

# **Regulatory Impact Statement**

## **Removal of fee charged to vessel operators for observers to supervise returning fish to the sea**

### **Agency Disclosure Statement**

This Regulatory Impact Statement has been prepared by the Ministry for Primary Industries (MPI).

It provides an analysis of options to address the problem of costs to both the fishing industry and MPI associated with retaining a regulatory provision that requires MPI to charge fishing vessel operators a fee every time the fish managed under the Quota Management System (QMS) are discarded under observer supervision.

The analysis relies on information held by MPI, some of which was supplied by the fishing industry under legislative requirements. The key gap in the information used to inform the analysis is the lack of data on the costs to MPI associated with administering the current process. Despite this, the analysis does not highlight any significant constraints or assumptions relating to the proposal.

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## Status quo

One of the fundamental aspects of New Zealand's Quota Management System (QMS) is that fish managed under the QMS must not be discarded by commercial fishers. There are a limited number of exceptions to this, one of which provides for MPI observers to authorise the return or abandonment of fish, aquatic life or seaweed. This provision is currently set out in section 72(5)(c) of the Fisheries Act 1996 (the Act) but has been present in legislation since 1989.

Since 1990, commercial fishing vessel operators have been charged a fee for each occasion on which an observer supervises fish being returned to the sea pursuant to section 72(5)(c) of the Act (or the equivalent sections of earlier Acts). The fee is currently \$28 and is set out in Part 4 of Schedule 2 of the Fisheries (Commercial Fishing) Regulations 2001.

The fee was introduced on a "user pays" principle; only those vessel operators using the provision for observers to supervise fish being returned to the sea under observer supervision should pay for the service. Other fees relating to duties performed by observers were also introduced in 1990. The difference between these fees and the fee for supervising the return of fish to the sea, was that the former were charged on a 'per day' basis. The fee for supervising the return of fish to the sea was the only one ever set on a 'per event' basis.

In 1994, the government introduced cost recovery to enable the Crown to recoup some of the costs associated with managing commercial fisheries. Since then, the fishing industry has paid for all costs associated with observer coverage either by cost recovery levies imposed on quota holders or by transaction fees (a daily charge) imposed directly on vessel operators. Cost recovery levies and transaction fees are calculated on a per day basis and are meant to include all observer duties.

The fees that were introduced in 1990 relating to observer duties still remain, although additional situations for which fees are charged have been added. Again, all fees remain on a 'per day' basis with the exception of that for supervising the return of fish to the sea. Observer coverage is separated into days that are direct charged or those for which costs are recovered by levies imposed on quota holders; vessel operators are never 'double charged' for daily costs. However, the 'per event' nature of the fee for supervising fish returned to the sea means that regardless of how the daily cost is charged, there is an additional charge for what has been, since 1989, a core component of an observer's duties.<sup>1</sup>

The requirement to charge a fee generates a revenue stream for MPI. During the 2013 and 2014 calendar years, invoices were issued totalling \$13,440 and \$21,672 (excluding GST) respectively.<sup>2</sup> The funds raised are used to offset costs in the MPI Observer Programme, although they represent a very small proportion of the Programme's overall budget.<sup>3</sup>

In order to recover the charge, MPI Observer Programme staff must first complete an invoice request form, which involves collating the discard information completed by observers at sea. The invoice request form is then sent to the Observer Programme Manager for

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<sup>1</sup> The provision enabling fish to be returned to the sea has always been on the proviso that it must be supervised by an observer.

<sup>2</sup> In 2013 observers supervised 480 separate instances on 25 vessels, while in 2014 they supervised 774 instances on 25 vessels.

<sup>3</sup> The amount recovered in cost recovery levies during the 2014/15 financial year was just over \$4m. The amount recovered via transaction fees is in addition to this.

checking and authorisation. After this, it is sent to Financial Operations staff to generate the invoice.

In 2013, MPI consulted on a proposal relating to how commercial fishers report observer authorised discards. As part of its submission on that proposal, the Deepwater Group Ltd (the group that represents quota owners in New Zealand's major deepwater fisheries), requested that the requirement for a fee to be charged for observer authorised discards be rescinded. In subsequent advice to the Minister for Primary Industries, MPI said it would look further into the fee and determine if it was appropriate to retain or rescind it.

## Problem definition

The requirement to charge an additional fee for what is a standard component of observer duties is redundant in the context of full cost recovery for all observer costs.

The process of recovering the fee represents a cost to MPI, primarily in staff time. Such costs are not reported directly, however Financial Operations staff have estimated that the costs of administering the process are double that of the revenue generated. This represents an overall loss to MPI. It also poses a problem in that there are no added benefits for the government, the public or stakeholders.

In addition to the costs to both the fishing industry and MPI, an additional consideration is that the requirement to charge a fee is known to influence behaviour on some vessels. In order to avoid being charged a fee, vessel crew will, for example, take fish to the galley rather than getting an observer to authorise its discard. Although still required to be reported, the reporting does not accurately represent the fish's fate and reduces the quality of information available for management purposes. In some instances the quantities of fish reported this way are far beyond what can reasonably be expected to be eaten, and it is likely such fish is simply discarded directly from the galley.

## Objectives

The objectives of the proposal to remove the requirement to charge a fee for observers to supervise returning fish to the sea, which are derived from the purpose of the Act, include:

- Promoting sustainable fisheries management by improving the quality of information regarding the quantity of fish returned to the sea under observer supervision
- Enhancing the effectiveness and cost efficiency of the regulatory framework

There is no authoritative or statutory basis for undertaking the analysis and the outcomes are not subject to any constraints.

## Options and impact analysis

The options consulted on were:

- Option 1 – Status quo (no action): To retain the requirement to charge the fee.
- Option 2 – to amend legislation to remove the fee (MPI's preferred option).

Under both options, the provision that enables observers to authorise fish being returned to the sea would remain unchanged.

No non-regulatory options were identified that would wholly or partly achieve the objectives.

### *Option 1 - Status quo*

The status quo option means the fishing industry collectively would continue to incur an additional observer-related cost despite already paying for all observer coverage. Total sums invoiced were \$13,440 and \$21,672 (excluding GST) during 2013 and 2014 respectively.

During the 2013/14 fishing year (the period 1 October 2013 to 30 September 2014) a total of approximately 1,690 tonnes of fish was reported as returned to the sea under observer supervision. During the same period some 261 tonnes of fish was reported as having been eaten on board vessels carrying observers. A proportion of this may have been reported as having been returned to the sea if there were no fee associated with the provision for fish to be returned to sea under observer supervision; on some trips the quantities reported having been eaten appear to be much higher than what could reasonably be expected to have been eaten by the crew.

Retaining the status quo would not provide any benefits. It would represent a cost to vessel operators and an overall loss to MPI. It would continue to provide incentives for fishing vessel operators to avoid accurate reporting.

### *Option 2 – remove fee*

Under this option fishing vessel operators, who already pay for all costs of observer coverage, would not incur an additional observer-related cost. Removing the fee would obviate the need for MPI to administer a process that represents an overall loss to and that does not deliver any additional benefits.

The MPI staff currently required to administer the invoicing process would have additional time, which could be devoted to more useful duties. Removing the incentive for crew on vessels to alter their behaviour, for example but reporting fish as being eaten rather than returned to the sea, could improve the accuracy of the information available to fisheries managers.

The impacts of each option in relation to the objectives of the proposal are set out on the table below.

**Table 1.** Summary of qualitative analysis of policy options against objectives

Options	Option 1 – retain fee for observer authorised discards ( <i>status quo</i> )		Option 2 – amend legislation to remove fee	
Sector	MPI	Industry	MPI	Industry
Objective 1: sustainable fisheries management	No change to information quality.	Incentive remains to alter behaviour to avoid paying the fee.	Quality of information improved by more accurate reporting of fate of fish.	No incentive to alter behaviour to avoid incurring the fee.
Objective 2: cost effectiveness of regulatory framework	Continued overall loss to MPI as administrative costs exceed the sum recovered.	Continued additional cost despite already paying for all observer coverage.	Loss of revenue stream but overall cost saving due to removal of administrative costs.	Overall reduction in observer-related costs.

## Consultation

MPI followed its standard consultation process of posting a consultation paper on the MPI website and alerting stakeholders to this. Stakeholders were given four weeks to provide submissions on the proposal.

The key stakeholders that MPI alerted were representatives from the deepwater and inshore fishing industry organisations. They, in turn, alerted vessel operators, who are the stakeholders most affected by the proposal.

Despite only alerting fishing industry organisations, the consultation process provided for all stakeholders to comment on the proposal, should they have they wished to do so. The outcome of the consultation process was that most submissions were from fishing industry stakeholders but one was received from a stakeholder with no direct links to fishing.

Four submissions were received in response to the consultation process. All submissions expressed support for the proposal to remove the fee charged to vessel operators for observers to supervise the return of fish to the sea.

## Conclusions and recommendations

The options analysis indicates that Option 2, amending regulations to remove the fee, is the only option that achieves the objectives. The benefits would comprise cost savings to both MPI and the fishing industry, together with better quality information that would more accurately reflect the fate of fish taken on commercial fishing vessels.

There are clear benefits to this option whereas there are no benefits to retaining the status quo.

## Implementation plan

Amending regulations to remove the fee for observers authorising the return of fish to the sea would require ensuring that both MPI and the fishing industry were aware of the change, which is planned to come into force on November 2015. Shore staff from MPI's Observer Programme would be required to inform observers of the change and to update or amend any relevant briefing notes or sections of the observer manual.

The MPI staff involved in the invoicing process would also be kept informed regarding the specific date when the process would cease. Similarly, the Manager of the Observer Programme would be kept informed of this date to minimise any issues arising from cessation of the revenue stream.

Fishing vessel operators will be informed of the date when the amendment would come into force.

## Monitoring, evaluation and review

Monitoring will be undertaken to ascertain the extent to which removing the fee influences the quantities of fish that fishing vessel operators choose to return to the sea. This would consist of examining quantities of fish reported on returns together with discussions with observers for their views on whether fisher behaviour has changed.

As always, there will be ongoing compliance effort devoted to ensuring accurate reporting of all fish taken on commercial fishing vessels.