

REVIEW OF OBSERVER SERVICES FEES – INITIAL POSITION PAPER

Executive Summary

- 1 During late-2007 to early-2008 the Chief Executive of the Ministry of Fisheries (MFish) consulted on a range of measures aimed at better managing the risks of foreign charter vessels (FCVs) operating in New Zealand waters. The Chief Executive approved the management measures on 12 June 2008.
- 2 One of these measures consulted on, was the proposal to introduce a risk-based approach to Observer coverage on FCVs¹ i.e. higher Observer coverage, paid for by the FCV operators, for higher risk vessels. Stakeholder submissions to the FCV Initial Position Paper (IPP) generally supported this approach. Accordingly, provision needs to be made for these charges in the Regulations. The current charges are no longer a fair reflection of the costs of observers. Consequently, it is also timely to review Observer charges generally.
- 3 This paper proposes that the Fisheries (Commercial Fishing) Regulations 2001 (the Regulations) be amended to set a new flat daily rate for all Observer services that are not funded through cost recovery levies.
- 4 The Observer programme is set up under Part 12 of the Fisheries Act (the Act)² to collect reliable and accurate information for fisheries research, fisheries management and fisheries enforcement. The costs of the programme are recovered through a mix of cost recovery levies under Part 14 of the Act and transaction fees for specific services.
- 5 As stated above, the current process has two cost recovery systems: Levy orders and transaction fees. The transaction fees are direct fees payable by the operator of a given vessel receiving an Observer service, of which there are currently three in regulations (supervision of conversion factors, dumping at sea and transhipments), created in 2001.
- 6 Currently the Regulations set transaction fees for supervision of conversion factors, transhipments and dumping at sea. The listed fees no longer cover the costs for these services and it is proposed that these fees be revised to be more in line with the actual cost of providing the services. The proposal is to move to a flat daily fee.
- 7 Charges for other Observer services such as coverage for High Seas Fishing including Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and activities authorised by special permits are set as conditions on permits. It is proposed that the provision for all fees for these Observer services be also set out in one place in the Regulations.

¹ See Appendix 2 for description of the risk based approach.

² In this IPP section references and references to “the Act” are references to the Fisheries Act 1996 and to sections in that Act unless otherwise stated.

The Issue

Existing fee structure for Observer services

- 8 Most Observer coverage is provided as part of the general research and monitoring programme. The cost of this Observer coverage is recovered through Cost Recovery Levies. Some specific Observer services fall outside the general programme and are funded by individual permit holders or vessel operators. These specific Observer services (in addition to supervision of conversion factors, transshipments and dumping) are:
- Benthic Protected Area Fishing (the Fisheries (Benthic Protected Area) Regulations 2007, Reg 9 (c));
 - Special Permit Observer Coverage -s 97(5);
 - High Seas Permit Observer coverage (this encompasses the different Regional Fisheries Management Organisations that require Observer coverage) ³-s 113K (1)(m);
 - Industry Requested Observer coverage.
- 9 It is proposed that charges for all these services be added to the Regulations.
- 10 To date, cost recovery for these extra services has been based on actual costs, through transaction fees.
- 11 Changing the Regulations to add the relevant fee structure and to increase Observer fees is the only way to appropriately meet the relevant management objectives (i.e. fully recovering costs and targeting costs to the most appropriate person).
- 12 There are two management objectives intended to be covered by the proposals in this paper. First is to create a fee structure to ensure all fees charged are set out in regulations. Second is to increase Observer fees to ensure Observer costs are 100% recovered through transaction fees. The current transaction fees for the services listed in the Regulations have not increased since 2001, yet costs have increased 30%, creating a deficit. The intention is to amend the Regulations so that they reflect the true cost of delivering Observer services.
- 13 The risk of not updating the Regulations is twofold. Firstly, the risk of not putting a fee structure in place for the proposed (and currently provided) Observer services is that it lacks the clarity and transparency associated with regulations. Secondly, by not updating the fees for Observer services, part of the costs of these services will be transferred to other members of the fishing industry through Cost Recovery Levies.

³ CCAMLR (Convention for the Conservation of Antarctic Marine Living Resources), South Pacific Regional Fisheries Organisation (SPRFMO), Western Central Pacific Fisheries Commission (WCPFC)

- 14 An outline of the different activities and the fees that will be applied is set out in Appendix 3.

Risk-based approach to observer coverage on Foreign Charter Vessels

- 15 MFish proposes to seek regulatory change to enable MFish to directly recover from vessel operators the cost of additional Observer coverage for “high-risk” and “medium-risk” FCVs.
- 16 Presently, Schedule 2, Part 4 of the Fisheries (Commercial Fishing) Regulations enables MFish to charge individual vessel operators transaction fees for supervision of transshipments, conversion factors and dumping at sea. The schedule does not provide scope for costs to be recovered for Observer coverage on high-risk and medium-risk FCVs from the operators of those vessels.
- 17 If Schedule 2 is not amended to allow recovery of costs from those FCV operators, the cost of this additional Observer coverage will fall on quota owners under general cost recovery levies. MFish considers that it is appropriate to place the cost of this Observer coverage directly on the operators of high risk category FCV vessels. Placing the cost on FCV operators would therefore be consistent with The Treasury’s “Guidelines for setting costs in the public sector”.

Summary of options

Option 1 – Status Quo

- 18 The status quo would be to retain the current structure and content of the Regulations and keep the transaction fees at their current rate.
- 19 If the status quo is retained it would lead to three major issues:
- the cost of additional Observer coverage of high-risk and medium-risk FCVs would be included in the general costs of the Observer programme, and so would be shared by quota owners generally;
 - the increasing cost of Observer coverage would result in specific transaction charges not funding the activity that the charge relates to; and
 - the MFish Observer programme would not recover 100% of the cost of Observer services.
- 20 The impact of the status quo would be maintaining the current system where fees are set out in different places, creating complexity and losing a transparency gain.

Option 2 – Amend the Commercial Fishing Regulations (MFish preferred option)

- 21 MFish’s preferred option is to amend the Regulations to:

- Introduce fee structures for Observer coverage for all the current and anticipated services that Observers provide;
- Revoke the current fee structure of \$1971.55 dollars for the first day and \$457.78 for every subsequent day of Observer coverage (sections 13 - 15 of Part 4, Schedule 2 of the Regulations);
- Introduce a new, flat daily rate of \$571.65 (excluding GST) per Observer.

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22 This is the preferred option because:

- the cost of additional Observer coverage for “high-risk” and “medium-risk” FCVs would be passed to the operators of those vessels;
- it allows for higher recovery of costs through increased transaction fees (rather than using levies);
- of the associated benefits of having transparency and clarity. It should be noted that only trips longer than six days would incur a greater fee for the service receiver.

Rationale for Management Options

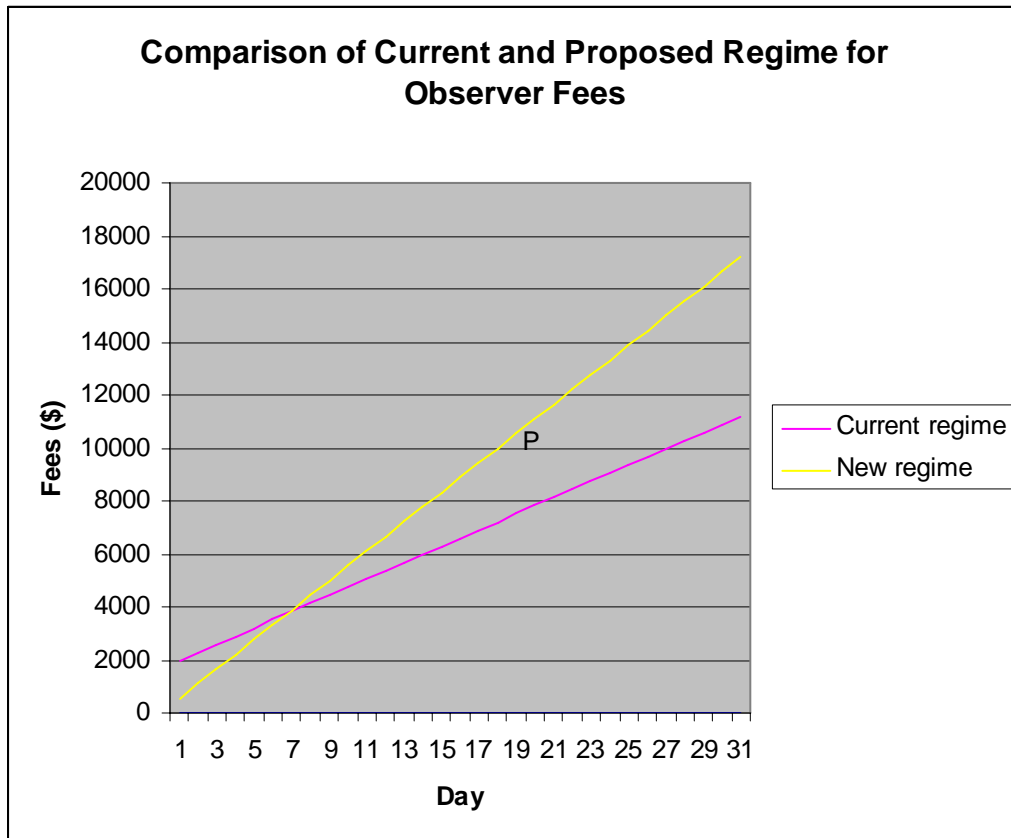
Unified fee structure with flat daily rate

- 23 In regards to regulating to establish a unified fee structure (Option 2), the option of regulation is being proposed because the current practice lacks the transparency desired in relation to charging of fees.
- 24 In regards to changing and increasing the fees for Observer services, MFish’s Statement of Intent states that one of the Observer Programme’s management objectives is to remain cost neutral. This means that all costs not recovered directly through transaction fees must be recouped through the Cost Recovery Levy process, meaning all quota holders in the relevant fishery must pay a levy. This is unfair on those quota holders who did not require or were not required to receive any Observer coverage.
- 25 Currently the Regulations set transaction fees for supervision of conversion factors, transhipments and dumping at sea. The current charging system for the first two of these involves a graduated fee. On the first day of an observed trip the fee is (generally) \$1,821.55 (excluding GST). For each subsequent day the fee is \$307.00 per day. The fee for supervising dumping at sea is \$22.50 for each occasion. These fees no longer cover the costs for these services and it is proposed that these fees be revised to be more in line with the actual cost of providing the services. The proposal is to move to a flat daily fee.
- 26 An assessment of the current fees charged and the new proposed structure has revealed that the new fee structure would increase the average transaction fees charged by the Observer Programme. When the fees were set in the 2001 Regulations, the average fishing trip was significantly shorter. Analysis has

⁴ This proposed figure is for the 09/10 year. The figures in the graph in paragraph 32 and the table in the appendices is for the current (08/09) fishing year.

determined the current average trip length for which an Observer is required is 31 days.⁵

- 27 Although there are different levels of fees currently based upon whether accommodation is provided for Observers, the most common figures are provided below in Figure 1, compared with the proposed new regime.



Note: figures are in dollars and exclude GST.

- 28 For the average trip duration of 31 days, the proposed regime would charge \$6000.05 more to the service receiver. Increased transaction fees (which are targeted) would reduce the cost of Observer coverage that is recouped through Cost Recovery Levies, which is considered to be a fairer outcome to quota holders.

Funding additional Observer coverage on FCVs

- 29 The Chief Executive has agreed that Observers should play an important role as part of a new range of measures aimed at reducing the risk of certain FCVs operating in New Zealand waters. The role of the Observer on medium and high-risk FCVs would be different from the current Observer role, in that there would be a focus on auditing of the vessel's activities against the Act and regulations because of an assessment of the risk posed by the particular vessel.

⁵ In port unloads last 1-3 days, Conversion factor coverage is 21 days, CCAMLR trips average 83 days and ORH 1 trips are averaging 21 days.

The Observer placement in these circumstances will be a condition of vessel registration imposed by the MFish Chief executive under s 103(4) of the Act. The risk-based approach to Observer coverage was consulted on in the IPP entitled “Management Measures to Mitigate the Risks from Foreign Charter Vessels Operating in the New Zealand EEZ”, and the relevant section of the IPP is attached as Appendix 2.

- 30 Currently, if MFish wishes to place Observers on vessels for compliance reasons, the cost of the coverage must be recovered through levies. Annually, the MFish Observer programme plans for a specified number of Observer hours to be allocated for compliance purposes. The cost of the Observer hours is recovered through levies. MFish believes that the current compliance allocation is not adequate to provide coverage for the anticipated requirements on medium and high-risk FCV, as the allowance must be spread across all vessels (i.e. FCVs and domestic vessels). In addition, the costs are not targeted to the identified receiver of the service (the operator), but are spread amongst the quota owners.
- 31 MFish would prefer to recover costs directly from the FCV operator. The ability of MFish to monitor medium and high-risk FCV activities at sea will create an incentive for FCV operators to abide by the Act and regulations.
- 32 Under the status quo, MFish would be unable to implement the risk-based approach to Observer coverage. It is therefore necessary to amend the Regulations to specify a specific pricing regime for placement on medium and high-risk FCVs.

Assessment of Management Options

Option 1 – Status quo

Impact – Existing fee structure for Observer services

- 33 The impact of the status quo has been that listed revenue from the supervision of conversion factors is now 30% below the cost of delivering this service.
- 34 If the status quo is maintained, negative financial position reporting would continue and the shortfall in revenue through transactional charges would need to be averaged out over levies and consulted on through the end of the financial year balancing process.
- 35 Continuation of the existing fee structure would increasingly deliver a deficit in revenue in the areas of supervision currently listed in the regulations.

Costs – Existing fee structure for Observer services

- 36 In regards to the current transaction charges, the main cost would be a continuing deficit in the running costs of the Programme, which would continue to be met by quota holders in the form of levies.

Impact – Existing fee structure for Observer coverage on FCVs

- 37 The status quo would retain the existing fee structure for Observer services, with no provision for Observer coverage specific to FCVs.
- 38 The principal impact of retaining the status quo would be the inability of MFish to place Observers on all medium and high-risk FCVs for the purpose of auditing FCV performance against the Act and regulations without transferring that cost to other members of the fishing industry.

Costs - Existing fee structure for Observer coverage on FCVs

- 39 FCV operators are currently only being charged transaction fees for a very specific range of services. Services that fit outside of that range are covered through cost recovery levies that are charged to quota owners. The status quo would therefore retain the cost of placing Observers on high and medium-risk FCVs with quota holders, when the costs should be charged directly to the FCV vessel operator.

Benefits – Existing fee structure for Observer services

- 40 There are very few merits in maintaining the status quo option other than a pecuniary advantage to the recipient of the listed services.

Option 2 – Amend the Commercial Fishing Regulations

Impact– Unified fee structure with flat daily rate

- 41 The main impacts of Option 2 would be the clear and equitable recovery of Observer costs and the recovery of an amount of costs appropriate for the value of the service received.
- 42 There would be no additional enforcement strategies required above what currently exists for fees payable by service receivers.
- 43 This option would not overlap with existing rules. The existing fee structure (ss 13, 14 and 15 of Schedule 2, part 4 of the Regulations) would be revoked and a new one inserted, with the new fees accompanying it.

Costs – Unified fee structure with flat daily rate

- 44 There are no obvious costs associated with this option apart from the minor costs attached to developing regulatory documents and informing vessel operators about the changed costs.

Benefits – Unified fee structure with flat daily rate

- 45 This option will allow the Observer Programme to meet its management objective of cost neutrality in each service it delivers. It also provides greater transparency than the existing fee structure.

Impact - Funding additional Observer coverage on FCVs

- 46 Currently, Observer coverage is required to meet fisheries or conservation needs as specified by MFish (e.g. if scientific data collection is required for a

given fishery/species), or for reasons specified in the Act (i.e. supervision of transshipments, dumping or conversion factors). In addition to this, the Observer programme plans for a limited number of compliance hours, in order to monitor the activities of fishers for compliance purposes. FCV operators are currently only required to take Observers on board if their FCV fits into these categories.

- 47 Option 2 reflects the decision made to link Observer coverage to the status (i.e. length of time in New Zealand) and performance of the FCV. Linking risk status of FCVs to performance of the vessel and vessel personnel (i.e. adherence of the operator and vessel crew to the Act and regulations, as specified in conditions of registration consent) is aimed at creating incentives for FCV operators and crew to act in accordance with the law.
- 48 MFish foresees that the long-term impact of a cost structure that reflects the risk-based approach would only be high for vessels that continually breach the Act and regulations. MFish anticipates that FCV operators who demonstrate adherence to the law in the long-term would have the same Observer costs as they do currently (i.e. for low risk FCV, Observer coverage would be limited to services that can be recovered through levies).
- 49 It is not possible to determine how many current FCVs would be affected by the risk-based approach. For example, it is not possible for MFish to determine the proportion of registered FCVs that would fit into the respective risk categories, as the risk category of individual FCVs will change over time.

Costs - Funding additional Observer coverage on FCVs

- 50 Annually, there are between 20 and 40 FCVs registered in New Zealand (either new registrations or renewals). Of these, there are typically 3 or less new FCV arrivals. It is not possible to determine the extent of senior crew changes discussed in the medium risk category (see Appendix 2 for details).
- 51 Many of the FCVs currently operating in New Zealand have MFish Observers on board. As discussed above, the Observer coverage is based on the priorities of the Observer programme. The Observer coverage on these vessels is either paid for by quota owners (for the purpose of scientific data collection for fisheries and conservation services), the permit holder (for supervision of transshipments or dumping at sea and as required by conditions on special permits and high seas permits), or the vessel operator (for supervision of conversion factors). A limited number of hours are allocated for the purpose of auditing and monitoring vessel activities. The cost of these hours is recovered through levies.
- 52 Option 2 would allow that for all Observer placements for the purpose of monitoring medium and high-risk FCVs, the cost of Observer coverage would be recovered from the vessel operator (for medium-risk FCVs it is presently intended that the costs be charged directly to the vessel operator unless the Observer coverage can be facilitated as part of the normal fishery-specific Observer coverage requirement. The MFish Observer Programme would determine when this is possible).

- 53 The risk-based approach would increase costs for those operators whose FCVs fit in the medium and high-risk categories of the risk-based approach.

Benefits - Funding additional Observer coverage on FCVs

- 54 The benefits of Option 2 are that MFish would be able to recover the costs of increased Observer coverage from the most appropriate people. The risk-based approach to Observer coverage is an integral part of a wider range of measures recently signed off by the Chief Executive. Failure to secure full Observer coverage on these FCVs would seriously compromise the ability of MFish to monitor the activity of FCVs against the range of measures MFish is currently implementing. This would also compromise the ability of MFish to enforce the conditions of registration consent imposed by the Chief Executive.
- 55 MFish requires a FCV-specific fee schedule in the Regulations to provide legal justification for MFish to recover fees from medium and high-risk FCV operators.

Other Management Controls

- 56 There are no other relevant management controls to consider, given the Act and current fisheries regulations and the requirements thereof relating to collection of fees.

APPENDIX 1 - STATUTORY CONSIDERATIONS

- 57 **Section 5 (a):** Decision-makers are required to act in a manner consistent with New Zealand's international obligations relating to fishing including the Law of the Sea and the Fish Stocks agreement as well as regional fishery management agreements. MFish considers that both options are consistent with New Zealand's international obligations relating to fishing.
- 58 **Section 5 (b):** Decision-makers must also act in a manner consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish considers that both options are consistent with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. MFish considers that both options are consistent with these provisions.
- 59 **Section 9 (a) and (b):** It is unlikely that either of the management options proposed would materially affect any associated or dependent species or the biological diversity of the aquatic environment.
- 60 **Section 9 (c):** It is unlikely that either of the management options proposed would affect relevant habitats of particular significance to fisheries management.
- 61 **Section 10:** Decision-makers are required to take account of the information principles which direct that decisions are based on the best available information, that any uncertainty in the information be considered and that caution is taken when information is uncertain or unreliable. The information principles also prescribe that an absence or lack of information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act.
- 62 **Section 297 (1) (m), (i)-(iii):** provides that the Governor-General may make regulations prescribing:
- The matters in respect of which fees or charges are payable;
 - The amounts of the fees or charges, or the methods or rates (including hourly rates) by which they are to be assessed;
 - The persons liable to pay;
 - The circumstances in which the Minister of Fisheries or Chief Executive may remit or waive payment.
- 63 **The Fisheries (Commercial Fishing) Regulations 2001, Schedule 2, Part 4:** contains the present regulatory fee structure and fee amounts to be charged.

APPENDIX 2 – RISK- BASED APPROACH TO OBSERVER COVERAGE

- 64 MFish is proposing to implement a risk based approach to determine the appropriate level of Observer coverage onboard FCVs. For some vessels this new approach is likely to result in a greater level of Observer coverage than exists currently.
- 65 Under this proposal three risk profiles (high-risk, medium-risk and low-risk) will be used to characterise FCVs. When a FCV is registered it will be assigned to one of these risk profiles which will determine the level of required Observer coverage. The table below provides an overview of each risk profile.

	High-risk	Medium-risk	Low-risk
Criteria	All new FCVs to New Zealand	Existing vessels, which have previously been classified as low risk, seeking re-registration and where issues have been identified Existing FCVs but where senior crew have changed (master/factory manager) New vessels that have successfully completed the initial two observed trips	Low risk vessels which have been through the high/medium/low hierarchy and are not deemed to pose a risk by virtue of their FCV status Low risk vessels seeking re-registration where the permit holder and vessel operator details remain unchanged, where the senior crew have NZ fishing experience and where no issues have been identified during the re-registration assessment.
Actions	Full Observer coverage (up to 4 trips.)	Vessel must have one of the next 2 trips observed.	Observed as part of the normal fishery specific Observer requirements
Standard	If after 4 trips there are outstanding issues relating to the vessel complying with the conditions of registration then registration may be revoked If there are no issues identified the vessel will be classified as medium risk	If there are no issues identified then the vessel is classified as low risk If there are issues identified the vessel will be reclassified as high risk	If there are issues identified the vessel will be reclassified as either medium or high risk

High risk vessels

- 66 All FCVs new to New Zealand will be classed as high-risk vessels. Vessels assigned a high-risk profile will be required to have their first two trips observed. If during these two trips no issues are identified in terms of the operation of the vessel or with the vessel adhering to the conditions of its registration, then the vessel will be re-classified as medium-risk. If a breach occurs or if any events during the two observed trips cause MFish to consider the vessel should remain as high-risk then the vessel will be observed for a further two trips. MFish will advise vessel operators of the reasons behind the decision to retain the high risk status for their FCV.
- 67 If no breaches are detected during the second two trips then the vessel may be classified as a medium-risk and the Observer coverage requirement for medium-risk vessels will apply. However, if following the four Observer trips there are still outstanding issues regarding the vessel's ability to meet the conditions of registration then registration revocation will be considered.
- 68 Any vessel which has previously been classed as either a medium-risk or a low-risk vessel and where there have been breaches of the conditions of registration consent or areas of concern have been identified, will be re-classified as a high risk vessel and will be required to accept MFish approved Observers for their next two full length fishing trips.
- 69 To ensure all tows and factory activity onboard the vessel are observed MFish will require high-risk vessels to accept two Observers for each trip.

Medium risk vessels

- 70 A vessel will be assigned to a medium-risk profile if it has had two observed trips completed (as a high-risk vessel) without incident. Medium-risk vessels will be required to have one of their next two full length trips observed.
- 71 Vessels will also be characterized as medium risk if:
- A vessel is seeking re-registration and has previously been characterised as low risk but where MFish has identified some minor concerns with the vessel operation following an assessment of the registration application;
 - A low-risk vessel has a crew change at senior level.
- 72 If during an observed trip onboard a medium-risk vessel, a breach of the registration conditions occurs or a possible breach of the Act occurs then the vessel will be reclassified as a high risk vessel. The vessel will be required to have its next two trips observed as per the requirements for a high-risk vessel.
- 73 If no issues or breaches are identified the vessel will be classified as low-risk.

Low risk vessels

- 74 Low risk vessels are not required to have additional Observer coverage beyond the normal fishery-specific Observer coverage requirements. A vessel will be

classified as low-risk if no issues or potential breaches are detected during the vessels' status as a medium risk.

- 75 A vessel seeking re-registration, which has previously been categorised as low-risk and where the permit holder and vessel operator details remain unchanged, where the senior crew has New Zealand fishing experience and where no issues have been identified during the re-registration assessment, will remain classified as a low risk vessel.
- 76 An assessment of a low-risk vessel's performance against the conditions of registration will still occur through normal Observer coverage or through fishery officer inspections. Breaches of these conditions will mean the vessel is reclassified as either high or medium-risk depending on the extent of the breach.

Factors that will determine a vessel's risk status

- 77 MFish expects that in the majority of cases a vessel's risk profile will move from high-risk to low-risk over the course of the registration period.
- 78 MFish will consider evidence of a vessel's compliance with the following factors in determining if a vessel should be reclassified from high-risk to a medium or low-risk classification:

- Full compliance with the pre-trip Observer personal safety check.
- Continued compliance with the Observer accommodation standard.
- Acceptable auditable performance against industry operating procedures⁶.
- Assessment of a vessel's performance against the catch plan (provided during registration)
- Appropriate adherence to environmental mitigation measures during the trip e.g. deployment of required bird mitigation devices.
- Compliance with the general requirements of the Fisheries Act 1996 and supporting regulations. Breaches to the Act will be addressed through the normal process however MFish considers that the existence of such concerns would mean the vessel poses a higher risk and should be classified as a high-risk vessel.

Cost of additional Observer coverage

- 79 MFish proposes using the following charging arrangements to fund this additional FCV-specific Observer coverage:
- 80 The cost of Observer coverage on those vessels classed as high risk will be charged directly to the vessel operator. MFish does not consider the level of Observer coverage required for high-risk vessels can be undertaken as part of a routine Observer trip.
- 81 Cost of Observer coverage onboard medium-risk vessels will be charged directly to the vessel operator unless the Observer coverage can be facilitated as part of the normal fishery-specific Observer coverage requirement. The MFish Observer Programme will determine when this is possible.
- 82 Currently the typical cost of a day's Observer coverage is \$555 (exclusive of GST) per day.
- 83 MFish considers this risk based approach will be more costly to those operators that continue to pose a risk to the integrity of the management regime and the health and safety of MFish staff and contractors. However, this approach is likely to be more cost effective than the current Observer regime for those operators whose vessels are classed as low-risk vessels, as some of the normal fishery-specific Observer coverage may be filled by medium-risk vessels as a priority.

⁶ MFish is currently auditing vessel performance against a number of the voluntary management initiatives developed by industry – to date vessels performance are audited against the vessel management plans, marine mammal operating procedures and the hoki operating procedure.

APPENDIX 3 – PROPOSED FEE STRUCTURE

- Supervision of conversion factors, “high-risk” and “medium-risk” Foreign Charter Vessel coverage, Benthic Protected Area Fishing, industry requested Observer coverage, High Seas Fishing Permit and Special Permit Observer coverage.
 - The fee payable in respect of Observer coverage in these circumstances is \$571.65 (excluding GST) per Observer per day.
 - The fee is payable by the operator of the vessel concerned
- Supervision of transshipments, vessel hold inspections and in port unloads
 - The fee payable in respect of Observer coverage for the transshipment of fish in circumstances referred to in s 227(1) of the 1996 Act is, for the first 24-hour period or part thereof a 24-hour is \$571.65 (plus GST) per Observer per day.
 - The fee is payable by the holder of the fishing permit under which the fish were taken.
 - If more than 1 person is liable to pay a fee under this clause in respect of the period during which an Observer or Observers are on board a vessel, the Chief Executive may divide the total fee payable between those persons on a proportionate basis, having regard to the percentage of total transshipment hours taken up by each relevant transshipment
 - For the purposes of this clause, a transshipment at sea or in port unload is deemed to occur from the commencement of the first sling from a catcher vessel to the completion of the last sling from the same catcher vessel.
- Supervision of dumping at sea
 - For each occasion on which fish are returned to, or abandoned in, the sea, the fee payable for Observer or Observers, as authorised under s 72(5) of the Act is \$28.00 (excluding GST)
 - A fee payable under this clause is payable by the holder of the fishing permit under which the fish were taken.

REGULATORY IMPACT STATEMENT - REVIEW OF OBSERVER SERVICES FEES

Executive summary

1. It is proposed that the Fisheries (Commercial Fishing) Regulations 2001 (the Regulations) be amended to set a new, flat daily rate for all observer services that are not funded through cost recovery levies, as well as adding in new services not currently prescribed by the regulations. This will include significantly increased coverage on medium-risk and high-risk foreign charter vessels (FCVs).

Adequacy statement

2. This RIS has been approved by MFish's internal RIA Steering Committee and found to be adequate.

Status quo and Problem

3. Currently, the amount charged for Observer services is not sufficient to fully recover costs. Additionally there are new services being provided which need to be prescribed in regulations, including coverage of FCVs.
4. The preferred option is to update the fee for Observer services, change the Observer coverage on FCVs and the amount recoverable from FCV operators. This is the only way to ensure the stated management objectives of 100% recovery of costs through direct charging. Current levies do not allow for the recovery of the required amount since the figure prescribed in regulations has not changed since 2001.

Objectives

5. The key fishery management objective for the relevant stocks is:
 - Management of the resource is credible.

Preferred option

6. MFish's preferred option is to:
 - Introduce revised fee structures for Observer coverage for all the current and anticipated services Observers provide;
 - Revoke the current fee structure of \$ χ dollars for the first day and \$ γ for every subsequent day for Observer coverage (sections 13 - 15 of Part 4, Schedule 2 of the Regulations);

- Introduce a new, constant daily rate of \$571.65 (excluding GST) per Observer.⁷ This fee is based on the 2008-09 actual transaction fee of \$555 per coverage day, plus a 3% inflationary adjustment for the July 09 implementation of the propose regulatory amendment.
7. This is the preferred option because the cost of additional Observer coverage for “high-risk” and “medium-risk” FCVs will be passed to the operators of those vessels. Also, it allows for higher recovery of costs through increased transaction fees (rather than using levies) and because of the associated benefits of having transparency and clarity. It should be noted that only trips longer than six days will incur a greater fee for the service receiver.
 8. This proposal does not involve any additional risk for the Ministry.
 9. The amended cost structure will not require FishServe to process information or clients any different apart from amending amounts in systems and invoices. This will help to minimise operational and compliance costs.

Implementation and review

10. This proposal, will be given effect on 1 July 2009. It will be consulted on externally on 1 September 2008, and sent to EDC on 4 March 2009.
11. Affected parties will be notified by Gazette notice and notification from FishServe that their Observer invoices are going to be raised.
12. The public policy objective sought to be completed under this paper (cost recovery through direct charging) will be accomplished by standard debt recovery mechanisms, mainly FishServe debt recovery practice. This means there will be minimal additional compliance costs.
13. Monitoring of this proposal will be done through the Observer Services group’s financial accounting practices to ensure costs are now fully recovered.

Consultation

14. The IPP was released for general public consultation on 1 September 2008, through the Ministry’s website.

⁷ This proposed figure is for the 09/10 year.