

2 June 2015

Mr M Dunne
Ministry for Primary Industries
PO Box 10420
Wellington

Dear Martyn

COMMENTS ON DRAFT 2015/16 LEVIES

1. You have asked for comments on the draft 2015/16 levies for MPI and CSP. This submission reflects the view of Fisheries Inshore New Zealand Ltd and the Deepwater Group Ltd. The submission is in two parts – first, matters of a generic concern and secondly individual comments on levy components. A number of industry organisations and companies will forward their own submissions as they consider appropriate.
2. This submission has been prepared by Tom Clark of Fisheries Inshore New Zealand Limited. Any queries should be directed to Mr Clark.

The Submitters

Fisheries Inshore New Zealand

3. Fisheries Inshore New Zealand Limited (FINZ) represents the inshore finfish, pelagic and tuna fisheries of New Zealand. It was formed in November 2012 as part of the restructuring of industry organisations. Its role is to deal with national issues on behalf of the sector and to work directly with and on behalf of its quota owners, fishers and affiliated Commercial Stakeholder Organisations (CSOs). As part of that work it also works collaboratively with other industry organisations and Sector Representative Entities (SREs), Seafood New Zealand, Ministry for Primary Industries (MPI) and the Department of Conservation.
4. Its key outputs are the development of, and agreement to, appropriate policy frameworks, processes and tools to assist the sector to more effectively manage inshore, pelagic and tuna fishstocks, to minimise their interactions with the associated ecosystems and work positively with other fishers and users of marine space where we carry out our harvesting activities.
5. We have included comments from major inshore commercial fishing representative bodies, including Northern Inshore, Area 2 and Southern Inshore.

Deepwater Group

6. Deepwater Group Limited (DWG) is a non-profit organisation that works in partnership with the Ministry for Primary Industries to ensure that New Zealand gains the maximum economic yields from its deepwater fisheries resources, managed within a long-term sustainable framework.
7. Their mission is to optimise the sustainable economic value of our deepwater fisheries. DWG's vision is to be recognised as the best managed deepwater fisheries in the world.

PART I – GENERIC ISSUES

8. In this section, we comment on process and generic matters relating to the levy model.

The Consultation Process

9. As in previous years, we have worked collaboratively with members of the MPI Finance Team in reviewing and analysing the draft levy model. That process has enabled us to identify matters and errors of a factual nature that can be resolved between the two parties. We value and support the openness and collaborative nature of that process.
10. We have jointly resolved a number of issues that would otherwise need to be canvassed in this submission. The submission therefore focuses more on issues in respect of the 2015/16 levies and research projects and any Unders and Overs matters that could not be resolved.
11. We have had a constructive meeting with senior executives of MPI on a number of the matters raised in this submission and reached conclusions as to how some issues should be resolved. That included the removal of projects DEE2015-07 and MOK2015-01 and a commitment that placeholder projects would not be confirmed in the levy programme. The executives indicated that options to address the levying of fishstocks with low catch:TACC ratios were being actively investigated by MPI. We are grateful to MPI for its response and trust this will continue in coming weeks. We have left reference to these matters in the submission for completeness.
12. MPI and industry representatives agreed that many of the issues regarding the nature and value of individual research projects can be addressed with more specific Management and Monitoring Plans. These Plans would provide specificity as to the nature of management and the services required. We would very much welcome this approach and look forward to working on such a framework in advance on next year's consultation on fisheries services. Allied to this is greater flexibility in service delivery whereby the Crown specifies deliverables and standards and the market provides. Again we look forward to the increased efficiency and effectiveness of such an approach and the more constructive relationship it would engender.

Cost Recovery Invalid

13. We have previously stated our view as to the validity of the Fisheries (Cost Recovery) Rules 2001 (the Rules). Since cost recovery is under current review by MPI, we take the opportunity to restate our views and opposition to the validity of levies based on the current regulations.
14. The Rules can only be valid to the extent that they enable the principles within the Act to be implemented, are consistent with and do not seek to modify those principles or extend the definitions beyond those contained in the empowering sections of the Fisheries Act 1996.

15. Fisheries and Conservation Services are defined in section 2 of the Act and are wider in scope than the activities defined in section 262 which sets out the recoverability of fisheries and conservation activities. The fact that an activity is a Fisheries or Conservation Service as defined by the Fisheries Act does not imply that the activity may be cost recoverable. For a service to be cost recoverable, it must first be assessed against and pass the thresholds contained in the Act and then be considered under the Cost Recovery Rules for the levels of cost recovery. If a service is inconsistent with the principles in section 262, it must be presumed that the activity is not cost recoverable.
16. It is our view that a number of past and current services that have been subject to cost recovery do not meet the statutory definitions in section 2 of the Act, and/or are inconsistent with the cost recovery principles in section 262 of the Act. As a consequence, the Crown has unlawfully levied the industry for these services. Our view is that MPI's current cost recovery proposals continue that unlawful activity.

General Public Interest

17. The Act requires that services provided in the general public interest rather than in the interest of an identifiable person or class of person cannot be cost recovered. Most cost recovery of Government activities takes place in a context of "public goods", "club goods" and "private goods". It should be noted that "public goods" and "services in the general public interest" are not necessarily synonymous. While public goods may be provided in the general public interest, general public interest invokes wider considerations than public goods and includes goods and activities provided which might otherwise be considered to be club or private goods but are provided in the general public interest. A general public interest need not be limited to specific goods or services – it may be a concept, a societal objective or a societal standard. To assess whether an activity or output is undertaken in the general public interest requires an assessment of the purpose of the activity.
18. We consider that general public interest includes, among other things:
 - a. The sustainable utilisation of New Zealand's fisheries resources;
 - b. The maintenance of law and order;
 - c. Management of protected species; and
 - d. Management of the benthic habitat.
19. We would expect that some of the cost of MPI activities currently attributed to commercial fishstocks e.g. compliance, stock assessment, protected species research and benthic research, should contain a significant element of Crown funding to reflect the general public interest in those matters. New Zealand prides itself on its image and history of a sustainable economy. Stock assessment research and protected species management are indisputably management tools to maintain and promote that image and the responsible stewardship of our natural resources. We would expect the share of Crown funding to be guided by the public interest of wider society in such issues. For example, we would expect the compliance, general management of protected species and benthic research activities to be fully funded by the Crown. Given the shared general public interest and the extractive users' interest, we would expect sustainable utilisation research to have a contribution from the Crown to reflect that wider interest.

Adverse effect

20. The principle contained in section 262(d) of the Act allows for fisheries and conservation services that are provided to avoid, remedy or mitigate a risk to, or an adverse effect on, the aquatic environment or aquatic biodiversity to be cost recovered.
21. Adverse effect is not defined in the Fisheries Act per se. In the absence of any legislative definition, adverse effect needs to be interpreted in the context of the purpose and principles of the Act. Section 9 provides the relevant environmental principles and obligations that inform the definition of adverse effect.
22. By implication, an impact that is adverse to an individual or protected species, but not of sufficient magnitude to compromise the long term viability of the species concerned, is not an adverse effect in terms of the Act.
23. It is clear from a contextual analysis of the Act, and its interpretation by the Courts, that the risk or adverse effect referred to should not be construed as any negative impact on the aquatic environment.
24. To qualify for cost recovery under this principle, an adverse effect must exist or a material risk of an adverse effect be demonstrated. It is not sufficient to assert or allege such a risk exists without the provision of supporting material and rationale. That point was made clear in the Auditor General's report of December 2002. It is also not acceptable to continue to impose cost recovery when it has been clearly demonstrated that the commercial fishing industry does not have an adverse effect or a risk of such an effect.
25. While commercial fishing may have an adverse effect or pose a risk of such to aspects of the aquatic environment, e.g., seabirds or the benthos, it does not necessarily imply that any research or service undertaken in respect of that effect or risk is cost recoverable. The Act restricts cost recoverability to services to avoid, remedy or mitigate known risk or adverse effects. It does not extend to dimensioning that risk, general environmental or protected species management or undertaking wider biological research.

The Rules

26. In respect of the Rules, we do not accept that the rules reasonably reflect the principles and intent of the Act. Our specific comments on the validity of the schedule items are as follows:

Activity	Comment
Surveillance and monitoring and enforcement of commercial fishing activities	The maintenance of law and order are matters of general public interest. As with other surveillance and enforcement activities, they should not be cost recovered from commercial fishing. These are not club goods and the sector has no means to enforce standards and regulations on fishers or quota-holders.
Research relating to protected species populations where risk to those populations by human intervention has or has not been estimated	The risk to a protected species population from human intervention is immaterial to the setting of any cost recovery rate. The issue at stake is whether commercial fishing activity poses an adverse effect or a risk thereof to the protected species population. In the event that commercial fishing poses or can be demonstrated to pose

	an adverse effect or risk thereof, then what is cost recoverable is research to avoid, remedy or mitigate that risk or adverse effect. Research into the population for management of the species is a general public interest matter and is not cost recoverable.
Services (including research) provided to avoid, remedy, or mitigate that portion of the risk to, or adverse effect on, the aquatic environment or biological diversity of the aquatic environment caused by commercial fishing	Cost recoverable activities are limited to those specifically related to the avoidance, remedy or mitigation of that risk or adverse effect. Wider research relating to the existence, scale or consequences of effect are not cost recoverable.
Stock assessment research	The sustainable utilisation of New Zealand's aquatic resources is a matter of general public interest. The management outcome of sustainable utilisation is not limited to the extractive users of the resource. All stock assessment research contains an element of general public interest which is not reflected in the current recovery rules.
Observer coverage	Observers are not a fisheries service as such, they exist to collect data for other purposes. The cost recoverability of observer activities therefore needs to be assessed in relation to the services they provide.
Monitoring harvest levels	Catch reporting and the monitoring of harvest levels is an operational facet of sustainable utilisation and contributes significantly to the general public interest.
Quota and commercial fishing administration and registry services, including access and introducing new species into QMS	The registry activity that is cost recovered is limited to the management of registers, reporting of catch and the issue of permits. Activities such as spatial access and introducing new species to the QMS should not be cost recoverable under the principles.

27. We consider it would be appropriate that the Ministerial advice on the 2015/16 levies should note that we consider the Minister to continue to be in breach of section 263(4) of the Act when recommending the cost recovery rules were consistent with the principles in section 262.

Inequity for Stocks with Low Catch Levels

28. The Cost Recovery Rules require that the costs for services are allocated to fish-stocks on the basis of the TACC times the port price (the Port Price Index) for the stocks involved. That Port Price Index basis, introduced in the 2001 Rules, was used to reflect the value of benefits to or risks imposed by the stocks. While that basis was appropriate in 2001 when there were a small number of QMS stocks, primarily all target stocks with high levels of catch relative to the TACC, it is no longer appropriate in 2015 when there are significantly more bycatch stocks in the QMS stocks, a significant number of stocks introduced on an experimental basis with a nominal TACC and no previous catch and a number of stocks with significantly lower catch levels relative to the TACCs. For these stocks, the Port Price Index significantly over-inflates

the value of or the risks imposed by the stock and results in a disproportionately high level of costs attributed to the stock and excessive levies, as shown in the following table:

Percentage of Catch to TACC	Number of Stocks	Levies Paid \$	Percentage of Levies Paid
0%	133	99,930	0.34
>0% and <5%	69	1,306,520	4.50
5% <10%	20	302,554	1.04
10% <20%	25	1,695,628	5.85
20% <50%	65	3,266,559	11.26
50% <100%	163	18,160,957	62.61
100% or more	60	4,171,348	14.38
Total	535	29,003,496	100.00

29. While the research costs recovered from such stocks can be in part be managed by the selection of stocks over which research is conducted, it is less easy to obtain an appropriate share of compliance and registry costs which are spread over all QMS and some non-QMS stocks.
30. The following table illustrates the impacts when catch levels are used rather than TACCs for stocks with low catch levels.

Cost Recovery for Low Catch Stocks under existing regulations				Assuming Catch used in Levy Model	'Over-recovery'
Stock	Compliance \$	Registry \$	Total \$	Total \$	\$
BIG1	120,276	48,929	169,205	29,979	139,226
HAK4	26,110	10,622	36,732	3,723	33,009
SCA7	64,603	26,281	90,884	10,584	80,300
SQU1J	611,840	248,900	860,740	3,108	857,632
YFN1	18,160	7,388	25,548	145	25,403
Total	840,989	342,120	1,183,109	47,539	1,135,570

31. From the perspective of a quota-holder in such stocks, the cost recovery levies paid are disproportionate to the services delivered to the stock. Where there is no catch or only low levels of catch, the risk of non-compliance or sustainability impacts is very low and actual compliance expenditure on the stock should be minimal or nil. Equally with no catch returns to be processed, actual registry costs should also be low or nil. For the stocks highlighted in the table above, the Cost Recovery Rules provide an inequitable outcome and provide another example of inconsistency with the Fisheries Act.
32. The purpose of the Port Price Index is to achieve a relative metric for a stock reflective of the stock's value of and risks to sustainable utilisation. Clearly, the existing practice for calculating the Port Price Index fails to provide equitable metrics for stocks with low relative catch levels.
33. It is not possible to change the definition of the TACC without significant changes to the Act and the regulations. Furthermore, reducing the TACC simply to reflect the principles of cost

recovery and thereby equitably apportionment costs is inappropriate. The TACC is a sustainability measure and is in place to limit total extractions. To manipulate the TACC in an attempt to implement the Act's Cost Recovery Principles demonstrates the inadequacy of the Cost Recovery Rules.

34. On the other hand, the port price is determined by the Chief Executive based on survey returns. As such, there is a discretionary power that can be exercised to provide a rate to meet the purpose of the index. For stocks where the catch is significantly less than the TACC and the market price is applied to the TACC, the Port Price Index significantly inflates the value of the stock and the risk posed by the stock relative to other stocks.
35. It is proposed that the inequity for stocks with a catch of less than 10% of the TACC be addressed by using the MPI Chief Executive's powers to determine an appropriate port price. It is proposed that the CEO multiply the port price from the survey by the proportion of catch to TACC to reflect an average weighted price for the full TACC. The uncaught TACC would effectively have a value of \$0 per kg. Adopting that approach will reduce the Port Price Index to an equitable level relative to other stocks.
36. This will re-allocate costs to other stocks but that re-allocation will only be the consequence of what the 2001 Rules sought to provide for the fulfilment of the principles in sections 262(c) and 262(d) of the Fisheries Act 1996. It could be argued that those stocks with higher consequential costs have received an undue enrichment from the failure to address the calculation of levies as the QMS evolved.

Aquatic Environment Research Has Lost Direction

37. We are disappointed with the content and quality of the Aquatic Environment Research programme for 2015/16. The programme consists of 17 projects of which:
 - a. Ten are from 2014 and seven for 2015;
 - b. Ten are placeholders (including five from 2014 which are still not yet tendered);
 - c. The aggregate value is \$1,105,100, with \$720,100 of that relating to 2014 projects and \$385,000 to new projects.
38. Projects - INS2014-01, PRO2014-01, PRO2014-03, PRO2014-05, ENV2014-03, PRO2015-01, PRO2015-04A, PRO2015-04B, ENV2015-03 and ENV2015-4 – are placeholder projects with no or poorly specified content. We oppose any projects of a placeholder nature. Industry has no detailed understanding as to what it is funding or why the project is being undertaken, what the implied adverse effect or risk is, has no understanding of the total cost of the project, cannot reasonably attribute the cost to appropriate fishstocks and cannot assess the cost recoverability of the project.

INS2014-01 - a sorry tale of placeholder projects

39. We review the history of this project as an example of the problem with placeholder projects.
40. The objective of INS2014-01 was to establish indicators to monitor trends in the stock status of specific QMS shark, skate and chimaera populations. The project was subsequently included in the 2014/15 levy model for an amount of \$124,664 being \$100,000 nominal project cost and a research overhead of \$24,664. A range of inshore shark stocks were levied for the project.

41. The risk assessment for shark, skate and chimaera species was conducted last year with the intent of guiding and informing future research and management in relation to sharks. This work has been neither finalised nor released. Until the risk assessment is released, made available for consultation and assessed by the appropriate working group in respect of the MPI Research and Science Information Standard, the risk assessment should not be accepted as being quality information to inform fisheries management decisions. The determination of research needs is an integral part of fisheries management. Until the AEWG process is complete, commissioning of any research is premature. It is our understanding that the assessment indicated that no QMS sharks were at high risk from commercial fishing.
42. In March 2015, MPI sought to vary the project, focusing on sharks that scored highest in the risk assessment. Just because those sharks scored the highest, it cannot be said those sharks are at high risk from commercial fishing in New Zealand. Where that threshold exists in a Level 1 Risk Assessment is not defined. The non-QMS sharks identified were largely deepwater sharks. MPI sought to change the objective to those non-QMS species while still levying the inshore QMS shark stocks – the correlation between the research species and the levied stocks being effectively zero. In short, there was no need for the project as originally conceived. It is not known how the project has been progressed.
43. In the 2015-16 levy model, MPI proposes to levy the same inshore QMS shark stocks a further \$25,000 notwithstanding there being no project proposal, no need for the research project in the first instance and an intent to divert the funding to a different range of non-QMS stocks caught by a different sector of the commercial fishing fleet. This approach simply cannot be construed as lawful.

No Strategic Direction

44. While the Ministry previously provided a medium term research plan for the aquatic environment, there is no current plan. While there are National Fisheries Plans and Annual Operating Plans for a number of fisheries which contain aquatic environment issues, there is no strategic or medium term aquatic environment plan to guide future research. This appears to be reflected in both this year's research plan and in preceding years' plans, which are becoming dominated by research "needs" derived from NPOAs.
45. While NPOAs might be used to inform research planning, industry would prefer to see a co-ordinated aquatic environment strategic plan being developed to set out the priority issues and the research needs for the future instead of the ad-hoc nature of the current research plan.

Completion of Research Projects

46. The Unders and Overs review this year contains 54 research projects that have been finalised. We commend the Ministry for seeking to finalise these research reports. Research is undertaken to inform management. Delays in the presentation of research findings limit the capacity of MPI to properly manage fisheries in a timely manner.
47. Notwithstanding the progress referred to above, our analysis of incomplete research projects indicates that there are still a significant number of projects that remain to be finalised (some dating back 10 years). These include only those projects where industry has been levied for the project:

Year Initiated	Number of Projects	Total Funded (\$m)	Industry Levies (\$m)	Expenditure (\$m)
2004	1	0.04	0.04	0.12
2005	1	0.20	0.15	0.17
2006				
2007	4	3.41	1.86	2.96
2008	4	1.40	1.01	0.95
2009	7	4.18	3.33	4.57
2010	35	26.76	25.36	25.12
2011	8	0.83	0.69	0.87
2012	17	3.11	2.61	1.80
2013	30	9.59	9.58	5.80
2014	32	6.42	3.60	1.19
Total	139	55.96	48.24	43.56

48. Of the above projects, 106 have over-funding totalling \$20.52m and 33 have under-funding of \$8.12m. Industry is therefore a net lender to the Crown to the extent of over \$12m per year. That is inappropriate and unlawful. The excess funding arises from a number of reasons, including placeholder projects and projects not tendered – these are discussed elsewhere in this submission.
49. Given the delays in the provision of research information, we submit that those research projects that are more than five years old and have failed to present interim or final research reports should be closed and the industry levies repaid to quota-holders.

Cost Recoverability of CSP Programme

50. Section 264 of the Act, which requires the Minister to be satisfied that the proposed levy order is consistent with the Cost Recovery Rules, applies to both the levies for MPI activities and CSP activities.
51. In our submission of 22 April 2015 on the proposed CSP research programme, we raised similar issues as to the cost recoverability of CSP activities as are raised in this submission on the levy model. MPI should review our submission on CSP activities in the context of providing the Minister with advice as to the consistency of DOC's CSP programme with the Rules. Fisheries Inshore NZ would be happy to provide a copy of our submission to you.

Recovery of Overheads

52. The costs recovered by MPI include a recovery of MPI overheads. The overheads includes corporate payments for accommodation, communications, personnel services, IT services, financial management, strategic management and the executive management. Information provided in 2014-15 indicated that overheads charged to science, compliance and registry activities were in excess of 45% of the direct costs of those activities.
53. It is unclear as to what percentage if any of those overheads should be cost recovered. For example, what percentage of the communications budget or the strategic or senior management budget could be deemed to be a fisheries service where commercial fishing is a beneficiary or a risk exacerbator?

54. The cost recovery regulations refer to costs including direct and indirect costs. Overhead costs are not included in the definition of costs.
55. In the absence of any information as to the consistency of recovery of the costs of corporate activities with the principles of the Act, there should be no recovery of MPI overheads. If any corporate overheads should appropriately be cost recovered, they should be identified and recovered as a separate cost recovery item rather than being merged into other cost recoverable items.

PART II COMMENTS ON COMPONENTS

56. We comment on more stock-specific or activity-specific matters in the levy model.

Compliance

57. As indicated previously, we are of the opinion that the compliance activity is not cost recoverable. It is a matter of general public interest.
58. We note that the activities of the group, in terms of inspections and enforcement action, have decreased in recent years. On that basis, we would have expected some decrease in the level of compliance spending. However, the Ministry asserts that expenditure continues to rise.
59. We are concerned as to the robustness of the compliance cost recovery budget and the virtual absence of any supporting information for the activity. There is no strategic or annual operating plan for the group. There is no statement of the services to be provided in respect of compliance and there is no supporting statement of performance for the year. While there was a joint Ministry/industry group formed in September 2005 to review the compliance function from a strategic perspective, that group ceased to operate in 2007 with no report or recommendations presented to the Ministry or industry.
60. Industry is concerned that the expenditure on compliance and enforcement activities by the Ministry continues to grow and for 2015/16 comprises 45% of the MPI fisheries appropriations. In contrast, the expenditure on Operational Advice on Sustainability and Management Controls in Fisheries which includes fisheries information has fallen to 28% in 2015/16. Industry does not support that switch of expenditure and contends that the trends should be reversed if New Zealand is to seek growth objectives.
61. Industry proposes that the Ministry and industry collaborate on a review of compliance activities to document the role and activities of compliance, identify potential savings and make recommendations as to future directions for the group.

Unders and Overs

62. These are the remaining unresolved issues as at the date of the submission.

Research – Administration Rate

63. MPI has assumed an administration rate of 20% on research projects rather than use the actual rate of overhead charged on the projects.

64. The historical rates of overheads, applied by MPI to research projects, were:

Year	Research Overhead %
2013/14	13.75
2012/13	15.79
2011/12	15.35
2010/11	15.62
2009/10	13.88

65. A rate of 20% is unrealistically high when compared to the above rates. While the preference would be to use the overhead rates for the years concerned weighted by the annual expenditures, if an average rate is to be used, then it should be no more than 15%.
66. The choice of rate has significant implications in the review of completed research projects. The impact of this change is particularly noticeable in the case of DEE2011-06, where if a 20% overhead is applied to the consulted cost, an under-recovery of \$554,019 is claimable by MPI. Claiming at a rate of 20% when the costs were as given in the above table results in an undue enrichment of over \$169,550. However, if the actual rates of overhead are applied, there is no under-recovery claimable from industry.

Research – Projects

67. Project RCO2012-01 is shown as withdrawn. If it is withdrawn, the levied funds should be refunded in full.
68. Project BYX2008-01 is shown as completed but with an expenditure of \$22,351 compared with levied cost of \$157,256. We have been unable to find any variation or any output research report from the project and believe it was cancelled/withdrawn. The full amount levied should be refunded.
69. Project SNA2012-02 had a variation of \$103,250, not \$200,000 (see variation #196, 5/7/2013). There were no subsequent variations for the increased cost. The new estimate after consultation should be \$103,250. That will change the recovery status of the project.
70. Project DWR2013-01 is shown as having a consulted variation in the project price. We have no indication of any variation request being received to increase the consulted cost to \$1,100,000. We cannot agree a recovery is appropriate.
71. In addition to these specific projects that have cost recovery implications, we are concerned at the number of both levied and Crown-funded projects that remain incomplete or materially late. We have commented on this matter earlier in this submission.

Observers – Daily Rate

72. There have been ongoing significant differences between the daily rates budgeted and the costs of delivered days for observers services. Charges for observers are divided into three categories – deepwater, pelagic, and inshore.
73. MPI observer services for deepwater operate on an agreement in place with the Ministry that the rate for both budgeted and delivered days will be \$450 per day. In the event that the delivered rate exceeds \$450, the Ministry is required to absorb the additional cost.

74. The daily rates for pelagic and inshore observer services were set by the Ministry to provide incentives to provide cost-effective services. Unlike the deepwater sector, the rates were not agreed to apply to delivered days.
75. In this and previous years, MPI has sought to recover the full cost of providing observer services through the daily rate for the services delivered. Industry has consistently opposed that proposal. The matter is not clearly defined in the Unders and Overs Agreement. A pricing mechanism needs to be agreed for these fisheries.
76. The approach MPI is using is to look at only the project costs rather than the delivered days. Industry has a fundamental problem where the number of days delivered is not achieved. For example, in the inshore in 2013/14, of 1,368 budgeted days, only 366 days were delivered. The levied days were budgeted at \$635 per day (a total revenue budget of \$868,680) whereas the amount claimed is \$1,132 per day, a cost of \$470,116. Under the Ministry's approach, industry receives a discount for the shortfall in days delivered but must pay the actual cost of the days delivered, notwithstanding the price of that day being approximately double the budgeted prices. Industry contends that it is not reasonable that it should pay \$1,132 per day for the days delivered.
77. The Unders and Overs agreement assures the Ministry of receiving some increase in the price at which services are delivered. Where the Ministry has control of the inputs and the deliverables, the permitted over-recovery is limited to 10% of the levied cost. Where the Ministry contracts delivery and does not have total control over the deliverables, the allowance is 15%. Given the nature of observer services more closely aligns to the latter category, the Ministry should be entitled to receive an additional 15% allowance on its levied daily cost. That is, the Ministry should only receive revenue of \$267,578 and the remaining levy amount of \$601,102 should be repaid to industry. The remainder of the cost would be not recoverable from industry.
78. Industry is more generally concerned at the cost of observer days. We understand that as part of a comprehensive Observer Services Strategy Review, which commenced in around 2009/10, the issue of high costs was addressed through a specific work stream. It appears to industry that the recommendations from that work have not been implemented to any meaningful extent and the costs of observer days remain excessive. A second work stream associated with the Observer Review was to establish observer standards and an audit function to ensure the delivery of a high quality service and the possibility of subsequent outsourcing. The latter issue was progressed by MPI to the point of seeking Expressions of Interest from the market to provide third-party observer services. Again, this was never acted upon and no further action has occurred to assist delivering effective and cost-efficient observer services. We are optimistic that progress has been made on video monitoring and we consider this should be assessed as a possibility to replace observers in some circumstances. However, this must be delivered as an alternative to expensive human observers and in a far more cost-effective manner. Industry needs to see a greater commitment to achieving cost effective monitoring and is keen to work with MPI to achieve that outcome.

Comments on Specific 2015-16 Research Projects

79. We have a number of comments on the proposed projects to be levied in 2015-16 as follows.

INT2015-01 ECSI Trawl Survey

80. We note that the Ministry has made a specific allowance for a public good component in respect of benthic invertebrates. While we welcome that decision, it would appear that MPI considers that public interest exists only in respect of non-QMS species. It is difficult to understand why that contribution should only be 50% when there is no demonstrated risk or adverse effect to benthic invertebrates for the commercial fishing sector. As discussed, section 262(d) requires there to be a risk or adverse effect on the aquatic environment and for the service to avoid, remedy or mitigate that risk or adverse effect for cost recovery to be valid. This particular objective of the project meets neither of those thresholds.
81. Having recognised the general public interest in the benthic invertebrates, we would have expected MPI to recognise that there is a significant public interest in the QMS species and fisheries sustainability that a significant contribution to the remainder of the programme costs would be in order.
82. Southern Inshore has requested that a cost benefit analysis be completed for the ECSI trawl survey to ensure that it is cost effective and to assess whether the information gathered is being fully utilised within the MPI management framework for inshore fisheries. Industry should not continue to pay for any surveys where the information is not directly utilised for fisheries management and stock analyses.

MOK2015/01 Catch at Age MOK1 and MOK3

83. This project has been opposed in previous years. Those objections were supported by MPI and projects MOK2009/01, MOK2010/01, MOK2011/1 and MOK2014/01 were not tendered.
84. We oppose this project on the basis of the management of the stock and the cost of the project. In MPI's Draft Inshore Fisheries Plan, MOK 1 is a Group 3 stock and MOK 3 is a Group 6 stock; neither is highly desired by any sector. As such, moki needs to be managed in a cost effective manner. The Plenary indicates MOK1 and 3 should be managed under a Level 2 - Partial Quantitative stock assessment, with the next assessment due in 2017.
85. With TACCs of 402 tonnes for MOK1 and 127 tonnes for MOK3, the stocks have gross revenues at port price of \$676,060 and \$160,050 respectively. ACE revenues are \$310,000 and \$40,000 respectively. Project MOK2015/01 is estimated to cost approximately \$220,000 with \$133,037 allocated to MOK1 (44% of the ACE revenue) and \$31,446 to MOK3 (79% of the ACE revenue). At a realistic estimation of profit in these fisheries, the current proposal would remove all profit for the next four years. That is not tenable.
86. The project should be withdrawn as in previous years and alternative management approaches, such as management procedures or an adaptive management programme, be considered.

HMS2015-01 Blue Shark – age, growth and reproduction

87. The information to be produced from this project is seen as beneficial to the management of blue sharks in the Western and Southern Pacific, not specifically to the management of sharks in the New Zealand EEZ. The information gathered will be used to inform stock assessments of blue shark in the wider Pacific area. That stock assessment process was

earlier set aside due to poor levels of information on blue shark catch from other Pacific nations.

88. Indicator analyses have been undertaken for blue, mako and porbeagle sharks and research projects on the age and growth of porbeagle and mako sharks have been commissioned. The cost for the identical project for mako sharks is approximately \$110,000, with \$50,000 levied in 2014/15 and \$60,000 to be levied in 2015/16.
89. The project has an estimated cost of \$54,000 in 2015/16 with \$50,000 of that to be recovered from BWS1. With the collapse in demand for blue shark and the conservation methods in place, port prices, ACE prices and catches of blue shark have fallen significantly. Gross catch revenue at the current port price is estimated to be \$4,300 per annum and ACE revenue based on catch is estimated to total \$1,600 per annum. Compared to those revenues, a project cost of \$50,000 is unacceptable. If the cost escalates as per mako sharks, a total project cost of \$100,000 is unconscionable.
90. Given the nature of the information being obtained benefits management of the wider Pacific blue shark population and the parlous state of the fishery, this project should not be cost recovered from the New Zealand HMS fishery.
91. That reasoning also applies to the cost recovery for the HMS2014-02 project on mako sharks. We oppose any recovery of costs for that project in 2015-16.

HMS2015-02 Isotope Analysis

92. An isotope analysis (HMS2014-05) was undertaken in 2014 for BIG1, STN1, and SWO1. A total of \$141,000 is to be levied for that project, \$25,000 in 2014/15 and \$116,000 in 2015/16. It is unclear what an isotope analysis will cost in total for the five HMS species to be analysed in HMS2015-02.
93. We note that, while the 2014-05 project was only levied against the BIG1, STN1 and SWO1 stocks, this project will be levied against wider HMS stocks but including the BIG1, STN1 and SWO1 stocks levied already for the earlier project. Those stocks cannot be charged twice by levying both the HMS2014-05 and the HMS2015-02 projects.
94. The project seeks to identify the source and migration route of the pelagic sharks and tuna that are caught in New Zealand waters to inform the development of a population model of shark and tuna stocks in the wider Pacific. While the project will contribute to a better understanding of the source of HMS stocks caught in New Zealand, the primary benefits relate to the wider Pacific management of shark and tuna populations. The full costs of the project should not be borne by the New Zealand industry.
95. It would be equitable to allocate the share of cost to the New Zealand TAC based on the New Zealand TAC as a proportion of the wider Pacific catch or allocation of the species involved.
96. The cost cannot be sustained by the ALB, BWS1, MAK1, POS1 and SKJ stocks. We would support the project be undertaken but not cost recovered.

PRO2015-01 Cryptic Mortality Seabird Risk Assessment

97. The Level 2 risk assessment has undergone significant development since its introduction. At present the assessment uses assumed cryptic mortality rates based on the available international information. The rates used have been demonstrated to be conservative, that is, are higher than indicated by those international comparisons.

98. INT2013-03 provided six recommendations to improve cryptic mortality assumptions in the risk assessment. Those recommendations and our comments are:
- a. Amend data protocols such that potential cryptic mortalities will be routinely documented: While improved data protocols may assist the quality of information, the cryptic scalars are applied to observed deaths. It is unclear as to how the improved data might be used.
 - b. Method-specific scalars for bottom longline fisheries especially vessels less than 34 metres in length: We see more value in estimating scalars based on the method than the length which should have a proportional relationship to the number of mortalities.
 - c. Better estimates of aerial warp strikes: It is unclear how improvements with aerial warp strike estimation would be undertaken.
 - d. Better estimates from trawl vessels less than 28 metres in length: We contend that the mortality rate including the cryptic scalar will be relative to the height at which warps exit the vessel – generally related to vessel length. We consider a reasonable estimate can be obtained by using an appropriate length scalar to well observed deep water vessels.
 - e. Cryptic mortality applied to smaller surface long line vessels: There appears to be considerable uncertainty as to the appropriate risk posed by this class of vessel and we would propose the review focus on this recommendation.
 - f. Experimental approaches to estimating cryptic scalars: we have no interest in funding work of this nature.
99. The recommendations related to a range of gear types and fisheries. It would be inappropriate to propose any cost recovery until the research proposal is defined. Not all fisheries pose a risk to seabird populations and not all seabirds face risk from commercial fishing. The identification of the fishstocks and the level of risk posed will need to be re-assessed once the project is defined. If the project cannot be defined, with only 12 of the seabird species considered to be at a risk of an adverse effect from commercial fishing, and only a limited number of fleets potentially posing an adverse effect, we consider the proposal be Crown funded in full to reflect the absence of an adverse effect.
100. This project represents further tinkering with the risk assessment methodology for the sake of scientific quality rather than management value. The only material management value lies in the estimation for small surface longline vessels but we would expect the value to be lower if only one recommendation is to be analysed.
101. As outlined in a letter to Dave Turner on 19 March 2015, FINZ holds the view that the best outcome for seabirds in New Zealand is to invest in systematic and widespread implementing mitigation techniques that are known to reduce risk. The work proposed will not save a single seabird and has been preceded by \$5.67M in the last five years. Further work will produce ever-diminishing returns and will neither grow, nor protect New Zealand.

PRO2015-04 Key information gaps for Maui dolphins

102. An identical project (PRO2014-03) with a projected cost of \$150,000 was levied last year. That project has still not been let. Furthermore, the Maui Research Advisory Group has yet to establish a prioritised plan for Maui dolphin research. We cannot support yet another placeholder project being proposed when there is no research priority identified.
103. Furthermore we are unable to support the cost recovery of any likely research project if the project was of the nature of the bullet-pointed themes in the proposal. First, an adverse effect from current fishing needs to be demonstrated. The result of the observer programmes in the Taranaki Bight has indisputably discredited the outcomes of the Currey et al. risk assessment of 2012. The highly questionable outcomes of that report in respect of assumed catch of Maui dolphins by commercial fishing cannot be relied to inform and justify cost recovery.
104. Second, the research themes contained in the bullet points refer to matters other than the avoidance, mitigation or remedying of any risk or adverse effect. The themes listed are general public interest matters and cannot be cost recovered. For example, toxoplasmosis cannot be said to be linked to the fishing sector and research into toxoplasmosis is not recoverable for the commercial fishing sector.
105. Third, without a specific objective for the research, the stocks to be appropriately levied cannot be identified. The principles require that the costs be attributed to those persons causing the risk or adverse effect. That does not validate the inclusion of all stocks that might be targeted in areas adjacent to the established habitat of Maui dolphin.
106. We oppose the cost recovery of the project and consider the Ministry should provide a specific objective for a research proposal rather than promote placeholders.

ENV2015-03 Addressing key information gaps – sharks

107. This is yet one more placeholder and is opposed by the industry for the same reasons as outlined above to support the withdrawal of INS2014-01. The project has no objective other than MPI being seen to act upon the recommendations of the NPOA-Sharks.
108. We oppose the cost recovery of the proposal on the basis that:
- a. The objective of the proposal is not specified;
 - b. The sharks at risk have not been identified;
 - c. We understand that the risk assessment did not score any shark species at high risk (although said assessment is yet to be reviewed or released);
 - d. Without identifying the sharks to be reviewed, the relevant fish stocks from which to recover funds cannot be identified.
109. Again with reference to the cost recovery principles we make the following observations:
- a. The subject of any potential risk or adverse effect has not been identified;
 - b. The cause of that potential risk or adverse effect has therefore also not been identified;
 - c. There is no detail of how the service provided will avoid, remedy or mitigate that risk or adverse effect;
 - d. There is no detail to justify attribution of levies among fish stocks.

110. Our view is that if this proposal is to progress it would constitute an unlawful recovery of funds.

ENV2015-04 Estimation of incidental captures, fish by-catch and discards using electronic monitoring

111. While we support the capability of electronic monitoring being assessed and developed, we consider this research to be experimental and more appropriate as a Stock Assessment Methodology project or for Seafood Innovations funding.
112. The project has, as its core, the analysis of trials to assess the capability of electronic monitoring. However, the project also states those trials are expected in the future and have yet to be undertaken. It is not clear when the trial material will be available for analysis.
113. The project however also seeks to develop the technology to convert electronic monitoring data into objective information on interactions and impacts. The technology developed will be a private company good specific to their hardware and software applications. We see that as a commercial research and development project that should not be funded from fisheries management levies.
114. The project states that the details of the work required, the costs and the stocks to be levied cannot be determined until the nature of the information available is known. That being the case, this proposal cannot be cost recovered.
115. We oppose the cost recovery of this project and would encourage the Ministry to work with providers of electronic monitoring systems to develop research and development projects to be funded as more appropriate R & D projects.

INS2014-01 Inshore Elasmobranch Indicators

116. As discussed previously in this submission, INS2014-01 provides a sorry tale of placeholder projects.
117. In the 2015-16 levy model, MPI proposes to levy the same inshore shark stocks a further \$25,000 notwithstanding there being no project proposal, no need for the research project in the first instance, an intent to divert the funding to a different range of non-QMS stocks caught by a different sector of the commercial fishing fleet.
118. We oppose the recovery and propose that INS2014-01 be withdrawn and the levied funds returned to industry.

Additional Funding for Projects Not Yet Tendered

119. We discussed previously the problem of project PRO2015-04 which was an identical project to an as-yet-untendered project from 2014-15. Levies are sought in 2015-16 to supplement the following projects for which tenders have not yet been issued, let alone contracts awarded. There is no justification to levy further funds when contracts have not been tendered and there is no indication of the project cost.

Project	Project Title	Levied 2015-16	Levied 2014-15	Total levied
BEN2014-02	Monitoring recovery of benthic flora on the Graveyard complex	\$100,000	\$0	\$100,000
BEN2014-03	Monitoring recovery of benthic flora in Spirits Bay	\$100,000	\$0	\$100,000
ENV2014-01	NPOA-Sharks: Comprehensive risk assessment	\$65,802	\$124,664	\$190,466
ENV2014-02	NPOA-Sharks: Age & growth of selected at-risk species	\$76,768	\$87,265	\$164,033
INS2014-01	Inshore Elasmobranch indicators	\$27,417	\$124,664	\$152,081
KIN2014-01	Recreational catch at age in KIN1	\$109,395	\$224,395	\$333,790
PRO2014-01	Improving information on the distribution of key protected species	\$54,835	\$62,332	\$117,167
PRO2014-03	Research in response to advice from the Maui's dolphin research advisory group	\$82,252	\$93,498	\$175,750
PRO2014-05	Reducing uncertainty in biological components of the risk assessments for at-risk seabird species	\$137,087	\$155,830	\$292,917
PRO2014-06	Update of level 2 seabird risk assessment	\$54,835	\$62,332	\$117,167

120. BEN2014-02 and BEN2014-03 were Tier 2 projects in 2014-15. They would only proceed if funding allowed in 2014-15. As it was the funding was not available and the projects were not levied in 2014-15 and no contracts have been tendered. Their existence in the 2015-16 levy model only serves to re-inforce the paucity of strong research themes and lack of direction of the Aquatic Environment research programme. The levy model contains only a recovery of the first year costs of \$100,000 for each project. With costs of up to \$1,000,000 and \$500,000 respectively, projects BEN2014-02 and BEN 2014-03 represent major investments and should have been highlighted for consultation in 2015-16.

121. Both projects are a further analysis of the effects of commercial fishing on the aquatic environment. While previous reports demonstrated that there had been negative effects on the benthic habitat as a result of bottom impacting fishing, this is not the same as an adverse effect. As alluded to in Part 1 of this submission, an adverse effect must be assessed in the context of the purpose of the Act and relevant jurisprudence (e.g. *Squid Fishery Management Company v Minister of Fisheries* (7 April 2004) CA 39/04).

122. The two research projects focus on specific locations with no assertion that they represent all or a significant part of the habitat type. It is this sort of consideration that is required to distinguish between an impact caused by fishing and an adverse effect. In addition, given that the two areas in question are closed to trawling, it is unclear how these projects could avoid, remedy or mitigate an adverse effect that no longer exists. We consider these two projects are interesting but are not cost recoverable.

123. We note that the comprehensive risk assessment for sharks ENV2014-01 was undertaken largely with MPI resources and the assessment is in the final stages of publication. We cannot understand how the costs can have escalated to the level in the model and why costs can be levied retrospectively for this project in 2015-16.

124. INS2014-01, ENV2014-02, PRO2014-01, PRO2014-03, PRO2014-05 and PRO2014-06 were placeholders and remain placeholders with no research objectives yet specified. As we have set out in this submission, we consider the levying of such projects to be unlawful. Our view is that it is equally unlawful and even less reasonable to seek additional funding for projects that do not effectively exist. We comment further on these projects:

- a. INS2014-01 – we have discussed this project extensively earlier in this submission and consider it is not cost-recoverable. It should be withdrawn and the funds returned.
- b. ENV2014-02 – it is our understanding that the risk assessment indicated no shark species was at high risk effect from fishing. There are no grounds for cost recovery.
- c. PRO2014-05 and PRO2014-06 – given the limited number of seabird species with an adverse effect, or risk thereof, from commercial fishing, it is not reasonable or lawful to continue to levy industry to the extent planned under these projects.