

# **REVIEW OF DEEMED VALUE RATES FOR SELECTED FISHSTOCKS**

**SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS**

**27 July 2007**

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## Introduction

The Ministry of Fisheries (MFish) has invited stakeholders to provide submissions on the initial position paper on deemed value rates in a number of fishstocks using the new deemed value fisheries standard.

The deemed value standard sets out a process for reviewing and adjusting deemed value rates. All quota management system (QMS) stocks were assessed against the following deemed value criteria:

- a. Catch is in excess of a total allowable commercial catch (TACC).
- b. Catch is in excess of an individual's annual catch entitlement (ACE) holdings and deemed values have been invoiced but ACE has remained unused.
- c. The port price of a stock changed.
- d. The Seafood Industry Council (SeaFIC) made a direct request on behalf of quota owners.
- e. A stock's TACC or the TACC of key by-catch stocks was recently changed.
- f. The stock recently entered the QMS and the deemed value rate was set using limited information.

If a deemed value adjustment was considered appropriate the following information sources were used to determine how the proposed new deemed value rate should be set. This information was available to participants at the deemed value review group meeting held on the 15<sup>th</sup> of May 2007:

- a. Port price.
- b. ACE trading price.
- c. Export prices as a proxy for market values (where appropriate).
- d. By-catch ratios (where appropriate).
- e. Cost recovery levy rates.

The more flexible approach proposed in the standard allows the setting of the annual deemed value rates (payable at the end of the year), but also allows variation in the interim deemed value (payable monthly during the year) and the differential rates (extra charges for catch more than 10% over the ACE held).

Non-commercial fishers agree that if deemed values are outdated and out of step with the value of the fish the quota management system starts to unravel and catch in excess of allocation becomes the norm. This is particularly concerning when it impacts on the availability of fish to amateur and customary fishers in shared fisheries.

This submission is from both the New Zealand Big Game Fishing Council and option4 (the submitters), organisations which promote the interests of non-commercial marine fishers in New Zealand. The limited period for consultation has meant we have had insufficient time to widely canvass the opinion of our constituents, however we believe the views expressed are a fair reflection of previous comments made on deemed values.

This submission is comprised of two parts, the first includes comments on the latest MFish proposals and secondly the previous submission made in October 2006 regarding the recommendations to the Minister of Fisheries of the Joint Working Group on Deemed Values. (Appendix One).

## Overview

Non-commercial fishers support the Minister of Fisheries' (the Minister) call for stronger measures to combat chronic deeming. However, the submitters are concerned that increasing the financial penalty alone will not be sufficient. Ramping up the deemed values may help reduce the profit motive for overfishing but it will not address the fundamental issue of replacing the fish that were taken in excess of quota limits.

MFish has proposed higher deemed value penalty payments for each kilogram of fish commercial fishers land in excess of their legal entitlement, in some fisheries.

Deemed value payments were a mechanism designed to cover accidental overcatch. The penalties were never intended to legitimise widespread fishing above the set quotas, and is particularly concerning when it occurs in important shared fisheries.

Sustainable catch limits are set in each fishery to ensure long term viability of the stock and to allow all New Zealanders to have reasonable access to those fisheries.

The submitters believe the simplest and most effective solution to chronic deeming is to deduct each year's over catch from the following year's total allowable commercial catch (TACC). Commercial fishers could then manage their own catch and not risk the sustainability of the fishery.

This alternative approach would encourage commercial fishers to work together to ensure their collective long-term interests and thus avoid the current situation where holders of bulk amounts of ACE (annual catch entitlement) do not lease their quota throughout the year to fishers that need it, to cover what they actually catch. This is particularly punitive on smaller commercial operators.

In addition, this method would make up for the loss of fish from the stock and their subsequent productivity from the overall fish population. MFish was offered this solution in the October 2006 submission<sup>1</sup> (Appendix One).

A fundamental principle of the quota management system (QMS) is that **ALL** catch and fishing related mortality is accounted for. Deemed fish are falling through the cracks. This alternative proposal would ensure that deemed fish were counted against commercial allocations, as they should.

## Disincentive to improving sustainability

One of the crucial roles of a fisheries manager is to implement incentives that encourage compliance and promotes sustainable fishing. Incentives need to be matched to the particular situation to be effective. Setting high deemed values creates a disincentive (rather than an incentive) to improve the sustainability of fisheries.

Commercial fishing usually occurs in isolated locations where the public or other fishers cannot see the fishing operation. This remoteness provides fishermen with the opportunity to undertake

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<sup>1</sup> [http://www.option4.co.nz/Fisheries\\_Mgmt/documents/DVJointsubmission201006.pdf](http://www.option4.co.nz/Fisheries_Mgmt/documents/DVJointsubmission201006.pdf)

activities that are illegal, because there is little chance of being caught. An example is overfishing, the fisher can dump the excess fish without being seen and therefore without penalty.

The objective to reduce wastage and ensure sustainability of fisheries through deeming has obviously failed in many fisheries important to non-commercial fishers.

MFish has acknowledged the difficulty in setting the deemed value at a level that encourages fishers to report their catch and not resort to illegal dumping of fish, particularly in fisheries such as Snapper 8 (SNA8), on the North Island's west coast, where MFish' compliance response is limited.

The submitters accept that exploiting a natural resource will always have an element of variability associated with factors such as seasonal changes, productivity and water temperature. However, the current system is obviously flawed when the economic model that is supposed to control excess catch fails.

Commercial fishers have been given a property right to extract an explicit amount of fish from a resource that belongs to all New Zealanders. With rights comes responsibilities. The submitters believe the fishing industry should respect that limit and MFish should hold them to it.

## **Overcatch of Snapper**

Over 2,000,000 snapper have been taken in excess of sustainable limits over the past twelve years. It's an injustice that some commercial fishermen are reaping handsome rewards from selling those extra fish while non-commercial fishers are struggling to 'catch a feed'.

Specific concerns are held for depleted fisheries such as SNA8. This fish stock has been seriously overfished for 30 years. In 1998 the Fisheries Minister decided it needed rebuilding so a ten-year strategy was put in place to restore the fishery, which stretches from Wellington to North Cape.

Despite quota limits and the Minister's decision, the SNA8 quota has been exceeded fifteen times over the past eighteen years. In 2005 the current Minister reduced catch limits again and adjusted the deemed value penalty. However, the profits to be made from deeming excess fish have meant that these new quota limits have had little effect on overcatch.

In 2006 the chronic deeming continued and the SNA8 quota was exceeded by more than 10 percent. This is a serious issue when this fishery is at only half the sustainable level required by the Fisheries Act, and when recreational and customary allowances have been reduced as a consequence of excessive commercial fishing.

The commercial fishing industry's blatant disregard for the long-term sustainability is a significant factor preventing a timely rebuild in the Snapper 8 fishery.

## **Effect on Recreational Fishers**

An inevitable consequence of overfishing is that fish numbers and size decrease over time.

All New Zealanders have a common law right to fish to provide for their needs. This right was recently confirmed by the High Court during the judicial review of the Minister's 2004 and 2005

kahawai decisions (the Kahawai Legal Challenge)<sup>2</sup>. Justice Rhys Harrison ruled that enabling people to provide for their wellbeing was a mandatory consideration for the Minister.

The ability to exercise that right comes down to access to the marine environment and the availability of fish of an acceptable size.

A whole generation of New Zealanders has not experienced the SNA8 fishery at more than half the sustainable level prescribed by our fisheries laws. If the chronic abuse of the deemed value system continues to go unchecked they are not likely to ever see a healthy, well managed fishery.

Deeming above the sustainable TACC erodes people's access to a reasonable number of fish, particularly where there is a need to rebuild stocks.

## **Deeming in Shared Fisheries**

Deeming has not been properly accounted for in the TACC setting process. Section 21 (1)(b) of the Fisheries Act 1996 directs the Minister to "allow for" all other fishing related mortality before setting the TACC. Non-commercial fishers have already proposed a mechanism to ensure that all fish killed through deeming in excess of the TACC are accounted for and deducted from the next year's TACC (refer Appendix One).

We note that the proposed mechanism does not address the over-allocation of TACC in some fisheries. We flag this related issue as urgent. Unnecessary conflict is created when TACCs are intentionally set so high they are never likely to constrain commercial catch.

Non-commercial fishers strongly object to their fisheries management objectives and aspirations coming second, just to placate commercial fishers and avoid compensation issues for the Crown.

Important shared fisheries must have adequate research, management and enforcement. It is unacceptable that the Minister and MFish are failing to manage shared fisheries according to the sustainability provisions of the Act and are allowing deeming to operate outside the constraints of the Act.

What is certain is that deemed fish are truly dead and therefore they must be "allowed for" as directed by the Act. It would be absurd to suggest that commercial fishermen would pay deemed values for fish they had not actually landed.

Deeming in excess of the TACC in shared fisheries is entirely inappropriate as it:

- Undermines the management objectives of Ministerial decisions
- Overrides the interests and aspirations of other users
- Undermines the value of quota holdings
- Places unsustainable burdens on fish stocks in fisheries that are below maximum sustainable yield (MSY) or target biomass
- Reduces public confidence in the QMS

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<sup>2</sup> CIV-2005-404-44495 heard on 6, 7 and 9 November, and 11 December 2006.

We reiterate that the TACC should simply be reduced each year by the level of the previous years deemed (all overcatch), to deliver a biological neutral result. The submitters strongly believe the overcatch problem should be directed back where it originates - with the quota owners.

MFish should have the ability to make TACC alteration the following year to account for overcatch; thus ensuring the damages inflicted by the commercial sector are not paid by the non-commercial sector. That is a clear and easily achieved Government function.

The submitters believe there is far more dialogue required on the deemed value issue and want to participate in those discussions. In the meantime we will be monitoring the outcome of the Deemed Value Joint Working Group recommendations and any Ministerial decisions that arise from that process.

## **MFish Proposals**

### ***Blue Cod***

The submitters support proposals to increase the annual deemed value rate for BCO3 so that it better reflects the average port price in this fishery and also to bring deemed value rates in BCO5 in line with BCO3, to ensure there are no incentives for fishers to misreport fish between areas so as to exploit lower deemed value rates. We are not convinced that this is a valid argument for BCO4 (Chatham Islands).

### ***Flatfish***

The submitters support proposals to reduce the TAC and the TACC for FLA3 as it has been over allocated. The deemed value rates should be increased so that they adequately protect the TACC and so that it better reflects the current port price.

### ***Red Gurnard***

The submitters support proposals to increase the annual deemed value rate in GUR3 (east coast South Island) so that it is closer to the port price for the stock and to stop fishers choosing to deliberately catch in excess of available ACE because there is a potential profit margin available above the deemed value rate.

It is hard to see how a decrease in the deemed value in GUR7 (West Coast, Marlborough) and GUR8 (south west North Island) can be used to stop high grading in this fishery when the value of small gurnard (less than 28 cm) can be as low as 7 cents a kilo.

The solution seems obvious and the submitters do not understand why MFish and commercial fishers have not realised that an increase in mesh size and the use of square mesh cod ends would be more effective and would also help avoid catching small fish.

### ***Hapuku and Bass***

The submitters support proposals to increase the annual deemed value rate to better reflect the high port price and export prices available for HPB3 (east coast South Island) – in 2006 the average port price was \$4.56 per kg and the average export price was \$8.92 per kg compared to an annual deemed value rate of \$1.50 per kg.

The increase in the current average port price suggests that fishers have an opportunity to fish in excess of ACE holdings, pay deemed values and still realise a profit. However, given that the TACC has regularly been exceeded the proposed increase to \$2.30 per kg is not a sufficient deterrent. A figure of \$4.00 per kg would be more appropriate.

Recreational fishers can expend considerable effort to catch just one or two hapuku or bass. Serial depletion of areas where the commercial fishery and recreational fishery overlap is an ongoing problem. If commercial catch in excess of ACE is coming from deliberate targeting for these species then obviously a higher deemed value is required.

### ***John Dory***

The submitters support proposals to increase the JDO7 (south west North Island) annual deemed value rate should increase so that it is set closer to the port price (\$4.64). It has been consistently over caught in recent fishing seasons and the increase in port price reflects the current high export price for john dory – in 2006 the average export price was \$10.05 per kg. This suggests there may be an incentive for fishers to deliberately fish in excess of ACE because they can pay the annual deemed value rate (\$3.17 per kg) and still realise a profit. This overfishing is also occurring because differential deemed values do not apply in JDO7.

### ***School Shark***

SCH1 has been consistently fished in excess of available ACE since the 1994–95 fishing season - the only exception being the most recent fishing season when reported catch declined to 92% of available ACE. The TAC for SCH 1 is being set and the TACC reviewed in this year's sustainability round.

The submitters support an increase in the deemed value rate from \$1.61 to \$1.75 per kg to reflect the recent increase in port price – from \$1.06 per kg to \$1.77 per kg. Differential deemed value rates should also be adjusted to reflect the proposed change in the annual deemed value rate.

**These increases should not be dependant on the outcome of the review** (as suggested by MFish). Even if the Minister decides not to increase the commercial allowance and wait for updated CPUE information, or decides that school shark allowances should be reviewed as part of a Fisheries Plan, the deemed value should better reflect the current average port price.

### ***Snapper***

Non-commercial fishers are very concerned that SNA2 (south east North Island) and SNA8 (west coast North Island) have been consistently over fished in recent seasons and at the end of the 2005-06 season deemed value invoices to the value of \$238,268 (SNA2) and \$617,540 (SNA8) were issued. This suggests that it is not small overruns of bycatch that are being deemed but that fishers are choosing to target snapper without ACE.

In both fisheries, a handful of companies are responsible for the majority of deemed values invoiced and this behaviour suggests that fishers are still able to fish in excess of ACE, pay the deemed value and realise a profit. In each stock the annual deemed value rate is set below the stock's port price (\$4.67 per kg) further indicating that there is a profit margin available to fishers who wish to over fish using deemed values.

The submitters support proposals to increase the annual deemed value rate to \$8 per kg in SNA2, SNA7 and SNA8 and that differential deemed values should be reset so that they apply to all catch that is 10% in excess of ACE.

### ***Swordfish***

Prior to introduction of swordfish into the QMS non-commercial fishers were concerned at the rapid increase in commercial landings of this non-ITQ species, largely as a result of illegal targeting. The majority of the swordfish TACC was held by the Crown following introduction to the QMS. Due to a number of factors existing commercial tuna longline fishers were out-bid in the tender process for almost the entire Crown held quota. There is still some turmoil in this fishery.

The average ACE trade price last season was about 66 cents a kilo and almost twice as much ACE was traded as there is quota available, but some fishers still can not access ACE and are paying deemed values and the higher differential deemed values.

MFish considers that there may be benefit in amending the deemed value rates, in the short term, to see if this can assist the ACE market to operate more efficiently. MFish proposes that differential deemed value rates should be removed in the short term. Annual deemed value rates will be left unchanged at \$4.25 per kg.

MFish believes this will provide fishers, who are legitimately trying to source ACE, some relief from high differential deemed value rates without undermining the rights of quota holders. The proposed adjustment should stimulate the ACE market and result in more trading of SWO1 ACE. This should eliminate any incentive for bycatch fishers to misreport swordfish.

Non-commercial fishers support this move as an interim measure only due to the particular circumstances in this fishery. These measures should be reviewed annually and differential deemed values must be reinstated before the TACC is exceeded.

### ***Tarakihi***

Tarakihi is predominantly a commercial target fishery but can also be caught as a by-catch in the snapper fishery. TAR1 is being considered for a TAC increase as part of the current sustainability round. The submitters support the view that the deemed value rates should be reviewed to ensure the TAC, irrespective of whether it is increased or not, is adequately protected by the deemed value rates.

TAR1 has been fished in excess of ACE in all but one of the last ten fishing years – the exception being the 1999–00 fishing season. The current annual deemed value rate of \$2.09 is set above the average port price of \$2.00 per kg but the extent of deeming that has occurred, particularly by a few companies, indicate that fishing in excess of their ACE is still attractive. About 1,800 tonnes of TAR1 ACE was traded last year with a maximum trade price of \$2.20. The TACC is 1,400 tonnes.

TAR1 is not the only QMA where the TACC has been exceeded and there is concern that having lower deemed values will provide an incentive to misreport where fish in excess of ACE was caught. The submitters support an increase in the annual rate to \$3.00 per kg and applying higher differential deemed value rates at 10% catch in excess of ACE in TAR1, TAR2, TRA7 and TAR8.

## **Trevally**

TRE2 has been fished in excess of ACE in all but one of the last 6 fishing years. MFish considers the critical factor contributing to overcatch in this fishery is the absence of differential deemed values. This means fishers continue to pay \$0.92 per kg irrespective of whether they catch 10% in excess of ACE or 100% in excess of ACE. Given that the port price for TRE2 is \$1.50 and the average export price for trevally is \$1.93 per kg, fishers have an incentive to catch in excess of ACE holdings and pay deemed values since there is still a profit margin available.

MFish propose to leave the deemed value the same and introduce differential deemed values. The submitters see this as an inconsistent approach given that the deemed value in the adjacent area TRE1 is \$1.24 per kg and that the MFish proposal does not align the annual deemed value closer to the port price. We submit that the annual deemed value should be set at \$1.24 per kg in TRE1, TRE2 and TRE7 with differential deemed values to apply.

Thank you for the opportunity to respond to the initial position paper on the review of deemed value rates for selected fishstocks.

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## **Appendix One**

### **CONSULTATION ON THE RECOMMENDATIONS TO THE MINISTER OF FISHERIES OF THE JOINT WORKING GROUP ON DEEMED VALUES**

#### **SUBMISSION ON BEHALF OF NON-COMMERCIAL FISHERS**

**20 October 2006**

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## Introduction

The Ministry of Fisheries (MFish) has invited stakeholders to provide submissions on the recommendations to the Minister of Fisheries of the Joint Working Group on Deemed Values.

The Joint Working Group was formed in 2004 and submitted nine recommendations to the Minister in May 2005. The Minister has decided that consultation should be undertaken to seek the views of fisheries stakeholders before any decision is taken on the recommendations.

A letter was sent to stakeholders on 16<sup>th</sup> August 2006 advising the consultation process was underway. Original deadline for submissions was 13<sup>th</sup> October. On request, MFish extended that deadline to 20<sup>th</sup> October to allow non-commercial fishing interests to submit their views.

This document is the outcome of a consultation process with non-commercial fishing interests and is the submission from the following organisations and individuals:

- Te Runanga A Iwi O Ngapuhi (Raniera T Tau, Chairman)
- Te Runanga o Ngati Whatua (Naida Glavish, Chairperson)
- option4
- The New Zealand Big Game Fishing Council
- The New Zealand Recreational Fishing Council
- Akaroa Harbour Recreational Fishing Club
- Nugget Point Recreational Fishing Club
- Outdoor Recreational Party New Zealand (Marine Committee)
- Cara Lockie
- Dianne Wilson
- Ed Railey
- Joe Wilson
- John Forrest
- Kristina Smith
- Mathew Railey
- Robert Wilson
- Stephanie Railey
- Terry Buckley
- Wayne Radford

## Overview

Non-commercial fishers are very concerned that the options put forward by the Deemed Values Joint Working Group (JWG) may not be compatible with the purpose and principles of the 1996 Fisheries Act (the Act).

Before setting the Total Allowable Commercial Catch (TACC) the Fisheries Act directs the Minister to “allow for” all other mortality caused by fishing. However, in some fisheries there are well-documented mortalities that have never been allowed for. Fish deemed in excess of the TACC, and the additional mortality associated with catching those fish, has somehow been omitted and those fish remain unaccounted for. This appears to be contrary to the sustainable use purpose, principles and relevant parts of the Act. The JWG proposal seems to ignore or dismiss this critically important point.

This submission provides the Minister of Fisheries with an alternative proposal to ensure that future deeming is compatible with the Act. The certainty of Ministerial decisions achieving their stated objectives will be increased when all mortalities are included within the decision making process. Rebuild strategies in shared fisheries would no longer be undermined by unaccounted for removals from the fishery.

Placing real constraints on commercial fishing would improve public confidence in the Quota Management System (QMS) and clearly demonstrate a will to rebuild depleted fisheries within the desired timeframes. Another advantage is increased harmony between competing interests in shared fisheries.

## Submission

Past and present ‘deeming’ in excess of the TACC in shared fisheries is easily quantified. Deeming is one of the mechanisms which makes non-commercial fishing interests subordinate to commercial fishers’ catching rights and their excesses, and is therefore a source of major conflict between the groups.

We are disappointed to find that the Joint Working Group (JWG) consisting of Ministry of Fisheries (MFish) staff, industry representatives and Treasury officials have been working on this project for the past two years without any input from non-commercial fishing interests. How can this have occurred? Non-commercial fishers clearly flagged deeming as a major issue in the *Discussion Document* provided at the request of the Minister of Fisheries’ advisor in December 2004, and in the subsequent “*Proportional Allocation Document*” provided to the Ministry in August 2005. (Appendix 1).

We are also concerned that the working group report and the discussion document encourage the consideration of the recommendations as a package, which implies that deals or tradeoffs have already been made.

This 'take it or leave it' approach is unacceptable and is not a satisfactory policy development process. It fails to give proper regard to non-commercial fishing interests and the proposal appears, in part, to be contrary to the Fisheries Act 1996 (the Act).

The MFish imposed short submission times and the one-sided process to date have left non-commercial fishers at a distinct disadvantage in developing sensible and compelling alternative proposals which meet the sustainable use purpose of the Act, and the opportunity to put those alternatives forward for open and transparent discussion amongst all users of our fisheries. The JWG proposal also fails to adequately consider non-commercial interests alongside those of quota holders without the benefit of dialogue on the issues.

It is apparent to us that if this process fails to achieve constraint of commercial catch within the TACC in shared fisheries, then we fail to see just how the sustainable use of our fisheries to meet the reasonably foreseeable needs of future generations can be achieved to provide for the social, economic and cultural well-being of all New Zealanders. It would therefore be inevitable that more injustices will be created than resolved.

Our particular interest in deeming relates to shared fisheries, fisheries important in the food chain of shared fisheries, and then only to deeming above the TACC.

## **Shared Fisheries**

In shared fisheries the setting of the TACC is much more than devising a simple target that can be casually disregarded and exceeded by commercial fishermen. The Act intends that TACCs be set after a thorough process that takes into account the management objectives for that particular fishery, based on the best available information and consideration of the interests all sectors.

In depleted fisheries, rebuild timeframes are often among the stated objectives. For example, in 1998 the Minister of Fisheries implemented a ten-year rebuild strategy for Snapper 8 (SNA8). The TAC, TACCs and allowances were set to achieve that express objective for the North Island west coast snapper fishery.

The fishing industry's response has been to continue the chronic deeming that has plagued this fishery since the outset of the Quota Management System (QMS). The last three fishing years have seen the highest ever levels of deeming in SNA8 and the expected rebuild has not occurred. In fact, the TAC had to be reduced again in 2005.

It is our view that the TACC is a marker that explicitly determines the maximum level of commercial catch that can be taken while still achieving the management objectives of that fishery. Exceeding the TACC in shared fisheries that are being rebuilt is a very serious issue. It places an extra burden on the stock which, even if sustainable in the short term, defers or prevents rebuilds within the timeframes stated in fishery decisions.

Although we are heartened that the Ministry of Fisheries is finally addressing the deeming issue, we are very concerned that there has been far too much focus on the rights of quota holders and far too little discussion on MFish's responsibility to manage our fisheries for sustainable use as required by the Act, and how the deeming proposals will affect non-commercial fishing interests.

## **Fisheries Act 1996**

The Fisheries Act requires the Minister to set the TACC as the upper limit of commercial catch. Before setting the TACC, the Minister is directed to allow for non-commercial fishing interests and all other mortality from the TAC.

Section 21 (1) of the Fisheries Act states:

*(1) In setting or varying any total allowable commercial catch for any quota management stock, the Minister shall have regard to the total allowable catch for that stock and shall **allow for** —*

*(a) The following non-commercial fishing interests in that stock, namely-*

*(i) Maori customary non-commercial fishing interests; and*

*(ii) Recreational interests; and*

*(b) **All other mortality to that stock caused by fishing.***

## **Fishing Related Mortality**

The amount of fishing related mortality allowed for varies considerably. In fisheries such as purse seining for kahawai, there is a 3% to 5% allowance in recognition that almost all fish that are encompassed by the net are landed. In less well-targeted fisheries such as bottom trawling and longlining, a 10% allowance for fishing related mortality is the norm. This recognises losses due to unseen mortality; for example, where small fish are squeezed through the mesh of nets. It also includes obvious mortality including crushed or damaged fish that are dumped, undersized fish that are returned, legal sized fish that are high-graded for quality reasons or dumped as a response to high deemed values, and for black-marketing (fish neither landed against ACE nor deemed).

The above allowances for fishing mortality have to be set, based on best estimates with little supporting information. However, from the information we have, there is strong evidence that fish deemed in excess of the TACC have never been included as fishing related mortality. This is despite the fact that **deeming is the most accurately recorded and easily quantified form of other fishing mortality**. Surprisingly, deeming above the TACC is simply not accounted for anywhere.

It is our strong view that a failure to explicitly account for deeming above the TACC as a form of “other mortality” in the TACC setting process:

- Is contrary to section 21 (1) (b) of the Fisheries Act;
- Contravenes the sustainable use purpose of the Act; and
- Seriously undermines the integrity of the Quota Management System.

Because all deeming is directly attributable to commercial fishers, it clear to us that to achieve the sustainable use purpose of the Act the only fair and legitimate way to allow for reported commercial catch in excess of the TACC is to deduct that amount from the TAC after the Minister has allowed for non-commercial fishing interests in the following year. A new decision could be made when deeming causes the TACC to be exceeded or, alternatively, relying on the accuracy of the information on fish deemed the previous year, a decision rule could be used to achieve the same outcome in a cost effective, automatic process.

In layman’s terms, catch over and above the TACC is like taking a loan from the bank (fish stock). Deeming only pays the interest on that loan, but commercial fishers have never been required to pay back the capital (fishstock) they have taken which was otherwise destined to rebuild a stock below  $B_{MSY}$ .

Non-commercial fishers want a system with clear disincentives or deterrents for commercial fishers who exceed the TACC. We consider the most effective measure in shared fisheries would be to reduce the TACC in the following year by the amount of the over catch in fisheries that may be below the target biomass. Only in this way is the capital loss (biomass) repaid.

We are very concerned with the approach taken in the Joint Working Group’s paper which seeks to strengthen its proposal by the introduction of vague terms not contained in the Act such as:

*“Significant levels of catch in excess of the TACC should not be allowed to persist.”*

Non-commercial fishers consider that **any** fishing above the TACC is “significant” in shared fisheries and emphasise that the Minister has no discretion under the Act to allow for mortality only if “significant”. Deemed fish are truly dead and the Minister must allow for **all** of them.

Any other approach can only distract all users of the fisheries from the task of sustainable use management and create unnecessary arguments and protracted debates as to what is, or what is not, “significant”.

A cornerstone of the QMS was that by giving commercial fishers explicit property rights to catch fish it would encourage quota holders to work collectively to conserve fishstocks. Fundamental to this objective is the ability to constrain commercial catch to the TACC. The sustainable use purpose of the Act is crystal clear and we can only

conclude that chronic deeming is a symptom of “laissez faire” or inadequate management of our fisheries not intended by the Act.

Quota owners collectively hold all the commercial fishing rights to a fish stock. Deeming above the TACC occurs when quota holders collectively fail to issue or provide ACE (Annual Catch Entitlement) in balanced catching portfolios. The ACE is designed to allow commercial fishers to cover expected catch against catching rights.

It is our strong view that the rental or return quota holders are entitled to be confined to fish taken within the TACC. Any erosion or loss of value quota holders suffer when fish are taken above the TACC is their collective responsibility by allowing fishers to fish with inadequately balanced ACE portfolios. As quota holders collectively hold, control and/or issue all catching aspects their quota rights, it follows that quota holders alone must take responsibility for any fishing above their entitlements.

The proposal in this submission would create strong incentives for quota holders to operate collectively, in the interests of the sustainable use of the fisheries when those quota holders are faced with an immediate quota cut as the price for taking fish in excess of the TACC. Moreover, fishing companies which hold large blocks of quota would carefully consider altering their catch plans, or contemplate leasing ACE to allow others to take fish they normally catch themselves in preference to a TACC reduction for collectively taking fish in excess of the TACC.

As part of our proposal, if quota holders resisted such incentives to achieve the sustainable use of our fisheries and cooperatively address deeming, a fisheries management decision could be made effectively splitting the TACC into two components, namely:

- A lower TACC; and
- A **deeming allowance**, which, when added together would total the previous TACC.

The **deeming allowance** would give Mfish control over a bank of sustainable ACE which could be issued to fishers to cover the precise amount of ACE the quota holders had failed to make available.

In the following year, if the combination of deeming allowance plus the new lower TACC is under-caught, then the TACC would automatically increase and the deeming allowance would be reduced to reflect this.

If the deeming allowance plus the new TACC is exceeded, the TACC would be reduced again. The quantity of fish representing the sum total of the TACC plus the new deeming allowance would always be equal to the previous TACC, and remain so until a new stock assessment was available.

We consider that all deemed monies should be returned to quota holders under this scenario up to the level of the previous TACC. Following this approach, if quota holders

had a greater involvement in setting deemed values they ought to have no entitlement to compensation. This is because any reduction in quota would be implemented to constrain commercial fishers to their sustainable entitlement intended by the setting of the TACC.

Quota holders have the capacity right now to manage their quota portfolios responsibly within the TACC in shared fisheries. If they do not, under this proposal MFish will control the shortfall. Refunding payments for deemed values above the TACC reduces the incentive for quota holders to work together to constrain the total commercial catch. In fact, it may create perverse incentives to do the opposite.

With this proposal in place quota holders would quickly learn to adjust their catch plans, and distribution of ACE they lease out, to maximise control over and the value of their quota holdings.

Non-commercial fishers believe that the JWG proposed options of increasing TACCs to simply cover chronic deeming is unacceptable because it completely ignores the information principles of the Act. The existing TACC is the result of an assessment that includes scientific information and agreed objectives of all users of the fishery. In the absence of a new stock assessment the previous assessment is the best available information. Deeming is a symptom of systematic or organisational failure and should not be used as the basis for increasing TACCs, particularly in shared fisheries. The mere fact that commercial fishers cannot balance their catch portfolios is no reason in itself, to give a TACC increase.

Non-commercial fishers believe that increasing TACCs to cover chronic deeming is unacceptable in:

1. Shared fisheries where additional restrictions on recreational bag and size limits are in place;
2. Under a proportional allocation model where the recreational allowance is a fixed proportion of the TAC; and
3. Particularly in a rebuilding shared fishery where the stock may be below the desired target biomass.

It is possible that the fishing industry, and/or quota holders will resist the obvious solution described above for shared fisheries by raising the “if we had proportional allocation in shared fisheries none of this would have happened” smokescreen they have been promoting for the last decade.

We again remind MFish that the statutory rights of commercial quota holders on the one hand, and recreational fishing rights on the other hand are quite different and, as such carry vastly different responsibilities.

## Commercial Fishing Rights

The implementation of the QMS, including the setting of the original TACCs was achieved after a formal process that included the following:

- Consultation with commercial fishers
- Scientific assessment based on commercial catch reports
- Catch history (used as the basis for allocating quota, not current utilisation)
- Compensation (paid to commercial fishermen to accept the TACC as the upper limit of commercial catching rights)
- The Quota Appeals Authority (which gave commercial fishers who were dissatisfied with their quota allocations, a process to have their claims heard and quota allocations reviewed).

The explicit perpetual commercial fishing rights issued through the QMS, and the compensation paid from the public purse to get commercial fishers to accept the QMS, both carried an absolute responsibility to the beneficiaries (quota holders) to constrain the sum of all commercial catch to the TACC.

## Recreational Interests

The right of all New Zealanders to catch fish is recognised and protected in the Act. This right has been administered by MFish in an ad hoc manner without any proper process. The ability to exercise that right has been whittled away, by stealth, to the detriment of recreational fishers. MFish's focus has been on balancing the TAC and TACC equation and avoiding compensation, rather than allowing for a process that truly and explicitly considers the full range of recreational interests as directed by section 21 of the Fisheries Act.

Put simply, recreational fishers have had their rights eroded by being fitted into the leftovers of a poorly implemented QMS. Deeming above the TACC erodes recreational fisher's rights even further.

Successive fisheries Ministers have allowed for recreational fisher's rights using under-estimates of recreational use, or estimates based on current utilisation in depleted fisheries. As a consequence this poses difficulties for Ministers to properly "allow for" non-commercial fishing interests. If an under allowance of historic catch has been made it merely means the fishery is more productive than previously thought. Exceeding a poorly estimated recreational allowance does not therefore pose a sustainability risk in the absence of evidence that effort and catch is **actually** increasing.

## Case Studies

The only shared fishery case study presented is Kingfish 8 (KIN8). We believe this is a very poor choice and not representative of inshore shared fisheries where conflict has arisen through chronic deeming. Other fish stocks such as Snapper 2 (SNA2) - an extreme example - or SNA8, which is an average example, would have made much better case studies. We use SNA8 because it is an average example in an important shared fishery. The evidence of how deeming adversely affects non-commercial fishing interests and does not allow for their aspirations to be achieved was included in the option4 SNA8 submission in 2005. A copy of the submission to the SNA8 2005 IPP is attached as Appendix Two. Additional new points on the latest SNA8 decision are also summarised below in Appendix Two.

## Deeming in Shared Fisheries

Deeming in excess of the TACC in shared fisheries is entirely inappropriate for the following reasons. It:

- Undermines the management objectives of Ministerial decisions
- Overrides the interests and aspirations of other users
- Undermines the value of quota holdings
- Places unsustainable burdens on fish stocks in fisheries that are below MSY or target biomass
- Reduces public confidence in the QMS.

It appears from the Joint Working Group's paper the Ministry wants to continue tinkering and experimenting with economic sanctions as a way of constraining commercial fishers to the TACC. After twenty years of watching this approach fail, we believe the time for doing so in shared fisheries is truly over! Such experiments, if considered to be absolutely necessary, should be run in commercial only deepwater fisheries.

Important shared fisheries need a completely different management approach. It is unacceptable that the Minister and MFish are failing to manage shared fisheries according to the sustainability provisions of the Act and are allowing deeming to operate outside the constraints of the Act. Non-commercial fishers strongly object to their fisheries management objectives and aspirations coming second, just to placate commercial fishers and avoid compensation issues for the Crown. We can be certain that deemed fish are truly dead and therefore they must be "allowed for" as directed by the Act. It would be absurd to suggest that commercial fishermen would pay deemed values for fish they had not actually landed.

Deeming has not been properly accounted for in the TACC setting process. The Act directs the Minister to "allow for" all other fishing related mortality before setting the TACC. This proposal provides the Minister with a mechanism to ensure that all fish killed through deeming in excess of the TACC are accounted for and deducted from the next year's TACC.

## **Criteria for Implementation of Shared Fisheries Deeming Policy**

In shared fisheries deeming in excess of TACC requires close scrutiny from a non-commercial perspective because commercial fishers have no rights above the level of the TACC. Non-commercial fishers need a process whereby they can nominate a fishery as being an important shared fishery in which the commercial catch has to be constrained to the TACC.

There should be a simple decision rule implemented when the TACC has been exceeded through deeming in a nominated shared fishery. Commercial fishers should be constrained to the TACC by using the deeming allowance/TACC split mechanism described above.

Obviously, quota owners will have had ample opportunity to modify catch plans, fishing areas, fishing methods, ACE distribution or any of the other mechanisms available to them to minimise the impact this proposal has on them.

Fisheries plans are highly unlikely to change our view on allowing for all fishing related mortality as per the Fisheries Act. Left unresolved the crucial issue of deeming above the TACC could seriously undermine any future shared fisheries plan process.

There are a limited number of fisheries affected by this proposal. Further consultation between non-commercial fishers and the Ministry will be required to define the final framework and to nominate fisheries of concern to ensure that a fair deeming policy regarding shared fisheries results from this process.

We note that this process does not address the over-allocation of TACC in some fisheries. We flag this related issue as urgent. Unnecessary conflict is created when TACCs are intentionally set so high they are never likely to constrain commercial catches.

This submission only deals with shared fisheries where the TACC is set to a level intended to constrain commercial catch, and that level is exceeded. This important point clearly distinguishes the above proposals from the old 'overs and unders' policy.

The Minister of Fisheries sets a TACC. The above proposals simply ensure that commercial fishers stay within the TACC. The split between new TACC and the deeming allowance is determined by the over catch in the previous year. Therefore, the sum of the deeming allowance and the new TACC will always be equal to the previous TACC as set by the Minister.

We are available for further discussion on the options put forward in this paper.