

INITIAL POSITION PAPER: ALTERING THE FISHERIES (COST RECOVERY) RULES 2001 WITH RESPECT TO THE BENTHIC PROTECTED AREAS ACCORD

Executive summary

1 The paper recommends an amendment to the schedule relating to the apportionment of costs of fisheries and conservation services contained in the Fisheries (Cost Recovery) Rules 2001 (the cost recovery rules) to reflect the requirements of the 2007 Benthic Protected Area (BPA) accord.

2 The benthos is the flora and fauna of the seabed. In this paper 'benthic' refers to the bottom of the sea or to the organisms that live there.

3 The BPA accord is an industry initiative approved by Cabinet. The BPA accord proposes the closure of about 1.2 million km² (around 30%) of New Zealand waters to bottom trawling and dredging. The BPA accord will be implemented later this calendar year.

4 The Ministry of Fisheries (MFish) recognises that the BPA accord and the establishment of BPAs alters the balance between the cost recovery principles in the Fisheries Act 1996 (the Act) relating to general public interest and fisheries services provided to avoid, remedy or mitigate a risk attributable to bottom trawling or dredging. Therefore, it is appropriate to adjust the proportion of costs borne by the commercial fishing industry (industry) for deepwater benthic research for fisheries services.

5 MFish proposes that from 1 October 2007, the cost-recovered proportion of fisheries services for deepwater benthic research in the EEZ will not exceed 1/3rd of the annual total cost of that research and the amount recovered from industry will not exceed \$0.333 million in any one year.

6 Apportioning the costs of deepwater benthic research between commercial levy payers and the Crown on this basis will require a change to the cost recovery rules. Currently under the cost recovery procedures industry bears the full costs of most deepwater benthic research.

7 Research into the general nature of the benthic environment will not be cost recovered, while research relating to the impacts of fishing on the aquatic environment, other than the impacts of bottom trawling on the benthos, will continue to be subject to the existing cost recovery rules.

8 These proposals relate to the costs of fisheries services for benthic research between 12 nautical miles and 200 nautical miles. They do not affect the costs recovered from industry for conservation services or benthic research within the territorial sea.

9 The proposed amendments to the cost recovery rules comply with the cost recovery principles in section 262 of the Act and do not alter the principles set out in the Act.

Background and rationale for management options

The Benthic Protected Areas Accord:

10 The BPA accord is an industry initiative approved by Cabinet. The BPA accord proposes the closure of about 1.2 million km² (around 30%) of New Zealand waters to bottom trawling and dredging. The areas proposed for closure are largely unfished and encompass a range of habitat types. Within the BPA accord, industry acknowledges that bottom trawling has an impact on the benthic environment and permanently relinquishes the opportunity to fish within approximately 30% of New Zealand's EEZ. In return, industry seeks certainty over the amount that will be cost recovered for research to assess the impacts of bottom trawling

11 In signing the BPA accord, industry and the Crown recognise that:

- a) Clear management objectives should drive management measures and define the service requirements. A more strategic approach to deepwater fisheries management will be developed through a fisheries plan(s), with clear management objectives to drive management decisions and underpin all research planning, including deepwater benthic research in the EEZ. This process must be open and transparent;
- b) The establishment of BPAs alters the balance between cost recovery principles in the Fisheries Act 1996 such that it is appropriate to adjust the proportion of the costs borne by the industry for deepwater benthic research for fisheries services; and
- c) Recognising the increased general public interest in deepwater benthic research due to the establishment of BPAs, the Minister agrees to promote changes to the cost recovery rules to give effect to the following: from 1 October 2007 the cost recovered proportion of deepwater benthic research in the EEZ will not exceed 1/3rd of the annual total cost of that research. The Minister commits from 1 October 2007 that the amount recovered will not exceed \$0.333 million in one year. This would not restrict the level of deepwater benthic research in the EEZ undertaken in the public interest

12 The cost recovery elements of the BPA accord only relates to recovery of costs for deepwater benthic research approved by the Minister as fisheries services. These fisheries services include management of fisheries, research relating to fisheries resources and the impacts of fishing on the benthic environment as well as the enforcement of regulation. The BPA accord does not alter the cost recovery rules as they relate to any service other than deepwater benthic research.

13 Any change to the cost recovery rules is subject to consultation. If, after consultation, the Minister decides not to pursue the changes to the cost recovery rules, he will go back to industry to discuss the impact on the BPA accord.

Legislative requirements

14 Section 262 of the Act sets out the cost recovery principles. Under s.262(a), fisheries services are provided at the request of an identifiable person, that person must pay a fee for the service. Through s. 262(b), the costs of research in the general public interest may not be recovered. Under s. 262(c) management costs must, as far as practicable, be attributed to the

person harvesting the resource. Section 262(d) states that the costs of mitigating adverse effects caused by harvesting resources must be attributed to the persons causing the effects or risks. Section 262(e) notes that the costs of services provided by an approved service delivery organisation may not be recovered.

15 Section 263(1) empowers the making of rules relating to the imposition of levies. Cost recovery rules may prescribe the proportion of costs that are recovered as levies; who must pay levies; how the costs are apportioned between the persons who must pay. Different rules may apply for different classes of person, stocks, quota management areas, fishery management areas, conservation services, fisheries services, or any combination of them.

16 Section 265 of the Act requires that the Minister of Fisheries must have regard to any under- or over-recovery of costs in a prior year when recommending the making of a levy order. But it is his discretion as to whether or not the under- and over-recoveries are adjusted for.

Analysis

17 Previously deepwater benthic research centred on the impacts of fishing on the benthos. As such, consistent with the cost recovery principles and cost recovery rules, the Crown recovered the full cost of research from the industry. The closure of 30% of the EEZ to bottom trawling or dredging under the BPA accord provides significant additional protection to the benthos consistent with the growing public interest in the benthos and the nature of New Zealand's benthic habitats. In light of this additional protection and the public interest in this research, the current attribution of the costs of deepwater benthic research need to be adjusted. The Minister and industry have, subject to this consultation process, agreed how these costs should be allocated between the Crown and industry consistent with the principles outlined in the Act.

18 There is incomplete information as to precisely how much deepwater benthic research benefits either the public interest or industry. MFish considers that to some extent deepwater benthic research is a public benefit. Under s. 262(b), costs of services provided in the general public interest may not be recovered. However, industry accepts that fishing may actually affect the benthic habitat. Under s. 262(d), the costs of remedying or mitigating these adverse effects is attributed to the persons causing them and may be recovered from them.

19 Therefore, the outcomes of deepwater benthic research are not entirely attributable to an identifiable person or class of person and the wider public benefit from deepwater benthic research. It is unclear exactly how much each party benefits from the research. Working out who should pay is time consuming and expensive. In addition, decisions about attributing costs may become somewhat arbitrary in nature.

20 Given this uncertainty, the BPA accord proposes to establish a defined percentage of deepwater benthic research costs that may be recovered. Under this proposal the Crown will recover 1/3rd of the fisheries services costs associated with deepwater benthic research from industry. The Crown will bear the remaining costs.

21 MFish believes that the changes proposed to the cost recovery rules comply with the cost recovery principles set out in s. 262.

22 Section 263 enables the Minister to make rules relating to the imposition of levies. These rules prescribe the proportion of costs that may be recovered as levies. These rules can apply to a specific class of person, stock, quota management area, fishery management area, conservation service, fisheries service or any combination of thereof. Since the Minister is able to vary the amount and proportion of costs recovered MFish maintains that the proposal outlined above meets the requirements under the Act.

Implications

23 If the proposal proceeds and the cost recovery rules are amended, from 1 October 2007 all deepwater benthic research will be 33% cost recovered up to a maximum of \$0.333 million per annum. The \$0.333 million limit applies to all existing active multi-annual contracts and any new contracts that extend beyond 30 September 2007 (Appendix 1). This limit is inclusive of all indirect costs.

24 Cabinet has accepted that this proposal will result in a reduction of Crown revenue of approximately \$300, 000 - \$400, 000 in the next financial year with similar costs in future years. MFish is confident this proposal will not restrict the quantity or quality of future research and that spending in this area is expected to double over the next few years. However, research projects will require greater clarity and specificity to ensure the appropriate allocation of costs.

25 The proposed changes to the cost recovery rules will not alter the Ministers obligation under s. 265 when recommending the making of a levy order to have regard to the cost of fisheries services that were under or over recovered in a previous financial year. The \$0.333 million limit on the costs of deepwater benthic research that may be recovered will be a relevant policy (i.e. non-regulatory) factor that the Minister will be obliged to consider when making under- and over-recovery decisions related to expenditure on deepwater benthic research. Any advice MFish provides will need to explicitly identify this issue – it is then solely the Minister’s discretion as to how he will take these under- or over-recoveries into account when setting future levy orders.

Consultation

26 MFish is seeking views from stakeholders on the proposed amendment to the schedule relating to the apportionment of costs of fisheries and conservation services contained in the Fisheries (Cost Recovery) Rules 2001.

27 Stakeholder submissions will be considered before the final advice paper is prepared for the Minister.

28 The closing date for submissions is 5.00 pm Monday 21 May 2007.

29 MFish welcomes written submissions on the items contained within the IPP. Written submissions should be posted to Tracey Steel, Ministry of Fisheries, PO Box 1020, Wellington, or faxed to 04 470-2669. Alternatively, electronic submissions can be emailed to tracey.steel@fish.govt.nz

30 If you require any further information on this issue of proposal please contact Tracey Steel on the email address above or by phone on 04 819 4585.

APPENDIX 1

Historic benthic research projects 2000/01-2005/06 open as at 04 April 2007

Project code	
ENV2001-09	The effects of mobile bottom fishing gear on benthic-pelagic coupling
ENV2003-03	Determining the spatial extent, nature and effect of mobile bottom trawling methods
ENV2005-15	Information for managing the effects of fishing on physical features of the deep sea environment
ENV2005-16	Investigate the effects of fishing on physical features of the deep sea environment
ENV2005-20	Benthic invertebrate sampling and species identification in trawl fisheries
ENV2005-23	Monitoring recovery of the benthic community between North Cape and Cape Reinga
BEN2006-01	Mapping the spatial and temporal extent of fishing in the EEZ