

Deepwater Group Ltd

**SUBMISSION ON
PROPOSED FISHERIES SERVICES 2007/08
TO BE PROVIDED IN 2007 – 2008**

15 February 2007

Introduction

- 1 Thank you for the opportunity to comment on the Ministry of Fisheries' outputs and services proposed to be delivered in the 2007/08 fishing year. This submission is made by the Deepwater Group Ltd ("DWG") on behalf of, and in consultation with, our shareholders.
- 2 This submission is in two parts. DWG will not be commenting on the draft Statement of Intent (SOI). Since the SOI and the context document are identical to those being consulted on last year, our comments (which, incidentally appear to have been ignored) would be identical to those we made last year.
- 3 The first part of our submission pertains to the research proposals for the mid and deepwater fish stocks. We will not be reiterating the specific comments that we have already made on these project in our previous submission¹. They still stand. We focus here primarily on the MFish response to that submission. The second part of this submission comments on the new initiatives to be considered in the 2007 Budget round.

Proposed Fisheries Research Projects

- 4 At the RCC meeting MFish proposed that stakeholders comment on the projects only once – after the RCC – and dispense with the second iteration of essentially the same points after the release of the SOI. We agreed in principle that this was reasonable, but we reserved the right to make another submission addressing the research project after the release of the SOI. This reservation was based on the possibility that our first submission could be misinterpreted (or ignored).

Cost recovery

- 5 DWG submitted that the cost allocations of a number of the proposed research proposals had to be reviewed. In our opinion, these projects did not meet the test in section 262(d) of the Fisheries Act 1996 and thus their costs could not be attributed to and recovered from Industry.
- 6 In our view, Principle (d) in section 262 of the Fisheries Act 1996 makes it clear that conservation services or fisheries services research other than those "*provided to avoid, remedy or mitigate a risk to, or an adverse effect on, the aquatic environment or biological diversity*", cannot be attributed to and recovered from Industry.
- 7 It is our opinion that baseline aquatic environment research and baseline protected species research are not recoverable from Industry under the Principles, and fall with the "general public interest" Principle in section 262(b). This public good research includes:

¹ Deepwater Group Ltd, *Submission on Proposed Research projects for 2007/08 Considered by the Research Coordinating Committee 12-13 October 2006, 31 October 2006*

- 7.1 research carried out to provide information on the current state of the aquatic environment, biological diversity or a protected species; and
 - 7.2 research to determine whether (and to what extent) commercial fishing provides a risk to, or an adverse effect on, the aquatic environment, biological diversity or a protected species.
- 8 MFish did not agree with our interpretation of section 262. Their response to our submission was:
- 8.1 *The Ministry notes DWG’s comments on cost recovery. Section 262(d) of the Fisheries Act provides for costs to “be attributed to the persons who caused the risk or adverse effect”. Our advice is that this does not limit cost recovery to “proven” adverse effects, because both risks and adverse effects are included. The definition of “effect” in the Fisheries Act (section 2) is very broad and includes direct, indirect, past, present, future, cumulative, and potential effects of fishing. The definition of “fisheries services” includes (part c) “research relating to ... stock assessment and the effects of fishing” (not necessarily “adverse effects”). Thus, the Ministry cannot agree with DWG that costs cannot be recovered for “research to determine whether (and to what extent) commercial fishing provides a risk to, or an adverse effect on, the aquatic environment, biological diversity or a protected species”, provided that the research is produced for the purpose of the Act and there is a reasonable basis for believing that there may be a risk to or adverse effect on the aquatic environment posed by fishing.*
- 9 In our view, the MFish advice is incorrect. This is not an argument about what is or is not a fisheries (or conservation) service. A project falling within the definition of a “fisheries service” is not sufficient to make it automatically also cost recoverable from industry.
- 10 Our interpretation of the statutory regime concludes that be recoverable from Industry, the service(s) must fall within:
- 10.1 the respective definitions of conservation services and fisheries services under section 2 of the Act; and
 - 10.2 one of the attribution Principles in section 262 of the Act (262(a), (c), or (d)); and
 - 10.3 one of the 11 Items specified in the Schedule to the Rules (to the extent that these Items are *intra vires* the Act).
- 11 And while MFish advice is correct that the definition of fisheries services research does not require that there be an adverse effect on the aquatic environment, that is only part of the equation. Principle (d) in section 262 provides that for costs to be to be attributive to Industry, Industry must cause a risk to, or **adverse** effect, on the aquatic environment or biological diversity (emphasis added).

- 12 Fisheries services or conservation services research into the effects of fishing on the aquatic environment or on a protected species therefore falls into 2 categories;
 - 12.1 research into, or the gathering of information on the current state of the aquatic environment or of protected species;
 - 12.2 research to avoid or mitigate a risk to, or adverse effect on, the aquatic environment, or protected species.
- 13 The cost of the services that fall into the first category are provided in the general public interest under section 262(b), rather than to benefit (or be caused by) an identifiable person, and therefore may not be recovered from Industry.
- 14 The cost of services that fall into the second category must be, as far as practicable, attributable to the persons who caused the risk or adverse effect. It follows that a “belief” that fishing could have posed a risk or adverse effect to the aquatic environment or biological diversity is insufficient; the risk or adverse effect must have been demonstrated, so that costs to avoid, remedy or mitigate that risk or adverse effect can be recovered from Industry.

Protected species projects cost attribution

- 15 Additionally, a number of protected species research project on incidental capture of seabirds or marine mammals had (erroneous) cost attribution as Item 9 (monitoring harvest levels); their incidental capture of does not constitute harvesting them.
- 16 We submitted that research relating to protected species (i.e. the research which meets the test that it is cost recoverable from the Industry) is cost recovered in accordance with items 2 or 3 of the Rules. MFish response to this point was:
 - 16.1 *MFish notes DWG’s suggestion on cost recovery. This study will be levied against schedule item 4. Schedule items 2 and 3 relate to research on protected species populations where risk to the population can come from more than one human intervention. Estimating the bycatch of commercial fishing clearly relates only to that portion of the total risk posed by commercial fishing, consistent with the wording of schedule item 4.*
- 17 The rationale that these projects should be levied according to Item 4 of the Schedule is wrong. (This discussion is on a without prejudice that these protected species fisheries interactions projects constitute “research to avoid or mitigate a risk, or adverse effect on, the protected species”).
- 18 It would appear that MFish has misinterpreted what “risk” the individual Schedule items pertain to. MFish approach has been to look at the relative risk, i.e. the risk to the individual birds destined for autopsies is known (100% mortality). However, the cost attribution should be on a proportional basis, i.e. what proportion of the absolute risks to the entire population is caused by fishing.

Additional fisheries service for 2007-08

Fisheries enforcement services-maritime patrol team

- 19 This is a proposal by MFish to provide a patrol team to utilise the new Project Protector vessels. The cost is given as \$3,636 in 2007/08 and the fishing industry is to be levied an estimated \$1.818 million to pay for this 'Kiwi Coast Guard' personnel.
- 20 This genesis of this "additional service" was the appearance of Project Protector - a "new initiative" in January 2006. Project Protector was briefly mentioned in the 2006 Statement of Intent's "context" document. The objective of that project was to deliver over the next three years a range of inshore and offshore patrol vessels. The proposal was not fleshed out and industry submissions requested that MFish spell out what exactly the project entailed and how much of the cost of the project would be borne by the Ministry in relation to other departments (such as Customs).
- 21 We did not receive any response (formal or otherwise) to the request. Next information we (and everyone else in NZ) received about Project Protector was a press release last year about acquisition of these vessels.
- 22 The SOI is now proposing as a new initiative "to provide a patrol team to utilise these new vessels, together with support staff to "manage the volume of data and intelligence generated, in order to ensure greater compliance with fisheries legislation".
- 23 This initiative purports to "address fisheries risks such as dumping, area misreporting and misreporting generally, incursion into the EEZ of non-NZ flagged vessels, and obligations in international waters." MFish has also said that "the at sea patrolling capability will change in fishermen's behaviour which will lead to increase in sustainability of fisheries with increases in access and value obtained by all users."
- 24 However, we submit that this initiative is not based any review what if any sea going compliance functions are needed by MFish. In our view, stripped of the mixture of high minded (and patronizing) sentiments, it would appear that the reality is that the Royal New Zealand Navy has acquired these vessels and now MFish feels compelled that it must come up with a "absolutely must be done by us" workload in order to justify their acquisition.
- 25 While the consultation document does not have any indications about the number of this maritime patrol team, (which is totally in line with the overall paucity of information about this project), we understand that it would be 22 FTEs comprising fifteen fisheries officers, three analyst, one manager, one planner, one trainer and one full time prosecutor (i.e. maritime patrol is a misnomer as 31.8% of the new staff fall into land based "overheads" category). It of course would be too much to expect that these additional FTEs would be offset by a corresponding decrease in the existing land based compliance team.

- 26 We submit that the consultation on this initiative did not provide adequate information to enable the consulted parties to make intelligent and useful responses and therefore fails the test set in the leading case on consultation²;
- 27 DWG expresses its strong opposition to industry funding this expansion of MFish capacity. We submit that, should there be a justifiable need for a squadron of sea-going “policemen”, which need has by no mean been demonstrated, it must be fully Crown funded.
- 28 Alternatively, subject to the need actually being demonstrated, we submit that Fisheries related component of the “Protector” programme should be available for open tender and fully contestable.” (This is not unique, “civilian” vessels and crews undertake this role in the Falklands, Japan and elsewhere).
- 29 However, should MFish find the suggestion of a civilian compliance regime totally abhorrent, we remind MFish that since officers of the Royal New Zealand Navy are vested in the role of Fishery officers (by statute), there is no need for additional seagoing staff.
- 30 DWG does not support this proposal.

Environmental certification of NZ fisheries

- 31 The consultation documents simply states that MFish “will seek an assessment of its management regime, then contribute to the certification of fisheries using an approved fisheries plan approach”. The proposed cost of this service is \$1.3 million.
- 32 While DWG would welcome the Government providing an attestation that New Zealand fisheries are sustainable (akin to its public endorsement of farming), this is insufficient information to ascertain the merits of this proposal.
- 33 For example, there is no indication whether this initiative will have any connection to the Government’s “Environmental Choice NZ ecolabel” and the establishment of a database of reliable ecolabel and standards verification schemes.
- 34 We therefore have to reserve our judgment. However, as presented in the consultation materials, at first glance the proposal looks very much like MFish seeking endorsement of its fisheries management at a rather excessive cost.

Additional funding for fisheries research

- 35 This initiative seeks additional \$6 million (with \$3.9 to be cost recovered from industry) to increase research information, which will then (allegedly) “provide for better, more informed fisheries management decision making to underpin strategies designed to extract close to the maximum sustainable yield from fisheries where appropriate, and will thus capture the economic benefits of fishing with greater certainty and at less risk”.

² *Wellington International Airport Ltd v. Air NZ*, Court of Appeal [1993] 1 NZLR 671.

- 36 These are rather lofty sentiments but in our view the research that would be enabled by these additional funds would not live up to them.
- 37 This funding would be directed at the large number of “perennial bridesmaids”, i.e. low priority Tier Two projects that keep being proposed and then deferred. There is no indication which of these competing Tier Two project would be selected nor how would they actually contribute towards effective fisheries management.
- 38 DWG does not support this initiative.

Kamila Skapa
Deepwater Group Ltd