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Minister of Fisheries

REPORT OF THE CROWN/INDUSTRY JOINT WORKING GROUP ON DEEMED VALUES TO THE MINISTER OF FISHERIES

Purpose

1. The purpose of this report is to present the recommendations of the Joint Working Group on Deemed Values¹ for your consideration, and to seek your approval to a process of consultation with stakeholders over these recommendations.

Background

2. Deemed values are a key part of the system used to encourage fishers to balance catches with annual catch entitlement (ACE) in New Zealand's fisheries. The deemed value regime provides for civil payments to be made to the Crown as a defence for landing catch of QMS species for which the individual holds no ACE. Currently all deemed value payments are transferred to the consolidated fund.
3. The Joint Crown and Industry Working Group on Under and Over Recovery examined the issue of whether deemed value revenue was a mandatory consideration of the Minister in setting a future cost recovery levy order. That Working Group recommended to the Minister of Fisheries in February 2003 that a similar Minister-mandated group be established, in the second half of that calendar year, to consider the proposition that quota rights holders should be entitled to a proportion of revenues paid as deemed values. In accordance with this recommendation a Joint Working Group (JWG) was created to undertake a review of the issue.
4. In developing terms of reference for the JWG on deemed values it became apparent to both the Ministry of Fisheries (MFish) and seafood industry representatives, that the review needed to address matters beyond just the distribution of deemed value revenues. Consequently the scope of the review was broadened to include policies for setting and adjusting deemed values and the information required for implementing those policies. The terms of reference for the group acknowledged that a range of other

¹ The Joint Working Group comprises representatives from the fishing industry, Ministry of Fisheries and The Treasury.

related issues were relevant to the matters to be considered in the review, including the setting of total allowable catches (TACs), total allowable commercial catches (TACCs), and the related compliance regime. The JWG Terms of Reference are attached as Appendix A.

Context

5. The purpose of the Fisheries Act 1996 is to provide for the utilisation of fisheries resources while ensuring sustainability. Utilisation means conserving, managing, using, enhancing and developing fisheries resources to enable people to provide for their social, economic and cultural well-being. The Ministry also has a strategic goal for the New Zealand's fisheries resources: "[To] maximise the value New Zealanders obtain through the sustainable use of fisheries resources and protection of the aquatic environment".
6. The Ministry is developing a new management approach to meet its obligations under the law and to achieve its strategic goal. This approach to fisheries management aims, within sustainability constraints approved by Government, to enable fishers to obtain the best value from the fishery. Sustainability constraints are to be expressed through standards (other standards will encompass other objectives). Management of fisheries will be delivered increasingly through collaborative approaches involving the Ministry and stakeholders.
7. The catch-balancing regime, of which deemed values is a part, is an important component of the Quota Management System (QMS). A policy affecting the catch-balancing regime should be consistent with Fisheries Act 1996 obligations and the Ministry's strategic direction. This suggests that such a policy should clearly specify the constraints (derived from legislative obligations) within which the balancing regime for a stock must operate, but provide for flexible application.
8. Deemed values are civil sanctions imposed on fishers by the Crown for failure to balance landed catch of QMS stocks with ACE holdings at a given time. These payments are subsequently returned to the fishing permit holder if they acquire ACE to cover their over-catch before 15 days after the end of the fishing year. The Fisheries Act requires that, when setting deemed values, the Minister of Fisheries must take into account the need to provide an incentive for every commercial fisher to have or acquire sufficient ACE to cover their catch.

Results from the Working Group

9. The JWG on Deemed Values carried on discussions through 2004 and members produced reports and case studies to inform and support the analysis and recommendations. The key outputs of this work are reflected in the recommendations of this paper. The central insights of the work on which the parties are in agreement concern the following matters:
 - the need for systematic attention to be focused on stocks where chronic over-catch is a problem so as to eliminate this within a reasonable timeframe;
 - the potential impacts of deemed value levels on both ACE prices and incentives on fishers to catch beyond their ACE holdings, and therefore the critical

importance of getting these settings right, for both sustainability and economic reasons;

- the economic analysis of these effects and the implications for policies for setting deemed value levels;
- the important relationships among TACC levels for jointly caught species and the deemed values for these species, and the implications for consideration of the appropriateness of TACC levels of various species where over-catch is a problem;
- the logic that, where catch for a stock exceeds the TACC, this has a negative impact on the interests of the quota owners (who are often not those catching the fish), and that, therefore, the deemed value revenue collected by the Crown for such over-catch should, at least in part, be paid to rights holders in recognition of such impacts.

Findings of the Joint Working Group

10. The Joint Working Group provides an endorsement below for the approach currently being developed by the Ministry for implementation of its statutory objectives.
11. The following nine recommendations propose a more rigorous application of deemed values but also recognize that this must be accompanied by a more responsive process of evaluating the need for adjustment of TACCs. The deemed value system has, in the past, been used in part as a pressure release valve for low knowledge stocks, but also for some fisheries where there are real trade-offs to be faced between attainable catch levels for the main target species and sustainable catch levels of by-catch stocks. The JWG is of the view that the appropriate balance between sustainability and utilisation can only be achieved if both the deemed value system and the TACC setting processes are more responsive to what is happening in these fisheries. In some cases more data will be needed to inform decision-making; in others, greater and more timely analysis of existing data could provide significant benefits.
12. Most of the recommendations are linked to form a systematic approach to the issue of over-catch, and therefore are not necessarily suitable as stand alone measures. The Working Group encourages consideration of the recommendations as a package.

Endorsement of Cooperative Management

13. The quota management system (QMS) provides the institutional structure for managing commercial fisheries in New Zealand to maximize the value generated by the fish stocks while ensuring sustainable use. The QMS provides incentives for commercial stakeholders to generate the maximum economic value from the Total Allowable Commercial Catch (TACC).
14. However, the extent to which the value of the fisheries is maximized also depends on the degree to which the management approach enables the development of optimal catch strategies. TACCs provide a regulatory setting that attempts to ensure sustainability while providing for the utilisation purpose of the Act. The Ministry's strategic direction encourages stakeholders to participate more actively in management

of their fisheries to maximise value within sustainability constraints. Ideally, management plans should be established that adjust harvests to conform to optimal total catch levels. Maximizing benefits from commercial fisheries also requires that markets for quota and Annual Catch Entitlement (ACE) are efficient.

The Joint Working Group endorses the Ministry's approach to implementation, which acknowledges that management targets for commercial fisheries need to be set through effective participation of commercial stakeholders within Government approved and monitored standards. Stakeholder incentives and information can contribute positively to the correct setting of management instruments and the operation of the catch-balancing regime.

Recommendation 1: Responses to TACC over catch

15. Significant levels of catch in excess of TACCs should not be allowed to persist. If catch exceeds the TACC and is balanced with deemed values, it may be appropriate to review the stock status and consider adjustment of TACC settings, for either target or by-catch stocks. For example, where the best available information suggests the current levels of catch for a by-catch stock are sustainable despite being in excess of the TACC, a TACC increase should be considered. If a change in the TACC is not recommended, it will generally be appropriate to raise deemed values to provide stronger individual incentives for balancing of catch with ACE and constrain overall catch to the TACC. However, The JWG recognizes the potential need for the use of the over-fishing threshold mechanism as a last resort.
16. The JWG acknowledges that process requirements for the review of TACCs and other management actions are such that the implementation of the preferred response to persistent over-catch may not be immediate, and that some use of increased disincentives through deemed values may be necessary while the best course of action is being determined. However, the JWG rejects the soft policy option of tolerating chronic over-catch of by-catch stocks with accompanying use of ongoing DV payments. The issues must be faced and management action taken. This implies a more responsive stance by the Ministry in monitoring over-catch problems, and in reviewing both TACCs and deemed value rates.

Deemed values may provide temporary flexibility in aggregate catch relative to TACCs, but chronic over-catch should trigger one of the management actions below. In cases where catch significantly exceeds available ACE and this does not appear to be a temporary occurrence, one or more of the following actions should be taken:

- *Increase the deemed value*
- *Increase the TACC of the over-caught stock*
- *Decrease TACCs of stocks responsible for significant incidental catch of the over-caught stock*
- *Implement other management measures to reduce incidental or other over-catch, including gear restrictions and over-fishing thresholds.*

Recommendation 2: Improving Flexibility for Setting Management Targets

17. The basic reference point for setting TACs under the Fisheries Act is the maintenance of stocks at or above the level that will produce the maximum sustainable yield, and TACCs must be set within the TAC. Tensions arise within this system in multi-species fisheries where some stocks are taken as by-catch in fishing for a main target species. If the ratio of by-catch to catch of the target stock is greater than the ratio of the TACCs, the by-catch TACC will either limit the target catch or will be over-caught.
18. Section 14B of the Fisheries Act 1996 provides some flexibility in setting TACCs for multispecies fisheries. It allows TACs for some fish stocks to be set at levels higher than the basic criteria would allow, and stocks to be fished down below the level that supports MSY. But the criteria enabling the use of section 14B, as set out in section 14A, are demanding, and this mechanism has not been used to date. A critical limiting condition is the need for approval of quota owners representing 95% of the stock.
19. The working group questions whether this threshold is set at the appropriate level to provide the flexibility intended by the Act, within the context of accepting that complete agreement of all quota interests is unlikely. If the intention of the provision to maximise the value obtained from joint fisheries is to be achieved, the current level of trade-off between majority and minority interests may need adjustment. However, views differ within the working group on what is the appropriate level for stakeholder approval. Should a change be made, it will be necessary to examine how to give appropriate consideration to the concerns of a dissenting minority.
20. The Ministry has a policy project scheduled to begin in 2005 on “collective responsibility,” which is intended to consider this matter of stakeholder majority decision-making and related issues in the broader context of encouraging greater participation in management to be taken by stakeholders. The Ministry’s view is that the specific level of majority required by section 14BA should be aligned with that for other stakeholder group decision-making affecting catch rights, and any decision on this should await the results of this broader policy development.
21. Another important matter in the use of section 14A/B is the information demands of reducing stock biomass below the point that will support MSY. The statutory requirements include that the long-term viability of the stock is ensured, that significant adverse effects of the aquatic environment are avoided, and that the costs of the change are outweighed by the benefits. These are complex matters and are inherently costly to establish with any certainty. These costs will very likely be greater than the costs of managing to the MSY biomass, and will inevitably be borne by the stakeholders.

Section 14A and 14B should be revised to provide greater flexibility for setting management targets for bycatch stocks in a multispecies fishery while still taking account of the rights of dissenting parties. The current approval threshold for proposals from quota owners to the Minister to apply 14B should be reduced from the current 95% level. The Ministry will commence a process to determine the appropriate changes to sections 14A and 14B of the Fisheries Act 1996, with the objective of completing that work to provide advice to Government before the end of 2005.

Recommendation 3: Principles for Setting Deemed Value Rates

22. Paying a deemed value is a legal substitute for holding ACE to cover catch. The deemed value provisions are now structured so that the only matter the Minister must take into account when setting a deemed value is the need to provide an incentive for fishers to cover all catch by ACE. Deemed values should promote the use of the market for ACE and help reduce transactions costs by allowing periodic rather than continuous balancing. Significant levels of over-catch should be seen as a signal that management action is required.
23. In order to provide individual incentives to cover catch with ACE, a deemed value should be set above the marginal value of the ACE for the stock. This ACE value is the equilibrium price that would prevail if catch were constrained to the TACC. The difference between the marginal ACE value and the deemed value must be greater than the transactions costs of obtaining ACE to provide any incentive to do so. When set at this level, deemed values will remove all incentives to intentionally take catch in excess of ACE holdings, and thereby defend the TACC.
24. If, as recommended, deemed value revenues are returned to quota holders in proportion to quota ownership, there will be a need to set the deemed value at a higher level than ACE price plus transactions costs. To account for quota ownership concentration, the deemed value must be set high enough so that the net cost of using deemed values remains above the ACE price for quota owners with significant proportions of total quota shares.
25. In cases where TACCs are being overcaught the level for a deemed value that will constrain catch to the TACC can only be determined with certainty by raising rates until overcatch ceases. Note that in a mixed fishery where catch of a primary target stock is being constrained by availability of ACE for an incidentally caught stock, if deemed values are at the appropriate level, the ACE price of the incidentally caught stock will reflect the cost of reducing incidental catch of that species with the target species. This is referred to as the shadow value of the bycatch. If reduction of incidental catch is not possible or very costly, the value of ACE for the incidentally caught species could be as high as the value of ACE for the target species divided by the incidental catch rate. This could easily exceed the port price of the incidentally caught stock. Such cases may require additional compliance attention to ensure illegal discarding is not used as a substitute for paying deemed values.
26. For certain high value species such as paua or rock lobster that are not taken as a bycatch in other fisheries to any significant degree and can be returned to the sea live there is no real justification for using deemed values to cover catch except temporarily. For these stocks, stakeholders want to continue the current policy of setting deemed values at 200% of port price to create an absolute deterrent for catch that can not be covered by ACE.

In general, deemed values should be set at a margin above the ACE value greater than the transactions costs of acquiring ACE. For certain high value species such as lobster and paua that are not taken as bycatch in other fisheries, deemed values should continue to be set at 200% of port price. It will be necessary to set deemed values above true ACE values by a larger margin when quota ownership is concentrated so that the net deemed value that would be paid by those quota holders would exceed the value of ACE. For stocks where

over-catch of the TACC is persistent, unless decisions are taken to adjust TACCs (or reduce incidental by-catch by introduction of technical selectivity measures), deemed value rates should be raised until over-catch is eliminated. Where deemed values are set above port prices, compliance activity should be focused to ensure all catch is landed and reported.

Recommendation 4: Information and Process for Setting Deemed Values

27. ACE prices, port prices, export prices, and cost recovery levies are important informational inputs into the decision making process for setting deemed values. An estimate of transactions costs is also important, in order to know how far above the ACE price the deemed value needs to be set to create an incentive to acquire ACE. By-catch rates relative to target catches are also relevant in order to determine the shadow value of the by-catch as a constraint on the target fishery, and the current system of differential deemed values, for some stocks, provides a useful source of information on the marginal willingness to pay for the right to land fish over the TACC. However, the most important information for determining the need for adjustment of deemed values is whether and the degree to which catch is exceeding the TACC.
28. It is not clear that it is necessary or advisable to institute a formal procedure to determine ACE prices (such as an ACE price survey carried out by the Ministry or its agent). Doing so is likely to be costly and may result in strategic behaviour that biases results. However, the Ministry should be analyzing disaggregated ACE trading data beyond simply relying on average or the range of ACE prices reported in the bluebook and might seek information from other sources to ground truth the ACE prices. Analysis of patterns of over-catch at the firm level may be necessary to determine the root cause of persistent over-catch problems for some stocks.
29. In light of the need for such analysis to set deemed values at effective levels, it may be advisable to allow for the rates to be set at any time up to the end of the first month of the fishing year to which they apply, to allow the analysis of the data from the previous year to be completed. Since, in this case, the deemed value decision process will be compacted into a short period at the end of the fishing year, opportunity for consultation will be limited. To provide more transparency and opportunity of feedback, an attenuated consultation process should be designed to allow a review deemed value changes during the first month of the fishing year.

Information relevant to setting deemed values includes ACE prices, port prices, catch in excess of TACC, and by-catch to target catch ratios. The Ministry should be undertaking regular detailed analysis of these factors to determine appropriate deemed value levels, particularly where over-catch is occurring. Deemed values could be set later in the fishing year so they can reflect information on whether the previous year's deemed value was sufficient to keep catch within the TACC. This might be achieved through allowing any changes to deemed value rates to be made up to the end of the 1st month of the fishing year.

Recommendation 5: Interim Deemed Values

30. Deemed values should provide the flexibility for individuals to reduce transactions costs by consolidating acquisitions of ACE (rather than acquiring ACE before or after each trip), but should not provide financial incentives to avoid acquiring ACE until the end of the fishing year.
31. Interim deemed values set lower than the cost of ACE reduce the incentives for fishers to acquire ACE before or directly after landing catch, where ACE is not expected to be difficult to obtain later in the season, since cash outlays are reduced. If annual deemed values are set around the ACE price, any lower interim DV would increase incentives to delay balancing.
32. However, if deemed values are well above ACE prices, then a lower interim deemed value might be appropriate so that deemed values are still utilized to lower transactions costs without imposing unnecessary cash-flow burdens on fishers. For deemed values set under the general policies recommended here, no deemed values should be substantially above true ACE values, but this may occur in at least two different situations. For certain high value species such as rock lobster and paua, deemed values are currently set at 200% of port price and this policy may continue for those stocks. In that case interim deemed values set at half the annual level would be appropriate. The other case would be when deemed values are set well above ACE price for some stocks to account for concentrated ownership and the effect that has on the net deemed value faced by those quota owners. If deemed values are set significantly above ACE price for that reason, it may be advisable to set an interim deemed value at a lower level.
33. In addition, it may take some time to bring the deemed value rates into line with ACE values under the policies recommended here. Hence interim deemed value rates may be a useful tool in the transition period for some stocks.

Interim deemed values would be inappropriate under the recommended approach to setting annual deemed values for most stocks. However, until all deemed value rates have been fully adjusted according to the new scheme, interim deemed value rates should be used where necessary to provide a rate commensurate with ACE prices. For any stocks for which deemed values are set well above ACE price, interim deemed values may continue to be appropriate.

Recommendation 6: Differential Deemed Values

34. Differential deemed values are intended to provide increasing individual and aggregate disincentives to take catch that cannot be covered with ACE. If deemed values are set too low to keep total catch within 120% of an individual's ACE, differential deemed values provide a rising price signal as over-catch increases. The mechanism provides a backstop for the TACC that can protect the stock when the annual deemed value has been set too low, or has not been increased as conditions have changed between fishing years, or when fishing costs or by-catch ratios differ significantly among fishers or across the season. In these circumstances, differential deemed values can also provide a valuable signal as to firms' willingness to pay to continue to harvest beyond their ACE holdings and the TACC, and this can be used to bring the deemed value up to an effective level in the following year.

35. However, differential deemed values may have some perverse effects. Differential deemed values can result in costs for catching rights that differ across firms, which implies that an efficient allocation of catch has not been achieved. Differential deemed values may undermine liquidity of the ACE market by creating incentives for quota holders to hold ACE until the latter part of year when some fishers may be facing differential deemed values and be willing to pay inflated prices for ACE.
36. If the key recommendations made here on principles for setting deemed values are implemented and have the desired effect, then differential deemed values may rarely be used. In the meantime, it would seem imprudent to remove an existing tool that may continue to prove useful in particular circumstances.

Differential deemed values can serve as a backstop to protect stocks from over-fishing and as a value indicator to assist the tuning of deemed values to their optimal level. However, differential deemed values can also cause distortions in ACE markets and should not be applied as a general rule. Application of differential deemed values should be reduced to a minimum once the recommended policies for setting annual deemed value levels have proved effective, but differential deemed values should remain in the manager's tool box to be applied in cases where the TACC has been exceeded in the previous year(s).

Recommendation 7: Redistributing Deemed Value Revenue to Rights Holders

37. Currently all deemed value payments are transferred to the consolidated fund. Yet catch in excess of the TACC covered with deemed values diminishes the value generated by the fish stock for quota owners both in the short-run and the long-run. In the short-run, the deemed value can undercut the ACE price that would have prevailed if catch were limited to the TACC. This reduces the revenue that quota owners could generate by selling ACE.
38. The catch above the TACC may also reduce the quantity of future ACE and associated catch that would have accrued to quota owners by either causing future reductions in the TACC or displacing TACC increases that would have been possible. The value of ACE may also be reduced by a reduction in the stock size, which may decrease catch rates and increase cost per unit of catch. There is potential for the loss to quota owners, from catches that exceed the TACC and are covered by deemed values, to exceed the deemed values transferred to the Crown. In that case, return of those deemed values would provide only partial compensation for the over-catch that was accommodated with deemed values.
39. One potent criticism of the current arrangement, particularly when over-catch of the TACC has been persistent over several years, is that deemed values can be viewed as the equivalent of the Crown selling extra ACE to fishers on the side without reference to the rights of quota owners. If a catch greater than the TACC is sustainable in the view of the government, then the TACC should be increased and the resulting ACE issued to quota owners. They may then sell this to fishers and benefit from the revenues. The return of deemed value revenues to quota owners would remove any potential for the interpretation that the Crown is deliberately using the deemed value system to generate revenue. However, if this criticism of the current system is valid – that the Crown is depriving quota owners of potential revenues from an increased

TACC – then deemed value revenues for catch over the TACC that is returned to quota owners should be at a rate more or less equivalent to the ACE price.

40. There has been some discussion of whether deemed values paid on catches above the TACC should be treated differently than those paid on catches within the TACC (that could have been covered by ACE but were not). The JWG favours an approach where deemed values collected only on catches in excess of the TACC are returned to quota owners. Withholding deemed values revenues that could have been covered with ACE is intended to create incentives for quota holders to make ACE available for sale, and reduce their ability to assert market power in the ACE market through constraining supply below the TACC.
41. An exception to the approach above should be made where quota owners have decided, through a management plan mechanism, to voluntarily maintain catches below the TACC because they believe it will increase the economic value of the fishery within sustainability constraints (for example by managing biomass at a level that will produce the maximum economic yield). In this situation quota owners should be returned the deemed value revenues collected by the Crown for individual over-catches that compromise their ability to achieve this goal. Thus, in the case where quota owners are acting collectively to restrict catch to agreed levels that are below the TACC, deemed values on catch above such an agreed level should be returned to quota owners. However, in the case of some stocks that are constraining by-catches of much larger and more valuable target fisheries, the return of deemed value revenues for catches between an agreed limit and the TACC may provide an incentive to limit catches as a strategy to transfer rents from quota owners of the target fishery to the holders of the by-catch quota. Given this risk, the final decision on whether this mechanism is applied to a particular stock should be at the discretion of the Minister of Fisheries.
42. The working group had some difficulty agreeing on the return of deemed value revenues collected in fisheries that are significantly shared with extractive users that do not hold quantified individual rights (recreational fishers and Maori customary fishers). The Ministry acknowledges the imprecision of management of non-commercial fisheries in terms of knowledge of the total take of stocks and about effectiveness of the management regime. However, over-catch by the commercial sector does have a detrimental effect on non-commercial as well as commercial interests in the stock. Because of the fishing techniques used, non-commercial interests are more likely to be adversely affected in the short term by any localised depletion and consequent changes in catch rates. However, the return of a share of revenues to non-commercial fishers would be impractical due to the dispersed nature of rights and their lack of quantification at the individual level.
43. The Crown, through the Ministry of Fisheries, currently funds that proportion of costs associated with non-commercial interests in fisheries. Thus any deemed value revenue attributable to the non-commercial interest in a stock should be retained by the Crown. The impact on their interests caused by over-fishing of a stock could be recognised by way of using deemed value revenue to fund research or management action directly related to the status of the stock or to addressing over-catch of that stock.
44. The aggregate catch quantity allowed for non-commercial uses, along with any other sources of fishing mortality such as illegal and unreported catch, is the difference between the TACC and the TAC (if a TAC has been set for the stock). If part of

eligible deemed value revenues for shared stocks are to be returned to commercial quota owners, the proportion should be equal to the ratio of the TACC to the TAC, with the remainder retained by the Crown to provide research and services that address the interests of the non-commercial sectors. This might include offsetting the Crown's share of regular research expenditures for the stock.

45. A transitional issue should be noted here, in that there are some stocks in the QMS that do not currently have TACs set for them – only TACCs – including some shared stocks. This matter is being addressed as stocks are reviewed. It will take several years before all relevant stocks are reviewed, and hence attention to the matter of setting TACs may need to be brought forward in order for this recommendation to be implemented.

Redistribution of Deemed Value Revenue:

Commercial Only Stocks—

Deemed values for catch in excess of the TACC or agreed and binding lesser catch limit should be returned to quota owners in proportion to quota ownership.

Shared stocks—

The proportion of deemed values for catch in excess of the TACC equal to the TACC/TAC ratio should be returned to commercial quota holders. The remaining portion of the deemed values on catches above available ACE should be tagged for provision of research and services for the stock that improve management of recreational and customary fisheries, and might be considered for such activities that contribute to the reduction of commercial over-catch.

Recommendation 8: Perverse Effects and Risks to Catch Balancing Regime

46. Returning deemed values directly to quota owners in proportion to their quota holdings may weaken or eliminate incentives for fishers who are also quota owners to cover catch with ACE and to constrain aggregate catches with the TACC. The Joint Working Group believes that this would only be the case in limited circumstances and adjustments can be made for those cases.
47. Only if all quota owners who over-caught exceeded their ACE in equal proportion, would the deemed values be exactly redistributed to those who paid them. This would require the quota owners to conspire to over-fish the TACC. However, acting individually, a quota owner who landed catch in excess of ACE would stand to lose the majority of the deemed value payments made as they receive revenue back only in proportion to the quota they own. The effective deemed value is reduced by this rebate and will only act as a deterrent as long as the deemed value after the rebate is greater than the economic value generated by the catch. This will require increasing the nominal level of the deemed value enough to counteract the rebate level for the largest quota owner of the stock.
48. However, raising the deemed value setting to compensate for incentives on the largest quota owner will work against the use of deemed values as a temporary flexibility

mechanism in balancing during the season by those fishers with lower quota holdings by making this more expensive, unless interim deemed values are retained. It also denies those with less than the greatest holdings any benefits of using DVs to maintain their catch share when temporary increases in abundance lower fishing costs. Hence positive flexibility attributes of the system are made available to the largest quota holders, but not to all fishers.

49. A further risk is that quota owners might become less concerned about the fishing behaviour of those that fish the ACE generated from their ITQ. Under current policies there is arguably an incentive on quota owners to be cautious about to whom they sell ACE, in respect of potentially irresponsible fishing behaviour such as over-fishing. With any deemed values from over-fishing returning to quota owners, they may be less concerned about it occurring. However, quota owners may also be more concerned about the possibility of dumping of over-catch because this would result in lost revenue from deemed values, and might therefore be more careful about who fishes their ACE.
50. The recommended deemed value policies will sometimes require setting deemed values above port price, which may increase compliance risks. Discarding at sea of quota species is a criminal offence, but high deemed values set to prevent over-catch of by-catch species may tempt fishers to discard. Such behaviour undermines the management system by under-reporting catch and thereby distorting inputs to stock assessment, and reduces the value of the stock to quota holders.
51. The Minister of Fisheries can take actions to curtail individual over-fishing if there is reason to believe the quota management system is being undermined. Compliance methods such as catch profiling and strategic placement of observers can be used where discarding is suspected, and the Minister could set over-fishing thresholds that would stop individuals from fishing without ACE beyond a given point. If the Minister determines that the deemed value regime is not proving to be an effective deterrent for catches above the TACC, and believes an increase in deemed value will also be ineffective, the Minister should set over-fishing thresholds for the stocks concerned to prevent fishing without ACE.

If the deemed value regime is failing to constrain catches within the TACC and other management actions are not available to effectively address this problem, the Minister should set over-fishing thresholds for the stocks concerned to prevent fishing without ACE. Where deemed values are set higher than the port price for a stock, compliance attention should be focused on the fishing of that stock to ensure that significant discarding of by-catch is detected and prosecuted.

Recommendation 9: Retrospective Application of Repatriation

52. Assuming the JWG's recommendations concerning the return of deemed value revenues to quota holders are accepted (Recommendation 7), an issue arises as to the date from which such repatriation should commence.
53. The Industry initially considered that repatriation should apply to the DV revenue received by the Crown during the fishing year ending 30 September 2004. This position goes back to the introduction of cost recovery in 1995. From that time the

industry has argued that deemed value revenue should be credited against cost recovery charges because, firstly, it was the intent of the Crown policy to recover avoidable costs only, and, secondly, that the statutory obligation to take into account any fees and levies when setting cost recovery charges should include deemed value charges.

54. The Crown's view is that deemed values were introduced as a sanction against individuals catching in excess of quota derived rights, and were intended to remove any real profitability from such over-catch, while providing some residual incentive to land and report catches taken in excess of quota rights. It is viewed as an entirely separate issue from that of cost recovery.
55. The Industry brought the matter to the Courts in a challenge to the cost recovery regime in 1998. Proceedings were discontinued in favour of a Select Committee Inquiry into the cost recovery regime. The legislative authority of the Crown to levy cost recovery charges without consideration of deemed value revenue was clarified by amendment in 2001 following the findings of the Inquiry.
56. The Industry then took their argument forward into the Joint Working Group on the Under and Over Recovery of Levies (2001-2003), which reported in February 2003. Rather than delaying the completion of the Unders and Overs JWG report, it was recommended that a separate JWG process be undertaken to consider whether quota holders should be entitled to a proportion of the revenues paid as deemed values.
57. There was a delay in initiating this JWG review, which was to have commenced in the second half of 2003. The delay was principally due to the work programme commitments of the Ministry (particularly the scampi inquiries). Had the review commenced without delay, the JWG may have reached its conclusions by the end of the 2003/04 fishing year, and this was acknowledged by the Ministry in the report of the Unders and Overs JWG as a "good faith target of completion.". Thus the terms of reference for this JWG noted that "Recognising the delay in initiating the review, the recommendations may consider the possibility of applying the outcomes of the review as if the review had been completed by 1 October 2004".
58. However, the terms of reference also expanded the scope of the review considerably, as is reflected in these recommendations, and the additional work consequently undertaken by the JWG is a major factor in the delayed completion of the review. This expanded scope has also made the potential retrospective application of the recommendations controversial.
59. Government officials, while supporting repatriation of revenues under a revised policy, view the current recommendations as an integrated package of policy settings with corresponding co-dependencies. In terms of the policy package there is no rationale for applying just one aspect retrospectively. The policy package is intended to bring about behavioural changes, the most important of which is to encourage fishers to harvest within the TACC. If these measures are effective, less over-catch will occur and the flow of revenues should be reduced. Thus the revenue from past years is not related to the recommended new regime.
60. The Industry acknowledges that the scope of this review has expanded and the resulting broader range of recommendations for change to the deemed value regime is a valuable achievement. However, the Industry remains frustrated by the time taken to address the

fate of deemed value revenues and favours the return of revenues collected during the delayed timeframe.

61. In the end both parties acknowledge that there is some validity in the respective positions. In recognition of this, two options are provided in the recommendation on this matter.

Option 1:

If recommendation 7 of this report concerning the repatriation of part of deemed value revenue is accepted by the Government, that policy should be applied in respect of the revenues for the fishing year ending 30 September 2005. Legislation necessary to give effect to that recommendation is unlikely to be in place before 2006. To avoid distorting the incentives provided by deemed values in the current fishing year, the deemed values paid in the 2004-05 year should be used to offset generic cost-recovery levies for the 2005-06 fishing year rather than be returned to quota owners for the relevant stocks.

Option 2:

If recommendation 7 of this report concerning the repatriation of part of the deemed value revenue is accepted by the Government, that policy should be applied in respect of the revenues collected under the new integrated policy regime. The decisions required to proceed with the policies, including repatriation, could be made before the commencement of the 2005-06 fishing year. If this occurs, but a legislative opportunity to authorise repatriation is not available until a later stage, the other aspects of the revised policy should be applied, and Cabinet approval sought for application of the repatriation policy to all revenues generated under the new policy settings.