

Minister of Fisheries' Final Decisions on Deemed Value Review

Analysis for Non-Commercial Fishing Interests

14 August 2008

Introduction

In 2004 a Joint Working Group (JWG) was formed to review the deemed value system. The JWG comprised fishing industry representatives, MFish and Treasury officials. In May 2005 the JWG included nine recommendations in its report for the Minister of Fisheries (the Minister).

After reviewing the report the Minister decided that consultation should be undertaken before implementing any of the recommendations. That consultation occurred in October 2006 and attracted 12 submissions, mainly from industry and one joint submission¹ from non-commercial fishing interests. A record of the process is online at http://option4.co.nz/Fisheries_Mgmt/deemedvalues.htm.

In June 2007 MFish provided a Final Advice Paper (FAP) to the Minister. In March 2008 the Minister made final decisions on the recommendations, these were released on 11th August.

Minister's decisions

The Minister has:

- Agreed to seven of the nine JWG's recommendations;
- Rejected suggestions to redistribute deemed value payments amongst commercial fishers;
- Signalled a review of the Fisheries Act 1996 (the Act) will occur before 2009. Particular reference was made to reviewing sections 14A and 14B; and
- Directed MFish to review the results of any implemented changes, as approved, by 2012.

The Minister's decision and MFish FAP is online at the MFish website <http://www.fish.govt.nz/en-nz/Consultations/Archive/Consultations+from+2006/Deemed+Values/Final+Decisions.htm?WBCMODE=PresentationUnpublished>.

Non-commercial submission

The submission from non-commercial fishing interests, dated 20th October 2006, did not respond to all the JWG's recommendations, instead it highlighted:

- The JWG recommendations may not be compatible with the Act's purpose and principles: [ss8, 9 and 10].
- The unlawful Ministerial practice of not 'allow(ing) for' all fishing related mortality, by not accounting for deeming above the total allowable commercial catch (TACC): [s21]
- Alternative proposals to ensure future deeming is compatible with the Act;
- Constraining commercial fishing to the TACC would improve public confidence in the quota management system (QMS), improve sector harmony and give effect to rebuild timeframes in depleted fisheries; and
- The exclusion of non-commercial fishing interests from the deemed value review and JWG process.

¹ http://option4.co.nz/Fisheries_Mgmt/deemedvalues.htm#2006

MFish final advice to the Minister

In the 30-page FAP MFish explained to the Minister that:

- Total commercial catch should not exceed the TACC;
- A per kilo deemed value penalty is charged if commercial fishers fail to cover their catch with quota in form of ACE (Annual Catch Entitlement); and
- Deemed values are an incentive for commercial fishers to maintain their catch within the TACC;
- Deemed values offer flexibility in enabling fishers to cover their catch after fishing has occurred, to account for catch variability.

Points of interest to non-commercial fishers

MFish has signalled a review of the Fisheries Act 1996 is due to occur and any resultant legislative changes are unlikely before 2009.

The continued use of the terms “allocation” and “constraining” non-commercial catch to that allocation signals both industry and MFish’s lack of intent to recognise the statutory obligation of the Minister to “allow for” non-commercial fishing interests before setting the TACC, as per section 21 of the Fisheries Act 1996.

The exclusion of non-commercial interests from this process is reflected in MFish advice to the Minister, where the focus is on industry’s needs, property rights and maximum utilisation of the fisheries while paying lip service to the sustainability provisions of the Act.

While MFish are “sympathetic” to the concerns put forward by non-commercial fishers they dismiss the alternate proposals offered in the joint submission as having “significant drawbacks” and seem convinced that increasing deemed value rates and their policy guidelines will address the over-catch issue. As noted in the joint submission, this approach has been tried and failed over the past twenty years of the QMS. Without effective monitoring and enforcement higher rates are more likely to increase misreporting and dumping activities.

MFish also acknowledge there are method and area controls that can be implemented to address over-catch issues, however they do not explore these options in any detail.

MFish also advised the Minister that many of the concerns raised in the joint submission “relate to the perceived unfairness in the allocation process between sectors. The ‘Shared Fisheries’ project is currently endeavouring to address these issues. The Ministry also notes that while deemed catch is not accounted for in the commercial allocation, it is taken into account in the stock assessment process.” [para 100]

Minimal consideration has been given to non-commercial interests’ concerns. The ‘Shared Fisheries’ project was not aimed at addressing the major issues for non-commercial fishers and was rejected by the majority of non-commercial submitters².

While it is debatable whether deemed catch is accounted for in the stock assessment process the burden of having less available fish is borne by all fishers. However, because commercial fishers are more mobile and can employ industrial methods to catch their fish they do not suffer the same consequences. There are less and smaller fish available in the places that amateur and customary fishers traditionally fish.

A more in-depth analysis of the recommendations, MFish advice and Ministerial decisions is available in Appendix One.

² <http://option4.co.nz/sharedfisheries/peoplesubmission.htm>

Appendix One

Recommendations

1. Response to TACC over-catch

Minister: Agreed that chronic over-catch should trigger management action.

Some industry submitters believe that because the stock assessment process is often imprecise TACC's should not be regarded as the absolute limit on fishing effort [para 18].

MFish acknowledged:

- the uncertainty in management but *“that does not mean that TACC's should be disregarded.”*
- Non-commercial fishers did not agree with deeming in shared fisheries and that deeming had failed to constrain commercial fishers to the TACC for 20 years.
- The catch balancing guidelines have been amended to monitor over-catch and allow deemed values to be set on a case-by-case basis.
- Consideration is being given to applying other management mechanisms such as over-catch thresholds, area and method restrictions.

2. Improving flexibility for setting management targets

Minister: Agreed that a review of the section 14A agreement threshold, in conjunction with consideration of other collective thresholds in the Fisheries Act, will be considered for the next review of the Fisheries Act.

Sections 14A and 14B of the Act provide flexibility for the management of stocks taken primarily as incidental catch. If the TACC for these species is low this can constrain fishing effort for other more valuable, target species. The JWG recommended reviewing these sections to lower the current 95% level of quota-owner approval required before a TACC for the bycatch species can be changed. This mechanism has not been used since it became operative in 1999. S14A(5) specifies no detrimental effects on non-commercial fishers or the long-term viability of the stock and achieving the purpose of the Act.

The majority of industry submitters supported reducing the approval threshold on the basis that such complete agreement is unlikely to be achieved.

MFish acknowledged:

- Thresholds should be considered when the Act is reviewed;
- Treaty settlement quota has limited tradability, that iwi own 10 percent or less in most stocks and these interests may need to be protected by other mechanisms;

3. Principles for setting deemed value rates

Minister: Agreed that in general, over-catch should lead to an increase in deemed value rates in the following year so that they provide sufficient incentive to fishers to balance catch with the ACE. The need for extra compliance effort to support increased deemed value rates and differentials will be determined on a stock by stock basis.

The JWG recommended deemed values should be set at a margin above the ACE value plus transaction costs of obtaining ACE. Also in high-value species such as crayfish and paua, if quota ownership is concentrated then the margin should be higher.

Industry submissions were evenly split between supporting and opposing this recommendation.

MFish acknowledged:

- Deemed values may remain unchanged if there is the possibility that the TACC will increase following a TAC review; and
- Their concerns about current levels of misreporting and dumping in some fisheries and that increasing deemed values is likely to exacerbate these issues.

4. Information and process for setting deemed values

Minister: Agreed that over-catch of the TACC is the major signal that a deemed value increase should be considered. The ACE price, informed by other information sources, is the primary information for determining at what level the deemed value rates should be set. This issue will be considered for the next review of the Fisheries Act.

Deemed values are currently set with reference to port price. The JWG recommends consideration should also be given to ACE prices, patterns and causes of over-catch.

MFish acknowledged:

- A range of information should be used to determine deemed value rates;
- Over-catch of the TACC is the major signal that a deemed value increase should be considered;
- Deemed values should be increased until over-catch ceases.

It is interesting that one submitter, presumably commercial, recommended that deemed values be reduced if catch is at or below the TACC for at least two years. MFish agreed with this suggestion and will consider this in the wider review of the regime and Act.

5. Interim deemed values

Minister: Agreed that legislative amendment would be required to set interim deemed value rates at the same level as the annual rates. This issue will be considered for the next review of the Fisheries Act. In the meantime MFish will be reviewing their catch balancing guidelines.

The JWG has recommended most interim deemed values, usually set at half the yearly rate, be phased out as the new regime is implemented because it encourages fishers to delay sourcing ACE or paying until the end of the fishing year.

MFish acknowledged:

- Interim rates should not provide incentives for fishers to avoid acquiring ACE until the end of the year because it causes market distortions and increases the risk that fishers will be unable to balance catch with ACE;
- The revised catch balancing guidelines provide for interim rates to be set closer to the annual rate, if interim rates are contributing to over-catch; and
- Legislative change will be required to allow interim rates to be set below or at the annual rate.

6. Differential deemed values

Minister: Agreed that differentials should be retained until changes to the deemed value/catch balancing policy have proven effective. MFish will take a case by case approach and differentials may be applied if individual over catch is a problem.

Differential rates apply to fishers who exceed their ACE holdings. The deemed value rate increases by 20% of over-catch. If the standard deemed value rate is \$1 per kilo then catch in excess of ACE holdings up to 120% attracts the standard rate; between 120% and 140% is charged at \$1.20; between 140% and 160% is charged at \$1.40; up to a maximum of \$2.00 per kilo.

The JWG recommended the differential rates be reduced when the new regime is implemented but retained if the TACC was exceeded in the previous year. These rates could also provide an incentive for quota owners to hold back ACE until the end of the year when fishers seeking ACE are willing to pay inflated prices to cover their annual catch.

Only one industry submission opposed this recommendation.

MFish acknowledged:

- Differentials should continue to be applied on a case-by-case basis, with variations allowed for levels and rates; and
- Differentials protect stocks from severe overfishing by fishers with low fishing costs.

7. Redistribution of deemed value revenue

Minister: Did not agree that deemed values for catch in excess of TACC, in commercial-only stocks, should be redistributed to quota owners.

The JWG recommended deemed values for catch in excess of TACC, in commercial-only stocks, should be redistributed to quota owners. They acknowledge that over-catch of the stock will reduce the stock size, which increases cost per unit of catch and therefore decreases the price fishers are willing to pay for ACE. It may also reduce the quantity of future ACE by reductions in TACC.

Also, that if the deemed catch is sustainable the TACC should be increased. Quota owners are incurring ongoing losses because the government has either failed to address over-catch issues or not adjusted the TACC. Either way, quota owners should receive deemed value payments on catch above the TACC.

Industry submitters were wary of redistribution for a number of reasons, did not agree whether it should apply to all deemed value revenue or just on catch above the TACC or if revenue should only go to quota owners who had utilised their ACE.

MFish rejected this recommendation and acknowledged:

- Deemed values are important in ensuring stock sustainability by providing the main incentive for fishers to balance catch with ACE;
- Redistribution may reduce incentives for quota owners to take responsibility for how their ACE is fished.

In addition to returning deemed value payment for catch in excess of the TACC in proportion to the TACC/TAC ratio, the JWG also recommended that the remaining portion be tagged for research and services to improve management of non-commercial fisheries and to reduce over-catch.

“The JWG had difficulty agreeing on redistribution in fisheries that are significantly shared with non-commercial fishers. It was recognised that over-catch by the commercial sector does have a detrimental effect of non-commercial as well as commercial interests in the stock. Also

recognised were issues with the management of non-commercial fisheries in terms of knowledge of the total take of stocks and effectiveness of the regimes.” [para 91].

Redistribution of funds received partial support from industry submitters, their main concerns were:

- Information on non-commercial catch needs to improve;
- The non-commercial allocation should be more accurately set and catch better constrained within it; and
- Quota owners would not be compensated for over-catch of non-commercial allocations.

While MFish is “*sympathetic*” to non-commercial fishers’ concerns, the two suggestions to address over-catch provided in the joint submission was considered by MFish to have “*some significant drawbacks.*” [para 99].

MFish is concerned that, in mixed fisheries in particular, a feedback loop would occur, where over-catch would lead to reduced ACE and then greater volumes of over-catch. This could lead to or exacerbate TACC imbalances and other difficulties. MFish believe increasing deemed value rates is a better way to reduce over-catch.

MFish also advised the Minister that many of the concerns raised in the joint submission “*relate to the perceived unfairness in the allocation process between sectors. The ‘Shared Fisheries’ project is currently endeavouring to address these issues. The Ministry also notes that while deemed catch is not accounted for in the commercial allocation, it is taken into account in the stock assessment process.*” [para 100]

8. Perverse effects and risks to catch balancing regime from redistribution of deemed value revenue

Minister: Agreed with the intent of the JWG recommendation 8. Overfishing thresholds will only be considered in light of the results of effective deemed value rates. Until the effects of such rates of fishing behaviour have been assessed, the Minister considered it would be inappropriate to consider setting overfishing thresholds.

9. Retrospective application of repatriation

Minister: Did not agree that deemed values collected in the past would be made available for return to quota owners.

Review of Implementation

The Minister has agreed it is necessary to assess the implementation of the agreed changes to ensure their effectiveness. MFish consider an important indicator of the success will be a downward trend in the total deemed values revenue collected. The Minister has directed MFish to conduct this review by 2012.