

S8151

13 August 2007

Minister of Fisheries
Associate Minister of Fisheries

FISHERIES AND CONSERVATION SERVICES COST RECOVERY LEVIES FOR THE 2007/08 FISHING YEAR

Purpose

1. This paper:
 - a) Recommends cost recovery levies to be applied from 1 October 2007 for the 2007/08 fishing year under section 264 of the Fisheries Act 1996;
 - b) Comments on the submissions made by the commercial fishing sector on the proposed levies following stakeholder review;
 - c) Provides you with the information you are required to have regard to when making your recommendation that orders in Council be made for the 1 October 2007 levy orders;
 - d) Seeks your approval to submit a paper to the Cabinet Legislation Committee recommending the proposed orders be promulgated.
2. The setting of cost recovery levies is a regular process and does not involve any new policy or changes in existing policy. As such it does not require consideration by the Cabinet Economic Development Committee.

Background

3. Cost recovery has been an integral element of New Zealand's fisheries management regime since 1994. The setting of fisheries services and conservation services levies is a regular process, undertaken every year.
4. The purpose of the fisheries cost recovery regime is to enable the Crown to recover its costs in respect of the provision of fisheries services and conservation services, as far as practicable, from those people who benefit from the provision of those services or cause the adverse effects that the services are designed to avoid, remedy or mitigate.
5. The determination of the proposed cost recovery levies results from decisions taken by the Minister of Fisheries in respect of the fisheries services to be undertaken by the Ministry and by the Minister of Conservation in respect of conservation services undertaken by the Department of Conservation.

6. Following these decisions, the Ministry of Fisheries, using the rules prescribed in the Fisheries (Cost Recovery) Rules 2001 (the 'Rules'), calculates the levies to be applied to each fish stock, based on the total amount to be cost recovered from the commercial fishing industry. There follows a further review process with industry to consider the levies and their application to fish stocks. The Minister then recommends the Governor General, by order in Council, impose the levies.

Requirements of the Minister of Fisheries

7. In determining the proposed cost recovery levies for any year, the Minister of Fisheries has a statutory obligation to:

- (a) consider any under and over recovery of Ministry costs of any conservation or fisheries services;
- (b) adjust the levies by the amount of any settlement credit still remaining for any affected fishstocks as a result of the negotiated settlement reached between the commercial seafood industry and the Crown relating to the over and under recovery of costs of fisheries services and conservation services between 1994 and 2002.

Under and over recovery of costs

8. Section 265 of the Fisheries Act 1996 creates a mandatory obligation on the Minister of Fisheries to have regard to the under or over recovery of costs of any conservation services or fisheries services incurred by the Crown in a previous financial year that the Minister has not previously had regard to when recommending new levy orders.

9. This requires that the Minister:

- a) turn his mind to the under or over recovery of costs in previous financial years and give those under or over recovery of costs genuine attention and thought
- b) not ignore any under and over recovery of costs from 2002/03 onwards (being the period not covered by 'the settlement'), that the Minister has not previously had regard to
- c) give the under or over recovery of costs in previous financial years such weight as he considers appropriate.

10. The Minister has already had regard to the 2002/03 to 2004/05 under and over recovery of costs of fisheries and conservation services when setting previous levy orders. What remains now is to give consideration to the 2005/06 unders and overs when determining the 1 October 2007 levies. In a separate advice paper provided on 24 July 2007, the Minister has approved a refundable over recovery of levies amounting to \$1.147 million and a recoverable under recovery of \$1.07 million for the 2005/06 year.

11. The effect of those decisions has been incorporated into the 2007 levy model. The Ministry has also applied residual under and over recoveries from 2004/05 that were not able to be applied to earlier levy orders. The result of this is that there is now a balance of

\$0.018 million unable to be applied to the 1 October 2007 levy orders. This will be offset against future levy orders.

12. Information about the under and over recovery of costs in the financial year ending 30 June 2007 is not available in time to be included in the 1 October 2007 levy order. Consistent with the agreement that the Ministry of Fisheries has with the commercial seafood industry to manage under and over recovery of costs, these unders and overs will be included in future levy orders.

Settlement of 1994/95 to 2001/02 under and over recovery of costs

13. The Fisheries Amendment Act 2004 gave effect to a negotiated settlement reached between the commercial seafood industry and the Crown relating to the over and under recovery of costs of fisheries services and conservation services between 1994 and 2002 (inclusive), and deemed values, through the reduction of future cost recovery levies. The net reduction in future levies was \$24.593m. This comprised a \$24.617m reduction and a \$0.024m increase in future levy orders.

14. Section 265A creates an obligation on the Minister, after calculating the levies in accordance with the Rules, to adjust the amount due by the settlement sum remaining for affected fishstocks, as detailed in Part 2 of Schedule 9A. Following the utilisation of \$1.115m in the 1 April 2007 amending levy orders, there is a balance of \$0.481m still to be applied. The proposed levies for 1 October 2007 will reduce that balance to \$0.318 million. This will be applied to future levy orders.

Other adjustments to be considered

Benthic Protected Areas Accord

15. On 4 April 2007, Cabinet Economic Development Committee (EDC Min (07) 7/4) agreed to the Benthic Protection Area (BPA) Accord – an industry initiative that would close around 30% of the New Zealand EEZ to bottom trawling and dredging. As part of that decision, EDC noted that the Minister of Fisheries would consult interested parties on a proposal to reduce the industry contribution for deepwater benthic research in the EEZ from 100 per cent to one third and that the Crown would contribute the remaining two thirds. This decision was confirmed by Cabinet on 23 April 2007 (CAB (07) 13/2).

16. Subsequent to that consultation, on 25 July 2007, EDC considered a further paper in which the Minister proposed that all deepwater benthic research would be 1/3rd cost recovered up to a maximum of \$0.333 million per annum. The \$0.333 million limit applies to all existing active multi-annual research contracts and any new research contracts that extend beyond 30 September 2007. This limit is inclusive of all indirect costs.

17. A revision to the cost recovery rules – the Fisheries (Cost Recovery) Amendment Rules 2007 (the amended Rules) – to give effect to the BPA initiative was considered by Cabinet Legislation Committee on 9 August 2007 (LEG Min (07) 14/1) and is to be confirmed by Cabinet on 13 August. Once confirmed by Cabinet, the amended Rule will be notified in the *Gazette* on 16 August. The amended Rules are due to come into force on 13 September 2007.

18. The amended Rules impact on the determination of the levies for 1 October 2007. Under Section 264 of the Fisheries Act 1996, the Minister must not recommend the making of an order unless the Minister is satisfied that the proposed levy orders are consistent with the rules in force under section 263 of the Act.

19. The levies for 1 October have been calculated using the amended Rules. While the amended Rules do not come into force until 13 September 2007, the Ministry believes that having been confirmed by Cabinet and *Gazetted* the requirements of section 264(2) have been met. The proposed orders will be consistent with the amended Rules that will be in force when the orders come into effect.

Issues raised during stakeholder review

20. The proposed cost recovery levies for 2007/08 were distributed to commercial stakeholders, initially on 1 June 2007 and then again on 29 June 2007 in order to accommodate the decisions relating to the introduction of the BPA Accord. The Ministry received one submission from SeaFIC. A copy of that submission is provided as Attachment 1. The key issues identified in the feedback relate largely to levying for specific research projects, the costs for Observers and the changes required to accommodate the BPA Accord. A full analysis of each issue raised by stakeholders and the Ministry response is provided in Attachment 2. Where appropriate, the Ministry has altered the proposed cost recovery levies in relation to the feedback.

Impact of levies

21. The Fisheries (Cost Recovery) Rules 2001, for the purposes of apportioning industry costs amongst affected fish stocks, require that the Chief Executive of the Ministry of Fisheries survey the port prices for each fish stock and fix a price that, in the view of the Chief Executive, is the average port price for each fish stock. The port price also provides a useful measure of the impact of fisheries services levies on a fish stock in relation to the port price for that stock, i.e. a measure of 'affordability'. On 17 May 2007, the Chief Executive approved the port prices to be adopted for calculating the 2007/08 cost recovery levies.

22. The table below details the species where the 2007/08 fisheries services levy is greater than 10% of port price.

LEVY AFFORDABILITY			
Fish Stock	Aggregate Levy\$/kg	Port Price\$/kg	Levy / Port Price %age
SCI1	4.33	18.66	23.20%
KAH1	0.04	0.23	17.47%
SCI6A	3.00	18.66	16.10%
SKI2	0.22	1.54	13.96%
TRE1	0.17	1.44	11.95%
OEO3A	0.09	0.80	11.76%
TRE7	0.10	0.86	11.08%
SKI1	0.16	1.54	10.39%
HOK1	0.06	0.60	10.21%
COC1A	0.19	1.90	10.04%

23. For each of the fish stocks listed in the table above, the predominant feature influencing the costs is research. All projects in the approved research plan have been subject to thorough consultation with stakeholders as part of the SOI process. SeaFIC has acknowledged that the levy levels are predominantly the result of stock abundance or stock assessment research projects.

24. Particular reasons for the research include:

- high commercial value (HOK1)
- surveys on by-catch (SCI1 and SCI6A)
- stock assessment surveys (SKI1, SKI2, OEO3A, TRE1 and TRE7)
- information on recreational and commercial catch levels (KAH1).

Fisheries and conservation services costs to be recovered for 2007/2008

25. The costs to be recovered for fisheries and conservation services by the 1 October 2007 levy orders after adjustments as detailed in Attachment 3, application of historic settlement sums for the period 1 October 1994 to 30 September 2002, and application of prior under and over recovery of costs, are set out below:

Fisheries Services and Conservation Services (\$m excl GST)	1 October 2007 levy order	1 April 2007 amending levy order
Cost Recovery Levy Orders	32.560	32.013
Transaction Fees and Charges	1.699	1.669
Total Recovery	34.259	33.682

26. The settlement sum available to be applied to the 1 October 2007 levy orders has reduced, as has the adjustment for prior year under and over recoveries (as discussed in paragraphs 7-17). Accordingly, there has been an increase in levies of \$0.547m from the 1 April 2007 levy orders to \$32.560m for 1 October 2007.

27. A full breakdown of the costs and adjustments is provided in Attachment 3.

Consultation with Other Government Departments

28. The Department of Conservation has been consulted on this paper and agrees with the recommendations.

29. Treasury has been consulted on this paper and has no comment.

Regulatory Compliance

30. Section 264(2) of the Act requires that the Minister must not recommend the making of an order unless the Minister is satisfied that the proposed levy orders to which this paper relates are consistent with the rules in force under section 263 of the Act. Every effort has been made by the Ministry to ensure that the proposed levy orders are consistent with the Fisheries (Cost Recovery) Rules 2001, as amended by the Fisheries (Cost Recovery) Amendment Rules 2007 and no reason has been identified to indicate any inconsistency.

Timing issues

31. The proposed levy orders need to be effective from 1 October 2007.

Cabinet Legislation Committee

32. The Cabinet Legislation Committee paper will be submitted to you in time for your consideration prior to inclusion in the LEG agenda for 23 August.

Ministry Officials Available

33. Ministry officials will be available for any briefings you may wish to have when considering the fisheries and conservation cost recovery levies recommended.

Recommendations

34. It is recommended that you:

1. Note that:

- a) section 264(2) of the Fisheries Act 1996 require the Minister to be satisfied that the proposed levies being recommended in this paper are consistent with the Fisheries (Cost Recovery) Rules 2001
- a) section 265 of the Fisheries Act 1996 creates a mandatory obligation on the Minister of Fisheries to have regard to under and over recovery of costs in a previous financial year that the Minister has not previously had regard to when recommending a new levy order
- b) the under and over recovery of costs to 2002 were considered as part of the settlement for the period from 1994/95 to 2001/02
- c) the Ministers of Fisheries have previously had regard to the under and over recovery of costs for the 2002/03, 2003/04 and 2004/05 years
- d) you recently approved the quantum of under and over recovery of costs for 2005/06 and that these have been incorporated into the development of the levies for 1 October 2007
- e) data to support the calculation of the 2006/07 under and over recovery of costs for fisheries services and conservation services is not currently available, and advice will be provided to you when the information has been obtained
- f) the proposed levy rates for affected fish stocks are provided as Attachment 4
- g) the proposed levy orders recommended in this paper do not require new policy decisions
- h) the proposed levy orders need to be effective from 1 October 2007

- i) the Ministry will provide you with the Cabinet Legislation Committee paper proposing the levy orders to be submitted for consideration at the committee's meeting on 23 August 2007.

2. Approve:

- a) the levy rates provided at Attachment 4 as the levies to be effective from 1 October 2007 for affected fish stocks
- b) the drafting of the levy orders by the Parliamentary Counsel Office.

Paul Laplanche
Chief Financial Officer
Encl.

Agreed / Agreed as Amended / Decline

Hon Jim Anderton
Minister of Fisheries
/ /2007

**SUBMISSION FROM
THE NEW ZEALAND SEAFOOD INDUSTRY COUNCIL
LTD ('SEAFIC')**

23 July 2007

Mr B Ashton
Manager Cost Recovery
Ministry of Fisheries
PO Box 1020
WELLINGTON

Dear Brian,

REVIEW OF LEVY MODEL EFFECTIVE 1 OCTOBER 2007

1. I have reviewed the draft levy model forwarded on 29 June 2007 for review. This replaced the model forwarded earlier on 1 June 2007 which contained errors in respect of the allocation of Ministry observer days and which did not include recognition of the BPA Accord.
2. Although the Ministry has included changes which it believes give effect to the BPA Accord, we are unable to agree with the changes for the following reasons:
 - a. the Ministry has not provided the proposed change to the Cost Recovery Regulations for consultation and the levy model cannot be reviewed in the context of the regulatory framework. We have been informed that the change is scheduled to be approved by late July.
 - b. the levy model assumes that all stocks will benefit from the Accord in respect of benthic research cost recovery limitations. However, the Accord only applies to research in the Economic Exclusion Zone and does not include the Territorial Sea. Inshore stocks should not benefit. The levy model provided will need to be amended to reflect the terms of the Accord.
3. We note that the draft levy rates do not include the impact of the 2005/06 Unders and Overs. SeaFIC concurs with the Ministry of Fisheries recommendations as set out in its Final Advice Paper on the under and over recoveries.

TAC/TACC Settings

4. The TAC/TACC settings are those used in the levy model effective 1 April 2007.
5. We agree with the estimated catch settings for the Non-ITQ stocks except for Albacore. While we commend the Ministry for setting aside its normal practice of a three year average of catch for Non-ITQ estimated catch levels for Albacore and proposing an

estimated 2007/08 catch for Albacore of 2,600 tonnes, we believe that such a catch level is still too high in the current climate. The catch for the year to date to May 2007 is 2,003.3 tonnes, a decline of 19% on the year to date to May 2006. Given that the May year to date total averages approximately 90% of the annual catch level, the 2006/07 catch is projected to total 2,200 tonnes. In comparison to the 100 vessels catching albacore prior to 2003/04, there are now only 26 boats catching albacore. In the light of these trends, a 2007/08 estimated catch of 2,600 tonnes appears excessive. We would suggest a level of 2,100 tonnes would be more appropriate. This would allow for some levelling off of the catch interest at around the current levels.

Port Price Index

6. The port prices are as per the reviewed and agreed prices with the exception of the prices for the Paua stocks. The variations are not material.

Ministry Business Plan

7. The Ministry business plan agrees with the Ministry Statement of Intent. I note that the Ministry has again this year not included a transaction fee component for the Compliance output. Transaction fees are payable on user requested compliance services, transaction fees have been received in the last 5 years and allowances were made for fees in prior years. An allowance should be made for them in the 2007/08 model.

Ministry Research Projects

Projects Where Cost Allocations Are Not Supported

8. The cost allocations for the following projects are not supported:
- a. **SNA2007/08** - 'Determination of optimum frequency for SNA 1 market sampling' –
This project for SNA1 mirrors project SNA2006/07 which was levied on both SNA1 and SNA8 in the 2006/07 year. Subsequent to the levy model for 2006/07 being implemented, the project was focused solely on SNA8. Notwithstanding that, SNA1 continued to be levied for the project in 2006/07 and is to be levied again in 2007/08. We do not accept that as being reasonable. While there may have been some development of a generic process, we do not consider it appropriate that SNA1 should continue contributing to the sampling programme for SNA8 under SNA2006/07 while paying for its own programme under SNA2007/08. Either SNA1 should not be levied for any further expenditure on SNA2006/07 or the projects should be considered to be a joint project and levied on both stocks.
 - b. **ENV2007/06** "Trophic relationships of commercial middle depth species on the Chatham Rise" –
This project continues a line of research previously initiated under the biodiversity research programme – a public good research allocation. The objective of the project is to measure trophic relationships but at this stage is unable to assess whether adverse effects exist. We do not agree that it should be now cost recovered from industry.

- c. **HAB2007/01** ‘Biogenic habitats as areas of particular significance for fisheries management’

This research project entails baseline research in documenting the existence of special habitats. It does not contain any research of adverse effects by industry. It should not therefore be recovered from industry.

Projects Where Costs Exceed Contract Prices

9. The following projects are over-recovered in that the aggregate levies exceed the contract price and there have been no variations recorded.

MINISTRY RESEARCH PROJECTS				
Project	Contract Price \$	Levies \$	Over-Recovery \$	Final Payment Query
HAK2005-01	68,869	69,959	-1,090	?
HAK2006-01	52,945	115,000	-62,055	
HOK2005-03	654,735	665,661	-10,926	?
INS2005-01	264,815	271,485	-6,670	?
KAH2005-01	147,840	153,525	-5,685	?
LIN2006-01	53,925	125,000	-71,075	
MID2006-02	76,675	90,140	-13,465	
SCA2006-02	72,540	76,000	-3,460	?
SCH2006-01	23,360	24,830	-1,470	?
SNA2006-04	114,000	119,800	-5,800	
STA2004-03	46,340	51,697	-5,357	?
TAR2004-01	214,520	245,487	-30,967	

10. It would appear that a number of the projects above (marked with a query in the final column of the table) are final contract adjustments on completed research projects. The amounts for these projects are not large and would be recoverable under an Unders and Overs review. It would be beneficial and more efficient if these amounts could possibly be recovered through the levy model rather than the Unders and Overs review. I would agree to that course of action if the Ministry confirmed that the levies were to recover final contract adjustments on completed projects.

BPA Projects

11. The Ministry has indicated cost recovery of the following projects are impacted by the BPA Accord:

- ENV2005/16 Investigate the effects of fishing on underwater seamounts;
- BEN2006/01 Mapping the spatial and temporal extent of fishing in the EEZ;
- BEN2007/01 Assessing the effects of fishing on soft sediment habitat, fauna, and processes; and
- HAB2007/01 Biogenic habitats as areas of particular significance for fisheries management

12. The Ministry is unable to identify that component of the project which relates to the benthic environment in the EEZ.

13. The Ministry has applied the 33% recovery level for these projects to all stocks levied for these projects rather than those eligible in terms of the Accord. It is uncertain how the Ministry will define eligible stocks.

DOC Research Plan

14. The DOC research plan accords with the CSP Approved Annual plan at the project level.

15. SeaFIC does not agree with the levy treatment for POP2005-02 - A Population and Distribution Study of White Capped Albatross (Auckland Island). The output of this project is stated in the CSP Annual Plan to be “An understanding of white-capped albatrosses population status, trend and distribution that can be applied to guide management of this species in a fisheries context.”

16. We do not accept that a project with an output that is not focused on mitigating, reducing or avoiding the adverse effects of fishing should be levied against industry. This is primarily a population and modelling project for which any effects from New Zealand fishing have yet to be proven to be adverse or a threat to the species. Recent research has shown that the breeding population of White-Capped Albatrosses has increased significantly in recent years and that one of the major constraints to further increases is the lack of safe breeding sites, not adverse effects of fishing. As such, industry should not be levied for the costs.

17. Even if the project were to be levied, we believe that DOC has been remiss by not re-assessing the percentage of risk attributable to NZ fishing. The risk to white capped albatross was assessed to be 12% in the Risk Assessment project undertaken by URS. Since then, recent research has shown that over 7,500 birds are killed annually in South African waters, as against the 300-500 estimated to be killed by fishers in the New Zealand EEZ. The number of New Zealand deaths has declined in recent years as a consequence of changes in industry practice to reduce the risk of bird mortality. These factors should have resulted in a risk re-assessment for the White-capped Albatross for the future levy of this project. Had the Department properly undertaken its duties in respect of that re-assessment and consideration of new evidence, the percentage of costs attributable to industry would have been significantly decreased.

18. We do not accept that industry should bear the costs of a failure of the Department to properly and reasonably perform its duties and recommend that, if any costs are attributable to industry for this project, they should be no more than 7.5% of the project cost.

OBSERVERS

Ministry

19. We continue to have a major concern with the cost of observer services provided by Ministry, the absence of initiatives to manage the delivery of that service more efficiently and the inability of the Ministry to deliver the scheduled days. The actual cost of a delivered observer day has risen from \$389.18 in 2002/03 to \$589.71 in 2005/06, the last year for which actual expenditure figures are available. That is an average annual increase of 15.4%. Such an increase is not acceptable. Equally unacceptable is the delivery rate of observer days. In the past five years, the Ministry has delivered only 86% of the scheduled number of days. It appears somewhat unrealistic for the Ministry to charge for 5,203 days in 2007/08 when the Ministry has been unable to deliver a lower number of programmed days in recent years.

20. Our concern lies not with the salary rates of observers but more with the costs of delivering the service. Given that the observer receives an average daily salary of less than \$200 per day, the costs of delivering the service are around \$300 per day. For the average offshore observer trip of 31 days, the industry pays approximately \$9,300 in indirect costs.

21. We have requested the Ministry to review the observer services procedures on previous occasions without success. Industry accepts the concept of and need for observers but has major problems with the delivery of the service.

DOC

22. The average daily cost of a DOC observer day is \$697, before the DOC administration charge is added, and \$830 after adding that charge. We have three problems in respect of the levies calculated for observers for the Department of Conservation programme.

23. The first issue relates to the high level of administration overheads imposed by DOC. The figures provided by DOC indicate that administration costs for the observer programme will be \$164,645, 19% of the invoiced cost of the observers. We are unable to comprehend how DOC can reasonably incur and levy such costs for the service given that the Ministry of Fisheries undertakes all the functions associated with the supervision and administration of the observers including their placement, equipment and ancillary costs. Given that DOC's role in respect of observer services is largely a contract management role, we do not accept that the costs being incurred are reasonable and validly recoverable from the industry.

24. Second, we note that while the Ministry invoices the Department of Conservation at an \$800 daily rate for inshore observer days and \$500 for off-shore days, the costs are then levied to stocks on an average basis. As a consequence:

- a. industry pays \$500 per day for an observer undertaking Ministry duties but then pays \$830 per day for the same observer on the same vessel in respect of the Department of Conservation duties.

- b. whereas the Ministry needs relate to scientific tasks such as detailed biological data on target and by-catch and the DOC duties are primarily observation of marine mammal and seabird interactions and collection of by-catch for later autopsy, the levies paid by industry are inverse to the skills and expertise needed of the observer; and
- c. the off-shore fisheries cross-subsidises the in-shore fisheries to the extent of 15% of the estimated cost of inshore observer days.

25. We understand this problem arises as a consequence of the Ministry levy model being unable to charge different daily rates for off-shore and inshore DOC observer days. We can see no valid reason why the off-shore fishing operations are required to subsidise the cost of inshore observer activity because of the poor specification of the levy model by the Ministry. DOC has had an inshore observer programme for the last three years and we would have expected the Ministry to have amended its levy model to provide for differential pricing before now.

26. We recommend that all DOC observer days should be charged at the lower off-shore price of \$500 per day plus an appropriate DOC administration charge, with the Ministry meeting the additional costs of inshore observer days. This would provide the Ministry with an incentive to provide the necessary functionality in the levy model

27. Third, it would appear that the costs charged by the Ministry for DOC only days are not discounted for the lower level of Ministry services needed for such services. We would expect for example that there would be a reduction for Ministry activities, such as data entry, compliance debriefing and trip diaries, for DOC only days. This would reduce the charge-out price of Ministry observers below the current costs of \$830.

2005/06 Unders and Overs

28. We concur with the Ministry's recommendations on the Unders and Overs for 2005/06.

Levy as a Percentage of Port Price

29. The following table contains those stocks which have a levy in excess of 10% of the port price. SeaFIC notes that the number of stocks with high relative levy rates has decreased on previous years and the levels are more moderate than previously.

FishStock	LEVY AFFORDABILITY		
	Aggregate Levy \$/kg	Port Price \$/kg	Levy / Port Price %age
SCI1	4.33	18.66	23.20%
KAH1	0.04	0.23	17.47%
SCI6A	3.00	18.66	16.10%
SKI2	0.22	1.54	13.96%
TRE1	0.17	1.44	11.95%
OEO3A	0.09	0.80	11.76%
TRE7	0.10	0.86	11.08%
SKI1	0.16	1.54	10.39%
HOK1	0.06	0.60	10.21%
COC1A	0.19	1.90	10.04%

30. In all cases, the high levy levels are predominantly the result of stock abundance or stock assessment research projects.

31. If you have any further queries, please do not hesitate to contact me.

Yours sincerely



Tom Clark
Principal Policy Analyst
Seafood Industry Council

PROPOSED COST RECOVERY LEVIES FOR 1 OCTOBER 2007

ISSUES RAISED BY INDUSTRY AND MINISTRY RESPONSES

Issue 1	Change to cost recovery regulations – the BPA Accord
Organisation	SeaFIC Page 1 paragraphs 2a and 2b

Submission Details

2 Although the Ministry has included changes which it believes give effect to the BPA Accord, we are unable to agree with the changes for the following reasons:

- a. the Ministry has not provided the proposed change to the Cost Recovery Regulations for consultation and the levy model cannot be reviewed in the context of the regulatory framework. We have been informed that the change is scheduled to be approved by late July.
- b. the levy model assumes that all stocks will benefit from the Accord in respect of benthic research cost recovery limitations. However, the Accord only applies to research in the Economic Exclusion Zone and does not include the Territorial Sea. Inshore stocks should not benefit. The levy model provided will need to be amended to reflect the terms of the Accord.

Ministry of Fisheries Analysis

SeaFIC's legal representatives have been made aware of the proposed changes to the cost recovery rules and, subject to one minor change, have agreed to the amendments.

The Ministry is currently working with SeaFIC to resolve details relating to the implementation of the Accord and ways to define benthic projects to ensure they are applied to fish stocks in the EEZ and not those in the Territorial Sea.

Issue 2	Non-ITQ catch estimates
Organisation	SeaFIC page 1 paragraph 5

Submission Details

5 We agree with the estimated catch settings for the Non-ITQ stocks except for Albacore. While we commend the Ministry for setting aside its normal practice of a three year average of catch for Non-ITQ estimated catch levels for Albacore and proposing an estimated 2007/08 catch for Albacore of 2,600 tonnes, we believe that such a catch level is still too high in the current climate. The catch for the year to date to May 2007 is 2,003.3 tonnes, a decline of 19% on the year to date to May 2006. Given that the May year to date total averages approximately 90% of the annual catch level, the 2006/07 catch is projected to total 2,200 tonnes. In comparison to the 100 vessels catching albacore prior to 2003/04, there are now only 26 boats catching albacore. In the light of these trends, a 2007/08 estimated catch of 2,600 tonnes appears excessive. We would suggest a level of 2,100 tonnes would be more appropriate. This would allow for some levelling off of the catch interest at around the current levels.

Ministry of Fisheries Analysis

The Fisheries (Cost Recovery) Rules 2001 provide that the costs of certain fisheries and conservation services are to be apportioned amongst affected fish stocks on the basis of a port price index ('PPI'). The PPI is the allowable catch multiplied by the port price for each stock. In the case of non-ITQ stocks the rules provide that an estimated catch value is used in lieu of an allowable catch limit, i.e. an 'estimated catch likely to be extracted from the stock in the fishing year'. However, the rules are silent on the definition of estimated catch and how it is to be calculated.

Historically the estimated catch has been calculated as an average of the actual catch over the previous 3 complete fishing years (e.g. 2002/03, 2003/04 and 2004/05 in the case of the 2006/07 levy order). Due to the lead times involved in the levy setting process, the catch information for the fishing year immediately preceding the levy order year is not available until after the levy order comes into effect. This results in the average catch estimate being one full fishing year behind the levy order in which it is applied.

The Ministry agrees that maintaining the existing estimated catch levels for stocks with steadily declining catches (e.g. albacore) will compound any recoverable under-recoveries, and that the levies should be adjusted as far as practicable to minimise this effect.

In the 1 April 2007 amending levy order we agreed that the estimate for the 2006/07 year should be based on the actual catch taken in the previous year – 2,600 tonnes.

However, in the face of continuing declining catch levels, even this approach will result in over recoveries and the Ministry agrees that a catch level of 2,100 tonnes should be used for 2007/08.

Issue 3	Compliance transaction fees
Organisation	SeaFIC page 2 paragraph 7

Submission Details

7 The Ministry business plan agrees with the Ministry Statement of Intent. I note that the Ministry has again this year not included a transaction fee component for the Compliance output. Transaction fees are payable on user requested compliance services, transaction fees have been received in the last 5 years and allowances were made for fees in prior years. An allowance should be made for them in the 2007/08 model.

Ministry of Fisheries Analysis

The 2007/08 plan for Output: *Observer services provided* includes an adjustment for forecast transaction fee revenue from activities such as observing trans-shipments and conversion factors. The Observer function incurs the expense of providing such services and it is appropriate the revenue generated be matched with the expense. As noted in the SeaFIC comments, transaction revenue from such services had previously been treated as commercial compliance revenue. However, this was changed from 2006/07 in an effort to ensure greater accuracy in the financial processes. Accordingly, there will be no adjustment to the commercial compliance output in the 1 October 2007 levy order.

Issue 4	Cost allocations on research projects
Organisation	SeaFIC page 2 paragraph 8

Submission Details

- 8 The cost allocations for the following projects are not supported:
- a. **SNA2007/08** - ‘Determination of optimum frequency for SNA 1 market sampling’
–
This project for SNA1 mirrors project SNA2006/07 which was levied on both SNA1 and SNA8 in the 2006/07 year. Subsequent to the levy model for 2006/07 being implemented, the project was focused solely on SNA8. Notwithstanding that, SNA1 continued to be levied for the project in 2006/07 and is to be levied again in 2007/08. We do not accept that as being reasonable. While there may have been some development of a generic process, we do not consider it appropriate that SNA1 should continue contributing to the sampling programme for SNA8 under SNA2006/07 while paying for its own programme under SNA2007/08. Either SNA1 should not be levied for any further expenditure on SNA2006/07 or the projects should be considered to be a joint project and levied on both stocks.
 - b. **ENV2007/06** ‘‘Trophic relationships of commercial middle depth species on the Chatham Rise’ –
This project continues a line of research previously initiated under the bio-diversity research programme – a public good research allocation. The objective of the project is to measure trophic relationships but at this stage is unable to assess whether adverse effects exist. We do not agree that it should be now cost recovered from industry.
 - c. **HAB2007/01** ‘‘Biogenic habitats as areas of particular significance for fisheries management’
This research project entails baseline research in documenting the existence of special habitats. It does not contain any research of adverse effects by industry. It should not therefore be recovered from industry.

Ministry of Fisheries Analysis

SNA 2007/08

The Ministry agrees that SNA 1 should not be levied for the SNA2006/07 project and will adjust the 2007/08 levy model accordingly. Any over recoveries in the 2006/07 year will be dealt with as part of the 2006/07 unders and overs process.

ENV2007/06

There is no requirement to demonstrate an adverse effect before research into that effect can be cost-recovered; the cost recovery principles clearly provide for cost-recovery to avoid risks as well as effects (s. 262(d)) and, in addition, effects can include potential effects, even potential effects of low probability (s. 2). This legal advice has been consistently communicated to SeaFIC regarding a variety of projects and work areas. The strategic relevance section in the project description outlined why the Ministry considers

this information necessary to support an assessment of the direct and indirect effects of fishing and is, therefore, cost-recoverable.

Strategic relevance: This project is consistent with Objective 3.4 of the Biodiversity Strategy (Protect biodiversity in coastal and marine waters from the adverse effects of fishing and other coastal and marine resource uses), especially those actions for which MFish is identified as the lead organisation. This project also forms a part of the Aquatic Environment research theme ‘...to determine the direct and indirect effects of fishing on associated or dependent species...’ and ‘A comprehensive ecosystem-based fisheries management approach would require managers to consider all interactions that a target fish stock has with predators, competitors, and prey species (trophic interactions); the effects of weather and climate on fisheries biology and ecology;...’. This project is also consistent with the Aquatic Environment Research and Harvest Levels sections of the Ministry of Fisheries Strategic Research Directions document. This project forms a part of the programme to determine direct and indirect effects of fishing on associated and dependent species, habitat of particular significance for fisheries management, and maintenance of biological diversity in the marine environment. This project is therefore consistent with the Marine Environment Research section of the Ministry of Fisheries Strategic Research Directions document, and is considered to be a high priority.

HAB2007/01

The strategic relevance section in the project description released for this project was quite clear (see below) that this information was needed to support an assessment of what species and habitats are most at risk from fishing as mandated by SMEEF. There is no requirement to demonstrate an adverse effect before research into that effect can be cost-recovered (see details above on ENV2007/06). Be that as it may, a decision has already been made to fund this project through the (Crown-funded) New Initiative on improving information on the effects of bottom trawling.

Strategic relevance: Biogenic structures have been identified as providing key environments and ecosystem services that are likely to be modified by fishing methods that disturb the benthos (e.g., trawling and dredging). This project will enable the identification of the species or habitats most at risk from fishing (as mandated by the SMEEF), and contribute to the Ministry’s priority (in the SOI) of improving the environmental performance of fishing through an ability to assess and monitor levels of modification of the aquatic environment relative to specified standards (relating to areas of particular significance for fisheries management). It also contributes to meeting goals of the Biodiversity Strategy by improving knowledge of key species and habitats, particularly those that play critical roles in marine biodiversity. This project is, therefore, considered to be of high priority and to be urgent. It will form the basis for future, more directed studies.

Issue 5	Projects where costs exceed contract prices
Organisation	SeaFIC page 3 paragraphs 9 and 10

Submission Details

9 The following projects are over-recovered in that the aggregate levies exceed the contract price and there have been no variations recorded.

MINISTRY RESEARCH PROJECTS				
Project	Contract Price \$	Levies \$	Over-Recovery \$	Final Payment Query
HAK2005-01	68,869	69,959	-1,090	?
HAK2006-01	52,945	115,000	-62,055	
HOK2005-03	654,735	665,661	-10,926	?
INS2005-01	264,815	271,485	-6,670	?
KAH2005-01	147,840	153,525	-5,685	?
LIN2006-01	53,925	125,000	-71,075	
MID2006-02	76,675	90,140	-13,465	
SCA2006-02	72,540	76,000	-3,460	?
SCH2006-01	23,360	24,830	-1,470	?
SNA2006-04	114,000	119,800	-5,800	
STA2004-03	46,340	51,697	-5,357	?
TAR2004-01	214,520	245,487	-30,967	

10 It would appear that a number of the projects above (marked with a query in the final column of the table) are final contract adjustments on completed research projects. The amounts for these projects are not large and would be recoverable under an Unders and Overs review. It would be beneficial and more efficient if these amounts could possibly be recovered through the levy model rather than the Unders and Overs review. I would agree to that course of action if the Ministry confirmed that the levies were to recover final contract adjustments on completed projects.

Ministry of Fisheries Analysis

The Ministry acknowledges the approach put forward by SeaFIC.

However, there are situations where the levies will differ from the contract price through timing issues in the setting of the levies. The Ministry will review each of the contracts and resolve any changes in the amending levy order.

Issue 6	BPA Projects
Organisation	SeaFIC page 3 paragraphs 11 - 13

Submission Details

11 The Ministry has indicated cost recovery of the following projects are impacted by the BPA Accord:

- ENV2005/16 Investigate the effects of fishing on underwater seamounts;
- BEN2006/01 Mapping the spatial and temporal extent of fishing in the EEZ;
- BEN2007/01 Assessing the effects of fishing on soft sediment habitat, fauna, and processes; and
- HAB2007/01 Biogenic habitats as areas of particular significance for fisheries management

12 The Ministry is unable to identify that component of the project which relates to the benthic environment in the EEZ.

13 The Ministry has applied the 33% recovery level for these projects to all stocks levied for these projects rather than those eligible in terms of the Accord. It is uncertain how the Ministry will define eligible stocks.

Ministry of Fisheries Analysis

The ENV2005/16 project will be entirely in the EEZ and, as such, will be subject to the provisions of the BPA Accord.

Although the BEN2006/01 project includes work in the Territorial Sea, a high proportion of the work involves the collection of Trawl Catch Effort and Processing Returns data in the EEZ rather than the Catch Effort and Landing Return data in the Territorial Sea. It is appropriate that this project is included in the BPA Accord process for levy calculations.

Information obtained from the BEN2007/01 project will be used primarily to manage fishing activity in the EEZ. It is appropriate that it comes within the provisions of the BPA Accord.

The HAB2007/01 project will be funded through the initiative to improve information on the effects of bottom trawling, and will be fully Crown funded.

As noted in respect of issue 1, the Ministry is currently working with SeaFIC to resolve details relating to the implementation of the Accord and ways to define benthic projects to ensure they are applied to fish stocks in the EEZ and not those in the Territorial Sea.

Issue 7	DoC research
Organisation	SeaFIC page 4 paragraphs 14 - 18

Submission Details

14 The DOC research plan accords with the CSP Approved Annual plan at the project level.

15 SeaFIC does not agree with the levy treatment for POP2005-02 - A Population and Distribution Study of White Capped Albatross (Auckland Island). The output of this project is stated in the CSP Annual Plan to be “An understanding of white-capped albatrosses population status, trend and distribution that can be applied to guide management of this species in a fisheries context.”

16 We do not accept that a project with an output that is not focused on mitigating, reducing or avoiding the adverse effects of fishing should be levied against industry. This is primarily a population and modelling project for which any effects from New Zealand fishing have yet to be proven to be adverse or a threat to the species. Recent research has shown that the breeding population of White-Capped Albatrosses has increased significantly in recent years and that one of the major constraints to further increases is the lack of safe breeding sites, not adverse effects of fishing. As such, industry should not be levied for the costs.

17 Even if the project were to be levied, we believe that DOC has been remiss by not re-assessing the percentage of risk attributable to NZ fishing. The risk to white capped albatross was assessed to be 12% in the Risk Assessment project undertaken by URS. Since then, recent research has shown that over 7,500 birds are killed annually in South African waters, as against the 300-500 estimated to be killed by fishers in the New Zealand EEZ. The number of New Zealand deaths has declined in recent years as a consequence of changes in industry practice to reduce the risk of bird mortality. These factors should have resulted in a risk re-assessment for the White-capped Albatross for the future levy of this project. Had the Department properly undertaken its duties in respect of that re-assessment and consideration of new evidence, the percentage of costs attributable to industry would have been significantly decreased.

18 We do not accept that industry should bear the costs of a failure of the Department to properly and reasonably perform its duties and recommend that, if any costs are attributable to industry for this project, they should be no more than 7.5% of the project cost.

Ministry of Fisheries Analysis

The following information has been provided by the Department of Conservation.

Disagreements over the interpretation and application of the Cost Recovery Rules have been an ongoing feature of the Conservation Services Programme. SeaFIC's views on the legitimacy of cost recovery for elements of the 2007/08 Annual Plan were again at variance with the Department's.

With respect to POP2006/02, a population and distribution study of white-capped albatross, the objectives of this project are:

Overall Objective:

To provide population and distribution data relevant to managing the effects of commercial fishing on white-capped albatrosses of the Auckland Islands.

Specific Objectives:

- 1 Collect data describing the at-sea distribution of the New Zealand white-capped albatross
- 2 Collect field data to allow estimation of white-capped albatross population size, and population parameters relevant to population viability
- 3 Analyse data collected in 1 and 2, including estimating population size, population parameters, and distribution of the New Zealand white-capped albatross with reference to spatial and temporal fishing effort.

The Department's view is that this work is a Conservation Service. The first year of work on this species (2005/06) was a feasibility study to ascertain whether a longer term project was possible, given the sensitivity of this species to disturbance, and the ruggedness of its habitats.

A 50% recovery from industry is undertaken as the risk to the albatross due to human intervention has not been robustly estimated. The remaining 50% of costs are met by the Crown. Mortality of white-capped albatrosses occurs across multiple fisheries, including inshore and deepwater trawl, and longline fisheries. The project complements work done by the Ministry of Fisheries to look for large scale population changes in this species using aerial photography over its main breeding site.

Current population estimates of this species are higher than what the population was believed to be in previous years. However, the estimates are not directly comparable due to the different methods used to produce them.

Issue 8	Ministry observers
Organisation	SeaFIC page 5 paragraphs 19 - 21

Submission Details

19 We continue to have a major concern with the cost of observer services provided by Ministry, the absence of initiatives to manage the delivery of that service more efficiently and the inability of the Ministry to deliver the scheduled days. The actual cost of a delivered observer day has risen from \$389.18 in 2002/03 to \$589.71 in 2005/06, the last year for which actual expenditure figures are available. That is an average annual increase of 15.4%. Such an increase is not acceptable. Equally unacceptable is the delivery rate of observer days. In the past five years, the Ministry has delivered only 86% of the scheduled number of days. It appears somewhat unrealistic for the Ministry to charge for 5,203 days in 2007/08 when the Ministry has been unable to deliver a lower number of programmed days in recent years.

20 Our concern lies not with the salary rates of observers but more with the costs of delivering the service. Given that the observer receives an average daily salary of less than \$200 per day, the costs of delivering the service are around \$300 per day. For the average offshore observer trip of 31 days, the industry pays approximately \$9,300 in indirect costs.

21 We have requested the Ministry to review the observer services procedures on previous occasions without success. Industry accepts the concept of and need for observers but has major problems with the delivery of the service.

Ministry of Fisheries Analysis

The observer coverage days that have been requested from the programme for the 2007/08 year have been formulated over the last twelve months for each of the fisheries, during which time they have been widely debated at working groups, which include SeaFIC and other stakeholder representatives, and developed into requirements for Observer Services under projects titled "Research Observer Services". These projects detail overall and specific objectives for observer coverage together with the number of coverage days required. As in previous years, these projects are subject to the Ministry's thorough consultation process which provides all stakeholders, including SeaFIC, the opportunity to comment on any and all aspects of the project.

The Observer Services management team delivers actual coverage days based on the plans and intentions of commercial fishing vessels as close as possible to the coverage plan determined by the relevant working group projects and subsequent consultation process. However, the Ministry recognises that under delivery of coverage days has been an issue in previous years. It has found that developing coverage in previously unfamiliar inshore fisheries has required increased levels of onshore management and two consecutive years of observer recruitment. In addition to this, in conjunction with inshore fishery development there has also been some major changes in the number and activity of commercial vessels, both in offshore fisheries and in particular in the tuna domestic fleet.

The SeaFIC comments on cost increase for the service need to be put in context. In 2004/05 and 2005/06, the actual expenditure on Observers increased (from \$2.623 million in 2002/03 to \$3.211 million in 2005/06, in part, to take account of the new initiative related to the National Plan of Action for Seabirds.

Year	Actual expenditure \$m	Total seadays achieved	Average cost per seaday \$
2002/03	2.623	6,603	397
2003/04	2.655	5,667	468
2004/05	3.259	5,625	579
2005/06	3,211	5,363	598

The following table provides a breakdown into offshore and inshore days. It will be noted that there is an increasing use of inshore days and smaller vessels. Unlike offshore, where the trips are generally longer and with no downtime, inshore trips often involve periods of time onshore between sailings. The Observer programme incurs costs for this non-coverage time, and this is factored into the average cost to be charged to industry. Salary rates for Observers have increased and with the inclusion of holiday pay now range from \$235 to \$313 per seaday.

Year	Planned coverage			Achieved		
	Vessel type		% Small vessel days	Vessel type		% Small vessel days
	Offshore	Inshore		Offshore	Inshore	
2002/03	7,864	880	11%	6,519	84	2%
2003/04	6,541	880	13%	5,353	314	7%
2004/05	5,908	1,067	15%	5,008	617	11%
2005/06	5,938	1,224	17%	4,681	682	13%

Issue 9	DoC observers
Organisation	SeaFIC page 5 paragraphs 22 - 27

Submission Details

22 The average daily cost of a DOC observer day is \$697, before the DOC administration charge is added, and \$830 after adding that charge. We have three problems in respect of the levies calculated for observers for the Department of Conservation programme.

23 The first issue relates to the high level of administration overheads imposed by DOC. The figures provided by DOC indicate that administration costs for the observer programme will be \$164,645, 19% of the invoiced cost of the observers. We are unable to comprehend how DOC can reasonably incur and levy such costs for the service given that the Ministry of Fisheries undertakes all the functions associated with the supervision and administration of the observers including their placement, equipment and ancillary costs. Given that DOC's role in respect of observer services is largely a contract management role, we do not accept that the costs being incurred are reasonable and validly recoverable from the industry.

24 Second, we note that while the Ministry invoices the Department of Conservation at an \$800 daily rate for inshore observer days and \$500 for off-shore days, the costs are then levied to stocks on an average basis. As a consequence:

- a) industry pays \$500 per day for an observer undertaking Ministry duties but then pays \$830 per day for the same observer on the same vessel in respect of the Department of Conservation duties.
- b) whereas the Ministry needs relate to scientific tasks such as detailed biological data on target and by-catch and the DOC duties are primarily observation of marine mammal and seabird interactions and collection of by-catch for later autopsy, the levies paid by industry are inverse to the skills and expertise needed of the observer; and
- c) the off-shore fisheries cross-subsidises the in-shore fisheries to the extent of 15% of the estimated cost of inshore observer days.

25 We understand this problem arises as a consequence of the Ministry levy model being unable to charge different daily rates for off-shore and inshore DOC observer days. We can see no valid reason why the off-shore fishing operations are required to subsidise the cost of inshore observer activity because of the poor specification of the levy model by the Ministry. DOC has had an inshore observer programme for the last three years and we would have expected the Ministry to have amended its levy model to provide for differential pricing before now.

26 We recommend that all DOC observer days should be charged at the lower off-shore price of \$500 per day plus an appropriate DOC administration charge, with the Ministry meeting the additional costs of inshore observer days. This would provide the Ministry with an incentive to provide the necessary functionality in the levy model

27 Third, it would appear that the costs charged by the Ministry for DOC only days are not discounted for the lower level of Ministry services needed for such services. We would expect for example that there would be a reduction for Ministry activities, such as data entry, compliance debriefing and trip diaries, for DOC only days. This would reduce the charge-out price of Ministry observers below the current costs of \$830.

Ministry of Fisheries Analysis

The Department of Conservation has advised that continuing improvements in efficiencies within the Conservation Services Programme have resulted in administration costs of \$260,372 for 2007/08, which contrasts with \$387,881 in 2005/06. These administration and overhead charges include those related to the observer programme, and all other CSP projects. Administration costs are pro-rated according to the value of projects. Administration and overheads include some staff salary contribution, accommodation, computer charges and other office materials, and support services (e.g. legal).

With respect to issues 2 and 3, the Ministry believes that it is open to question as to whether Rule 8 of the Fisheries (Cost Recovery) Rules 2001 contemplates an interpretation that would permit the differential charging SeaFIC suggests.

The Ministry does not propose to amend the model for the 1 October 2007 levies, but will include the issue as part of the review of the cost recovery framework.

Fisheries and conservation services costs to be recovered for 2007/08

A summary of the costs to be recovered in respect of fisheries and conservation services is as follows. The 1 April 2007 levy order figures, which covered the 2006/07 fishing year are shown for comparative purposes. All figures are in \$million and GST exclusive.

Fisheries and Conservation Services	1 October 2007 Levy Order	1 April 2007 Levy Order
Approved SOI – total cost of fisheries services	93.737	89.441
<i>Less</i> adjustments to 1 October 2006 levy order	0	(0.586)
Plus 1 April adjustment to research plan	0	0.502
Total MFish expenses	93.737	89.357
<i>Less</i> Crown share	(60.817)	(55.912)
Gross MFish expenses recoverable from industry	32.920	33.445
<i>Less</i> cost to be recovered by way of transaction fees and charges	(1.699)	(1.669)
Net MFish costs to be charged by cost recovery levies	31.221	31.776
<i>Plus</i> Conservation Services projects	1.823	2.060
<i>Less</i> Crown Share	(0.259)	(0.225)
Total recoverable from cost recovery levies	32.785	33.611
<i>Less</i> 1994-2002 net settlement credit applied	(0.162)	(1.115)
<i>Less</i> Adjustment for 2005/06 net future credit for research catch revenue to be applied in 2006/07	0	(0.480)
<i>Less</i> Adjustment for 2004/05 net future credit over recovery to be applied in 2006/07 (carried f/ward from 2005/06)	0	(0.003)
<i>Less</i> Adjustment for 2004/05 and 2005/06 net future credit over recovery to be applied in 2007/08	(0.063)	0
Total to be collected from industry for fisheries services and conservation services	32.560	32.013

**COST RECOVERY LEVIES FOR FISHERIES SERVICES
FOR 2007/08**