

6. Recovering Costs from the Industry

The introduction of an ITQ based fisheries management scheme provides individuals with exclusive harvest rights to a fishery. This allows fishers to focus on providing the best fish for the market, thus resulting in better quality fish, lower costs and ultimately higher returns (Clement 2000). But there are both pecuniary and non-pecuniary costs associated with running the system. Not only are there costs associated with its management and enforcement, but there are also societal costs because of its exclusive nature. Consequently, regulators must decide whether the economic benefits that quota holders obtain through their exclusivity should be captured by the industry or paid to the Government. By allowing the industry to keep this rent, the industry can be recapitalised (Clark and Major 1988). However, since these individuals are obtaining a benefit from a previously common resource, perhaps they should, at least partially, fund the system that provides them with their benefits. In New Zealand, many quota holders received their quota without cost based on previous catch history. Thus, there may be an even stronger argument for ensuring that quota holders contribute to the cost of managing the QMS.

Since the QMS was introduced, the New Zealand Government have wanted quota holders to contribute to the management costs associated with the system. However, the method for collecting funds from the industry has changed significantly in the last 20 years. This chapter covers these changes from the use of a resource rental in 1986 through to the current system where quota holders and fishers pay levies to fund all costs attributable to the commercial fishing industry. It also briefly discusses some of the conflict between the industry and the Ministry of Fisheries regarding the resource rentals and levies and concludes by outlining the settlement of under-recovery and over-recovery of costs in 2004.

6.1 Resource Rentals

When the QMS was first introduced, fishers of QMS stocks were required to pay a resource rental to the Crown for the use of the resource. This was designed to allow the Government to recover some of its costs associated with fisheries management. The resource rental was also used to prevent speculation in quota markets (Boyd and Dewees 1992, Sissenwine and Mace 1992). When the system was introduced there was concern that individuals would purchase quota as they expected the value of it to increase rather than to participate in the fishing industry. Therefore, in an attempt to prevent this from occurring and ensure that quota holders caught the fish that they were entitled to, resource rentals were charged on the amount of quota held rather than the amount of fish caught.¹

The money that was collected from the resource rentals was to be placed into a specific revolving fund which would cover industry management costs, the financial cost of altering TACC levels and management related research (Batstone and Sharp

¹ This practice implies that fish are abundant enough for all quota to be caught without dissipating the rent. But because of assessment errors, a failure to decrease TACs and economic conditions, this may not be accurate (Sissenwine and Mace 1992).

1999). It was even suggested that this fund might, in the future, pay a dividend to the Government (Crothers 1988). However, this fund was never established and rentals were paid straight into the Government's consolidated fund.

6.1.1 Initial Resource Rentals

To maintain the industry's support of the QMS, resource rentals were set low on introduction. For the majority of species, the resource rentals were initially set at \$3 per tonne of quota.² However, when foreign owned vessels were used, resource rentals were charged at a double rate to encourage the use of domestic vessels. When operations used both domestic and foreign owned vessels, the appropriate resource rental was paid based on the vessel that was used to catch the fish and all uncaught quota was charged at the domestic rate (Clark and Duncan 1986).

6.1.2 Altering Resource Rentals

Although resource rentals were introduced at low levels, the Government planned over time to increase the rentals so that the value of annual traded quota became zero (Clark and Duncan 1986).³ Resource rentals were to be eventually set so that the economic profit from holding quota would be zero, or as close to zero as possible. Although it was difficult to determine the correct level of rentals to achieve this, economists suggested that the quota trade price reflected the economic profit gained from holding it. But the fishing industry disagreed, arguing that the quota prices at the start of the system were not a valid representation of the economic rent gained, especially since when the system was introduced a number of high value trades took place as individuals positioned themselves in the market place and sought quota to cover bycatch (Clark and Major 1988).

The 1986 amendment (which introduced the QMS) provided for substantial movement in the level of resource rentals from year to year, allowing for an increase from the original low level. Under this amendment, as long as the Minister considered the value of quota, the impact on net commercial returns and the relevant changes in the TACC, he was able to alter the resource rental rate up to 20% per year (\$107G of the amended Fisheries Act 1983). However, since the legislation was drafted listing fixed resource rentals in a Schedule without an adjustment formula, altering resource rentals required an amendment to the fisheries legislation (Sinner and Fenemor 2005). This provided the fishing industry with the opportunity to contest each decision to increase resource rental rates.

In 1990, resource rentals were used as a bargaining tool to retain industry support. At this time, the Government was facing a large financial cost of reducing the TAC in the orange roughy fishery. To avoid this, quota was redefined as a proportion of the TACC (See Section 3.2.2 for more details). As compensation to the industry, the Government agreed to freeze the resource rental rates for five years and redistribute resource rental income to the industry (Sissenwine and Mace 1992).

² However, the species that were individually listed on Schedule 1B of the Act had higher resource rental levels. For example, resource rentals for hoki and orange roughy were set at \$8.25 and \$100 respectively.

³ Fishers were informed of this intention prior to the system's introduction (Ministry of Agriculture and Fisheries 1984).

From the beginning of the QMS, there was doubt about the legality and practicality of the resource rental scheme (e.g. Clark and Major 1988). The fishing industry was never convinced that the Government was entitled to benefits from holding quota. They argued that some of the benefits obtained from the quota holdings were due to earlier investments made by the fishing industry. Thus, they should be entitled to retain at least some of the benefits (Hawkey 1994). There was also doubt about the legitimacy of the Government charging rent for the use of something that it did not own. This doubt was not only expressed by the fishing industry but also within Government itself by MAF (Sinner and Fenemor 2005).

Once Maori began to claim ownership of New Zealand's fisheries under the Treaty of Waitangi, the ability of the Government to claim rentals was further put in doubt, especially when quota were given to Maori as part of the settlement package (Sinner and Fenemor 2005). Thus in 1994, with the passing of the Fisheries Amendment Act 1994, resource rentals were replaced with cost recovery levies.

6.2 Cost Recovery

Cost recovery enables the Crown to recoup some of the costs associated with managing commercial fisheries.⁴ When the system was introduced, the Crown and the fishing industry had different views regarding what costs should be able to be recovered. The Ministry of Fisheries wished to recover costs that would be avoidable if the commercial fishery did not exist. In contrast, the industry wanted to pay only for the costs that were attributed to the industry itself. While these were similar concepts, there were subtle differences between the two. In particular, under the industry's definition, it was required to pay lower costs. However, the Ministry proceeded with the attributable costs approach and, as a result of this, many of the services that the Ministry of Fisheries carries out are not funded by the commercial industry despite the benefit that it may receive. For example, the industry is not required to fund the Ministry's preparation of advice to the Minister on sustainability although they directly benefit. Instead, the Government funds this, along with any other joint costs between commercial and non-commercial fishing (Batstone and Sharp 1999).

The cost recovery levies were set by the Minister with considerable flexibility. Under Section 107EA of the amended 1983 Fisheries Act, cost recovery could be used to recover the costs associated with management, enforcement, research, conservation services and other matters that are related to fishing and are in the spirit of the Act. Levies could be charged to any group of individuals within the fishing industry such as quota holders, fishing permit holders, vessel owners and licensed fish receivers at the Minister's discretion.

Failure to pay the cost recovery levy could lead to significant consequences for the individual. If cost recovery levies were not paid within two months of the due date,

⁴ While the money is used to fund some of the activities carried out by the Ministry, the cost recovery levies are not given directly to the Ministry of Fisheries. The Ministry of Fisheries is funded from the Crown's consolidated accounts. The industry is then invoiced for the services attributable to it and the money raised is returned to the Crown.

the individual's fishing permit was suspended preventing them from fishing (Section 107L of the amended Act). When individuals hold multiple fishing permits, the Director-General could suspend as many of them as they deemed appropriate.

6.2.1 Fisheries Act 1996

The Fisheries Act 1996 maintained the spirit of the 1994 amendment. Costs were still recovered for both fisheries and conservation services and from a range of different types of industry participants (S262). However, there were some small changes under this new Act, including the revision of the Second Schedule of the 1983 Act. Cost recovery levies were outlined in the Tenth Schedule of the 1996 Act and in many cases the levies were altered and/or the species for which levies were applicable were changed. These changes included removing the higher costs associated with the use of foreign owned vessels and introducing levies on aquaculture. One of the most significant changes that occurred was that the Conservation Minister under the 1996 Act set the total conservation levy that was to be paid by the commercial fishing industry. The Minister of Fisheries was then required to identify how much each sector of the fishing industry would pay; previously, the Minister of Fisheries had also set the total conservation levy.

6.2.1.1 Research costs

Since the 1996 Fisheries Act, non-core fisheries services have been contracted out by the Ministry of Fisheries. This includes the tendering of research services, which started in 1997 (Batstone and Sharp 1999).⁵ While the Ministry of Fisheries initially funds this research, much of the cost associated with it is recovered from the commercial fishing sector through the cost recovery programme. The proportion of research costs related to a given fish stock recovered from the commercial fishing sector depends on the proportion of the total catch that was captured by the commercial fishing sector.

Since quota holders were being charged for the research carried out, there was more reason for quota holders to take an interest, especially as research costs constituted the largest item in the cost recovery levies (Stevens 2005). The fishing industry also realised the impact that the research has on future TACC levels and ultimately the profitability of the industry. This has led to some companies directly purchasing research in addition to the research that is funded by the levies to the Ministry. For example, the Orange Roughy Management Company invested in their own research, as well as through funding research by Government levies (Clement 2000). They directly commissioned research in a number of areas including stock assessments, environmental studies and age and growth studies.

However, there has always been conflict surrounding the role of industry in funding research. Environmental organisations worry about the conflict of interest that could be occurring, suggesting that the industry is influencing the type of research that is taking place and indirectly censoring the findings (e.g. Wallace 1998). But within the fishing industry there are also concerns; some members of the industry suggest that

⁵ The contracts that are tendered by the Minister are fully contestable. However, the majority of the work is carried out by NIWA.

the return on the investment in fisheries research may not be worth the money spent. Investments could be better targeted to get more value for money (Stevens 2005).

6.2.1.2 Under-recovery and over-recovery of costs

The 1996 Fisheries Act introduced further items for consideration by the Minister when setting cost recovery levies. Section 265 states that when the Minister is setting cost recovery levies, he must not only consider the cost of the service that the levy is meant to be financing, but he must also consider cost recovery in previous years. Cost recovery levies were based on budgets that were generated prior to the start of the fishing season and, therefore, did not reflect the actual costs for that year. This meant that fishers in some fish stocks were paying more than was required and others were paying less. However, the 1996 Fisheries Act ensured that the Minister considered the difference between what was paid and what was actually required in previous years.

6.2.2 Fisheries Act 1996 Amendment Act 1999

The Fisheries Act 1996 Amendment Act 1999 enabled substantial improvements to be made on the earlier cost recovery regime by clearly defining who was paying for what services while still providing enough flexibility to allow for variation in the amounts that were recovered from the industry (Wyatt 2000). Section 262 of the amended Act clearly defines whether or not a cost can be recovered. This amendment has meant that the fisheries and conservation services can have their costs recovered or not according to the following:

- If a service is requested by an individual they must pay a fee for the service.
- Services provided in the public interest cannot have their costs recovered.
- Costs of services that are provided to manage the harvesting or farming of fisheries resources are to be attributed, where possible, to the individuals who benefit from the resource.
- Costs of services provided to protect the aquatic environment or biological diversity are to be attributed, where possible, to the individuals who caused the risk or adverse effect.
- Costs cannot be recovered by the Government for services that are provided by another organisation if the organisation was delegated responsibility for the service. However, the delegated organisation is able to set its own fees for these services.

A new subsection was introduced into the Act, which made it explicit that the Minister did not need to consider the level of deemed values in an industry when he was recommending the implementation of an additional levy (S266 (3)).

6.2.3 Fisheries Amendment Act 2004

Despite the increased clarity provided by the 1999 amendment, tension arose between the Government and industry regarding the under-recovery and over-recovery of fishing and conservation service costs. To resolve this dispute, a \$25 million dollar settlement was negotiated and this was passed as the Fisheries Amendment Act 2004. This amendment updates the obligations of the Ministry regarding under- and over-recovery of costs, addressing the payment discrepancies covering the period from October 1994 (when cost recovery levies were introduced) to September 2002.

Although the amendment was passed to address concerns about the past, it has altered the way that the cost recovery levies have been set since October 2003.

The 2004 amendment identified the amount that quota holders in each fish stock are entitled to be credited or are required to pay back to the Government (Schedule 9A). Starting in the fishing year commencing on 1 October 2003, the earlier discrepancies were addressed. For stocks that were listed in Part A of Schedule 9A, the amount identified in the schedule was credited against the levies payable for the 2003 fishing year. If the amount owed was greater than the levies, the remaining balance was to be credited in the subsequent fishing years until the settlement sum reached zero. For stocks that were listed in Part B of Schedule 9A that owed money, the levies for the 2003 fishing year were increased by the amount listed. Thus, the discrepancies surrounding earlier payments were settled.

While this process settled the claims that industry had on earlier cost recovery levies, it also created a number of aggrieved individuals. Historical overpayment of cost recovery levies was addressed by crediting present quota holders. But the individuals currently holding quota in each fish stock may not have held quota in the past. Thus, the individuals who received compensation through this settlement were not necessarily those who paid the higher than required cost recovery levies. Those individuals who sold their quota prior to the 2004 settlement received no compensation.

6.2.4 Fisheries Amendment Act (No. 3) 2004

In the Fisheries Amendment Act 2004, all compensation awarded to quota holders of spiny dogfish quota was allocated to the quota holders in a single stock. However, the Fisheries Amendment Act (No. 3) 2004 reallocated the compensation to this fishery amongst all spiny dogfish fish stocks.