

9 September 2016

Mr Martyn Dunne
Chief Executive
Ministry for Primary Industries
PO Box 2526
Wellington 6140

Dear Martyn

COST RECOVERY LEVIES 2016-17

1. Thank you for the Ministry's response on our submission on the levies. Needless to say, we do not agree with a number of your views as to the cost recoverability of MPI and CSP activities and will address those in due course, either in the First Principles Review discussions or by alternative means. Notwithstanding those wider issues, there are two issues in your response which require urgent and positive action:
 - a. Project INT2013-01 ECSI Trawl Survey; and
 - b. SNA2015-02 Camera and Observer Monitoring.
2. We believe that MPI has made fundamental errors in its consideration of these two matters and those errors need to be addressed as soon as possible.

Project INT2013-01 ECSI Trawl Survey

3. MPI seeks an under-recovery of \$409,283 for this project.
4. FINZ disputes that claim and believes MPI has made a fundamental but significant error in interpreting the provisions of the Unders and Overs Agreement.
5. There is no dispute that:
 - a. the project was described as having a project cost of between \$500,000 and \$1,000,000 in the 2013-14 consultation documents;
 - b. funding of \$704,366 was approved in the 2013/14 and 2014/15 levy models;
 - c. \$667,514 (95%) was recovered by those levy models; and
 - d. Expenditure on the project totalled \$1,136,244, leaving a deficit in funding of \$431,878.
6. MPI and FINZ have agreed that the budgeted cost for the project should be \$900,000 which is close to the contract price of \$938,120.
7. MPI seeks an under-recovery of \$409,283 for this project on the basis that:
 - a. the deficit should have been included in the 2014/15 levy model and;
 - b. given the actual cost was within 10% of the estimated cost, the industry share of the deficit of \$431,878, being \$409,283 can be cost recovered.
8. Firstly, there was a levy of \$88,857 for this project in 2014/15. That the amount was not sufficient does not in any way justify the recovery.
9. More importantly, MPI has mis-interpreted the Unders and Overs agreement and is seeking a recovery under the wrong set of circumstances. The relevant sections of the Unders and Overs agreement are as follows:

“34 Where the cost of a service exceeds the budgeted cost and **no new outputs** are delivered, then the Crown can recover an under recovery of expenditure in all circumstances where the variance is less than agreed levels of materiality (as set out in **Table 1**). Where the agreed levels of materiality are exceeded, the Ministry of Fisheries and Department of Conservation will only seek to recover the under-recovery if the consultation requirements set out in Table 1 are complied with.”

and

Table 1: Expenditure under-recovery where no new outputs are delivered or where additional outputs (relative to the volume identified in the relevant budget consultation document) are delivered

The Crown can recover in the following circumstances:

Type of service	Materiality threshold	Consultation requirement
<i>Research services subject to the research planning and tender process, where the scope of the research does not change, but cost differs from the estimated budget</i>	<i>Lesser of:</i> <ul style="list-style-type: none"> • \$100,000 (excl GST) • 25% of estimated cost of project • 15% of annual levy for relevant fishstock(s) 	<ul style="list-style-type: none"> • SeaFIC Chief Scientist • Target 2 week turnaround
<i>Research services subject to the research planning and tender process, where the variance is the result of a contract variation</i>	<ul style="list-style-type: none"> • 10% of estimated cost of project and/or • 10% of annual levy for the fishstock(s) 	<ul style="list-style-type: none"> • SeaFIC Chief Scientist • Target 2 week turnaround

10. MPI claims the recovery in that it is less than 10% of the budgeted cost. As can be seen from the above extract, a 10% materiality threshold only applies where a contract variation has been consulted. There was no variation consultation for this project. Reliance on the 10% materiality threshold as per the third row of Table 1 above is inappropriate.
11. The appropriate test is that contained in the second row. That test requires establishing a materiality threshold being the lesser of
 - \$100,000 (excl GST); or
 - 25% of estimated cost of project; or
 - 15% of annual levy for relevant fishstock(s).
12. The variance is the final cost of the project - \$1,136,244 –less the budgeted cost being the budgeted project cost (\$900,000 as given in the MPI response) and a project overhead of 15% (\$135,000 as per the agreement last year that overheads on Unders and Overs should be 15% and as used in this year’s Unders and Overs analysis), a total of \$1,035,000. The variance between the final cost and the budgeted cost is \$101,244. With an estimated project cost of \$900,000, 25% of that amount is \$225,000. 15% of the annual levies for the fishstocks levied for the project amounts to \$156,733. The lowest amount of the three threshold tests is thus \$100,000. The variance for the project exceeds that materiality threshold. Given there was no consultation on any variation, no recovery of the variance as proposed by the Ministry is possible.
13. The levies need to be reviewed and amended to reflect this error.

SNA2015-02 Camera and Observer Monitoring

14. The FINZ and SNA1 Commercial submissions on the cost recovery levies for 2016/17 sought a 50% Crown funding of SNA2015-02, the camera and observer monitoring programme for SNA1. MPI's response denied the claim for 50% Crown funding on the basis that:

“The Letter to stakeholders does not refer to any funding arrangements associated with achieving these monitoring targets, nor did it refer to funding arrangements for the tagging project. MPI notes that the Crown funded the full cost of the initial electronic monitoring trial. Upon completion of the trial, MPI engaged SNA1 industry stakeholders in a number of discussions regarding expansion of the trial to meet the monitoring requirements for SNA1 set out by the Minister. All of these conversations were on the basis that the full cost of camera monitoring would be recovered and that electronic monitoring (EM) achieved considerable cost savings for the industry relative to the cost of observers. MPI considers these discussions supersede references in the 2013 Decision Document. MPI also notes that observer and monitoring costs are 100% recoverable under the Rules and these costs are recovered in full in all other fisheries.”
15. We acknowledge that the Minister's Letter to stakeholders on the SNA1 decisions made no reference to the funding arrangements for SNA1 monitoring or the tagging project. These were contained in a presentation the Minister gave SNA1 stakeholders when announcing the SNA1 decision. The Power Point presentation given by the Minister is attached as an appendix.
16. We refer you to Page 9 of that presentation where it details the funding arrangements for the camera and observer monitoring the Crown would fund \$250,000 for the start-up cost and ongoing data processing costs which were not yet quantified but were estimated to be \$1-2 million, would be split 50-50 between the Crown and industry. Funding arrangements for the tagging project are also detailed on that page with an expected budget of \$7 million, split 50-50 between the Crown and industry.
17. Industry believes these commitments were part of the overall package decided by the Minister. The commitments were not superseded by the discussions with stakeholders on the implementation of electronic monitoring and were not raised in those discussions. That electronic monitoring achieves cost savings is not a ground to overturn the Minister's commitments. Cost savings for MPI activity should be pursued wherever and whenever they can. Equally, that observer services are 100% cost recovered in other fisheries is not a ground to overturn the Minister's commitments.
18. Given the above, there are no grounds for MPI to fully cost recover the costs of SNA2014-02. The levies need to be reviewed and amended to reflect this error.

Need for Speedy Resolution

19. Given the new levies will apply from 1 October 2016 and need to be gazetted prior to that date, we would ask for a speedy resolution and response to this correspondence. Should the Ministry not wish to proceed as recommended, we will explore other avenues for resolution.
20. We are available for discussions on the matter should that be necessary.

Yours sincerely

Tom Clark



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Fisheries Inshore New Zealand