to meet certain standards and specifications set by either the Minister or the chief executive of the Ministry. . Table 1 below describes generally the services provided or managed (having been devolved) by the Ministry of Fisheries.

Description of the Core Services Delivered or Managed (Devolved) by the New Zealand Ministry of Fisheries

Service	Description	Cost Recovered or Devolved
Compliance Services	Compliance services are provided to take action in commercial, customary and recreational fisheries to encourage compliance and deter offending. Services provided include the: <ul style="list-style-type: none"> • Monitoring of commercial, customary and recreational fishing activity, including commercial fishing activity through a satellite Vessel Monitoring System • Analysis of fishing returns to detect offending • Inspection of commercial fishing vessels and Licensed Fish Receivers • Education of commercial, customary and recreational fishers Co-ordinating and managing special approval and statutory vessel notification requirements	Cost Recovered in part
Research Services	The Ministry administers research contracts contracted out to private research providers on a contestable basis. Research is primarily focussed on stock assessment, the affects of fishing and biodiversity.	Cost Recovered in part
Data Services	The Ministry administers contracts for the management and maintenance of research and commercial data databases. The Crown owns a multitude of fisheries data, collected through research, observer services and catch/effort reporting.	Cost Recovered
Registry Services	The Quota Management System (QMS) is underpinned by a registry service. Registry services provide the mechanisms behind the QMS, and include, among others, services related to vessel registration, processing catch/effort returns, fishing permit administration and quota allocation.	majority devolved and therefore paid for directly by industry the balance is contracted and subject to cost recovery
Observer Services	The observer service provides observer coverage of fishing vessel activity. The observer program collects and records accurate and reliable data relating to vessel catch and processing.	Cost Recovered

A number of additional services crucial to the trade of seafood products, such as customs and sanitary services are provided by public authorities. As is the approach within the Ministry of Fisheries, these services are predominantly provided on a cost recovered basis with some services devolved from public administration to private providers.

2. Is the provision of services regulated? If the provision of the service is restricted -- on what grounds? (e.g. environment, management, conservation, security). Are regulations and restrictions published? Are domestic and foreign users treated equally?

The provision of services in New Zealand are regulated under a number of different mechanisms, though primarily under the Commerce Act 1986 and New Zealand's obligations and commitments under the WTO General Agreement on Trade in Services (GATS). Sector-specific legislation was introduced to address issues relating to industry structure and market power in the electricity and telecommunications sectors.

As noted above, services required by the Minister of Fisheries to administer his obligations under the Fisheries Act 1996 can be delivered either by the Ministry of Fisheries itself, providers contracted by the Ministry or, in certain circumstances, by devolving responsibility to a private company.

Section 296B of the Fisheries Act 1996 sets out the legislative requirements regarding the transfer (devolvement) of services to private providers.

A foreign service provider can potentially fulfil all obligations required by Section 296B so long as they are registered as a company in New Zealand. This ensures that the general framework of New Zealand company law (i.e rights and obligations of directors, obligations on reporting and auditing etc) apply to these providers . However a test regarding the requirement to be representative of quota owners, as required under Section 296B(3)(a), may, in practice, be difficult for a foreign service provider to practically fulfil.

Many registry and administrative functions required by the Fisheries Act have been devolved and contracted to a private company – the New Zealand Seafood Industry Council (SeaFIC). SeaFIC is an industry owned company, financed through a statutory levy on all fish landed and processed by New Zealand industry, and managed by a board of directors who represent company shareholders. SeaFIC administers the services contracted and devolved to it through FishServe, which is a wholly owned subsidiary of the New Zealand Seafood Industry Council.

It is important to note that Section 296B applies to the ‘transfer’ (devolvement) of specified functions, duties or powers, and not to the contracting of functions, duties or powers. This distinction means that where MFish is contracting a company or organisation to provide a service, Section 296B does not apply though overarching legal frameworks such as the Commerce Act 1986 remain.

3. Is the service provided as a regulatory obligation?

Core services related to the management of the fishing industry and the administration of the quota management system and to the trade of seafood products stem from regulatory obligations. The Fisheries Act 1996 sets out functions, duties and powers that must be carried out in order to achieve the objective of the legislation. These services, generically described in Table 1, provide the foundation for the QMS and the sustainable utilisation of marine resources.

Services required to facilitate the trade of seafood product, such as customs and sanitary services, are focussed on ensuring that trade of products is standardised and safe. These services stem from regulatory obligations within New Zealand law but also obligations enforced through the legal requirements of trading partners for whom New Zealand exports seafood.

4. When considering a service provider, can the user freely choose between domestic or foreign providers?

The Government retains control of some companies, including the three main electricity generators, and maintains significant state ownership in the transport sector. Broadly speaking however, the trade in services specific to the fisheries value chain are relatively open to domestic and foreign service providers.

With regard to those services provided specifically by the New Zealand Ministry of fisheries as a foundation to the New Zealand fisheries management regime, the discussion under question two pertaining to the regulatory environment within which those services are provided is an important consideration. It was noted here that the devolution of certain functions (services) to foreign providers could be constrained by a requirement to be representative of quota owners (as required under Section 296B(3)(a) of the Fisheries Act 1996).

It is again important to recall the distinction that can be made between devolving a service from public provision to private provision, and the contracting of a service by the Ministry of Fisheries. In this context, the requirements of Section 296B(3)(a) only apply to devolution.

5. Is the regulatory environment for the provision of a service (or a series of services) an outcome of internationally agreed measures (e.g. Codex Alimentarius, RFMO provisions, multilateral environmental agreements)?

New Zealand takes seriously its obligations to fully implement international agreements and to ensure that domestic regulation is consistent in this respect. Regulation of services in New Zealand is considered to be in complete conformity with GATS obligations which arguably have the strongest influence on domestic regulatory policy.