

# **Deemed Values**

**The Recommendations of the Crown and Industry  
Joint Working Group on Deemed Values**

**A Public Discussion Paper**



## Executive summary

The purpose of this document is to consult stakeholders and tangata whenua on the recommendations made to the Minister of Fisheries by the Joint Crown and Industry Working Group on Deemed Values (the Group).

The Group, comprising Industry representatives and Ministry of Fisheries and Treasury officials, was established in order to discuss whether quota rights holders should be entitled to a proportion of money paid to the Crown as deemed values. This was expanded to include the rest of the policy parameters for the regime for balancing catch with catch rights, including the setting of TACCs and guidelines for the setting and use of deemed values.

The group produced nine recommendations which together constitute a more rigorous application of deemed values. The recommendations represent an agreed position of the Group, with the exception of recommendation 9 which offers two options.

Recommendation one is that chronic over-catch should not be tolerated by the management system as it has been in some stocks to date. Deemed values may provide temporary flexibility in total catch levels relative to TACCs, but chronic over-catch should trigger management actions. A more responsive stance is needed in monitoring over-catch problems and in reviewing both TACCs and deemed value rates.

Recommendation two suggests revising sections 14A and 14B of the Fisheries Act to decrease the threshold of quota owner agreement. Sections 14A and 14B enable quota owners to propose that the TAC of a by-catch species be set at a level that would reduce the stock below the level that supports maximum sustainable yield.

Recommendation three proposes principles for setting deemed values that will be more effective at reducing over-catch and less distorting to ACE markets. In general it is recommended that deemed values are set above the price at which ACE would settle if over-catch were not an option. The mechanism for finding this price is to increase deemed values until catch is limited to the TACC.

Recommendation four suggests improving the analysis of information used to set deemed values, including ACE prices, port prices, catch in excess of TACC, and by-catch to target catch ratios. It also suggests that the setting of deemed values could be delayed up to the end of the first month of the fishing year to allow for full analysis of the previous year's data.

Recommendation five is that the currently low interim deemed value rates will generally be inappropriate under the new regime because they increase incentives to delay balancing by providing a cheap substitute for ACE, and potentially lead to over-catch. Some interim deemed values may be retained for a transitional period.

Recommendation six proposes that differential deemed value rates (an escalating disincentive as over-catch increases) should not be applied as a general rule because they can provide unequal sanctions depending on ACE holdings and may distort ACE markets. However, they should still be applied where the TACC has been exceeded in the previous year(s).

Recommendation seven addresses the issue of redistribution of deemed values revenues to quota owners. It suggests that deemed values collected by the Crown for catch in excess of TACC should be paid to quota owners for the relevant stock in proportion to their quota share.

This recognises that over-catch of the TACC carried out by fishers, who are not necessarily quota owners, negatively affects quota owners' interests and deprives them of revenue. Furthermore, if the level of catch occurring is sustainable, with some being covered by the payment of deemed values (that is, TACCs are set inappropriately low), then deemed values revenue is displacing revenue which could have flowed to quota owners through increased ACE entitlements.

For shared stocks, revenues should be redistributed only in proportion to the commercial share of the TAC, with the Crown retaining the rest to recognise the rights and interests of the recreational and customary sectors.

Recommendation eight discusses some of the risks associated with paying deemed values to quota owners where those owners are also fishers. In this case deemed value rates will need to be adjusted upwards to ensure they are still a deterrent to over-catch.

Recommendation nine relates to the timing of the implementation of recommendation seven to redistribute deemed values revenues to quota owners.

Option 1 reflects the opinion of industry that repatriation should occur retrospectively, from the 2004/05 fishing year onwards, in line with industry's expectations of the timing of the policy process. To avoid distorting the incentives provided by deemed values the revenues from 2004/05 should be used to offset generic cost-recovery levies for 2005/06 rather than be returned directly.

Option 2 reflects the opinion of government officials that redistribution is part of a policy package and therefore should only be applied to revenues collected once the new integrated policy regime has been implemented.





## **Consultation**

The purpose of this document is to consult fisheries stakeholders and tangata whenua on the recommendations made to the Minister of Fisheries by the Joint Crown and Industry Working Group on Deemed Values (the Group).

The period available for submissions on the recommendations of the Joint Working Group on Deemed Values closes on Friday, 13 October 2006.

Following the closure of submissions the Ministry of Fisheries will analyse the submissions received and prepare final advice for the Minister of Fisheries on the recommendations of the Group.

Final decisions requiring legislative change or with significant fiscal implications for the Crown will need to be considered by Cabinet.

Any policy changes could be in place at the earliest by 1 October 2007.

## **Joint Crown and Industry Working Group on Deemed Values**

The Group was established in 2004 to address concerns around the operation of the deemed values system. Review of deemed values by a working group was agreed to by the Minister of Fisheries as an outcome of an earlier review of under and over-recovery of management costs from commercial fishers. Initially the Group was to consider the idea that quota rights holders could be entitled to a proportion of revenues paid as deemed values.

However it was decided that this should not be dealt with in isolation and the review was extended to cover policies for setting and adjusting deemed values rates and the information required to implement these policies. It was also acknowledged that the setting of catch limits and the related compliance regime were relevant to the review.

Membership of the Group consisted of fishing industry representatives and Ministry of Fisheries and Treasury officials.

The Group reported to the Minister of Fisheries in May 2005. Copies of the Group's full report are available from the consultation pages of the Ministry of Fisheries website <http://www.fish.govt.nz>.

## Context

Fisheries are managed under the Fisheries Act 1996, the purpose of which is to provide for the utilisation of fisheries resources while ensuring sustainability<sup>1</sup>. The Ministry of Fisheries also has a strategic goal for New Zealand fisheries resources: “[To] maximise the value New Zealanders obtain through the sustainable use of fisheries resources and protection of the aquatic environment”.

### **The Quota Management System (QMS)**

The QMS provides the institutional structure for managing commercial fisheries in New Zealand. It provides incentives for commercial rights holders to maximise the value generated from the commercial share of the catch while ensuring sustainability.

Under the QMS, quota owners hold perpetual property rights to the available harvest from a fish stock in the form of Individual Transferable Quota (ITQ) shares. There are 100 million quota shares for each stock and these shares can be freely traded.

A Total Allowable Catch (TAC) is set by the Minister for each fish stock managed under the QMS. For most stocks the TAC is set at a level that will result in the stock biomass moving towards a point at or above that which will produce the maximum sustainable yield.

For some stocks which are taken primarily as by-catch, the TAC may be set at a level that would reduce the stock below the point that will produce maximum sustainable yield (see recommendation 2).

For each stock the Total Allowable Commercial Catch (TACC) sets the level of commercial catch within the TAC. In setting the TACC for a stock, the Minister must allow for recreational and customary interests, and all other fishing related mortality.

At the beginning of each fishing year, quota owners are issued with rights to catch a proportion of the TACC (in kilograms) as Annual Catch Entitlement (ACE). If, for example, a quota holder owns 5 million quota shares for a stock (5%), they will receive 5% of the TACC as ACE. Quota owners may fish against their ACE or sell it to others.

### **Balancing Regime**

The catch balancing regime, of which deemed values are a part, is an important component of the QMS. Central to this system is the provision of incentives for fishers to balance their catch against the available ACE.

There are five ways the balancing regime provides incentives for fishers to cover all their catch with ACE:

- annual deemed values (the main incentive)
- interim deemed values (“reminders” to obtain ACE)

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<sup>1</sup> ‘Utilisation’ means ‘conserving, managing, using, enhancing and developing fisheries resources to enable people to provide for their social, economic and cultural well-being’. ‘Ensuring sustainability’ means ‘maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations, and avoiding, remedying or mitigating the adverse effects of fishing on the aquatic environment’.

- differential deemed values (a sliding scale of deemed value rates that provide an increasing disincentive on individual fishers as their individual over-catch increases)<sup>2</sup>
- permit suspension provisions (incentive to pay deemed values invoices)
- overfishing thresholds (levels of over-catch for each fisher above which they will be banned from fishing for that stock).

### **Deemed Values**

Deemed values are a civil sanction or charge imposed on fishers by the Crown for failure to balance their landed catch of QMS stocks with their ACE holdings at a given time. Paying the deemed value allows fishers to land fish not covered by ACE without committing an offence.

Deemed values are calculated at the end of each month once fishers' monthly harvest returns are processed. For each stock, if a fisher's total catch for the year at the end of each month exceeds their ACE holdings at the balance date (15<sup>th</sup> of the following month), they will be issued with a deemed value invoice for the excess.

Fishers must pay their deemed values invoices promptly or their fishing permit will be suspended. If a fisher who has paid deemed values for a stock obtains ACE to cover that catch at any time during the year, deemed values are refunded.

At the end of the fishing year total reported catch and ACE holdings are reconciled to produce a final balance for each fisher for each stock. Total deemed values (if any) are calculated, any previous payments subtracted, and a final invoice or refund issued.

Deemed values are charged at a set rate per kilogram of over-catch. Often a lower 'interim' deemed values rate (usually 50% of the annual rate) is charged for monthly balances, with the higher 'annual' deemed values rate charged at the end of the year.

Deemed values are intended to provide an incentive to cover all catch with ACE, while allowing some flexibility to ensure that maximum economic gains can be made from the available ACE. This flexibility comes from the ability to purchase ACE to cover catch *after* fishing and allowing for periodic rather than continuous balancing of catch with ACE.

The current catch-balancing regime, including the implementation of ACE, was introduced in October 2001, and operational guidelines were established for setting deemed values. In practice, under the ACE system, some problems have become evident. Relatively high levels of deemed values are being paid in some fisheries, and TACCs are being over-caught.

The broadened terms of reference for the Deemed Values Group sought to have the causes for these issues examined.

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<sup>2</sup> For each 20% that catch by an individual fisher exceeds their ACE holdings, the deemed value rate increases by 20%. For example, 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; and so on up to a maximum of \$2.00 per kilo.

## Key Insights

The Group based its recommendations on the following key insights:

- A 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 important relationships between TACC levels for jointly caught species and the deemed values for these species, and the implications for consideration of the appropriate TACC levels for 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. 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. However, if deemed values are set at appropriate levels, revenues should be minimal.

## Recommendations

The Group's recommendations constitute a more rigorous application of deemed values. However, a key finding of the Group was that this must be accompanied by a more responsive process to reconsider TACCs. For example, the deemed value system has in the past been used as a "pressure release valve" for low knowledge stocks and for fisheries where it is difficult to set a balance between sustainable catch levels for target and by-catch species. The appropriate balance between sustainability and utilisation can only be achieved if both the deemed value system and the TAC/TACC setting process are carefully considered in these fisheries.

The recommendations have been developed within the context of collaborative approaches involving MFish and stakeholders, as set out in the Ministry's Statement of Intent. This approach acknowledges that management objectives for fisheries need to be set through effective participation of stakeholders within government approved and monitored standards.

The following recommendations represent an agreed position of the Group (with the exception of recommendation 9 which offers two options). The Group encourages the consideration of the recommendations as a package, as they form a systematic approach to the issue of over-catch.

### Recommendation 1: Improving responses to TACC over-catch

*Significant levels of catch in excess of the TACC should not be allowed to persist. Deemed values may provide temporary flexibility in aggregate catch relative to TACCs. However, chronic over-catch should trigger one or more of the following management actions:*

- *increase the deemed value*
- *increase the TACC of the over-caught stock*
- *decrease TACCs of stocks responsible for significant incidental catch of over-caught stocks*
- *implement other management measures to reduce incidental or other*

Ongoing use of deemed values payments to cover chronic (significant and persistent) over-catch of stocks undermines the effectiveness of the QMS – damaging the property rights of quota holders, threatening sustainability and reducing the efficiency of allocation.

Therefore a more responsive stance is needed in monitoring over-catch and in reviewing both TACCs and deemed value rates.

If catch exceeds the TACC, it may be appropriate to review the stock status and consider whether adjustment of TACC settings would be appropriate. 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, the TACC could be increased. On the other hand the TACC for a target stock may need to be reduced to ensure catch of the by-catch stock is reduced to sustainable levels.

If chronic over-catch is occurring and a TACC adjustment is not recommended, increasing deemed values will provide stronger individual incentives to balance catch with ACE and thereby better constrain overall catch to the TACC. Overfishing thresholds may also be used as a last resort.

## **Recommendation 2: Improving flexibility for setting management targets**

*Sections 14A and 14B of the Fisheries Act should be revised to provide greater flexibility for setting management targets for by-catch stocks in a multi-species fishery while still taking account of the rights of dissenting parties. The approval thresholds for proposals from quota owners to the Minister to apply s14B should be reduced from the current 95% level.*

*The Ministry of Fisheries will commence a process to determine the appropriate changes to sections 14A and 14B, and will provide advice to the Government as soon as work programme priorities allow.*

Balancing catch with ACE presents a particular challenge in multi species fisheries, where some stocks are taken predominantly as by-catch in fishing for a main target stock.

By-catch to target catch ratios vary considerably and do not necessarily match the ratios of the TACCs for the stocks.

Sections 14A and 14B of the Fisheries Act provide an alternative way of setting TACs (and hence TACCs) for by-catch stocks in multi species fisheries. These sections enable quota owners to propose that a stock be managed at a biomass level lower than that which would support the maximum sustainable yield. The long term viability of stock and non-commercial interests must be protected in any decision to set a TAC under this mechanism.

However, the criteria for setting a TAC under these provisions are demanding, and the mechanism has not yet been used. A critical limiting condition is the need for the agreement of quota holders representing at least 95% of the quota. It may be that this threshold is too high to provide the flexibility intended by the Act.

The Act currently requires proposals to outline the concerns (if any) of quota owners who do not support a proposal, and what arrangements are in place to address those concerns. Any change to the threshold of agreement would also require a provision to ensure appropriate consideration is given to the concerns of a dissenting minority.

A further consideration in using this alternative mechanism is the high information cost. The Minister must be satisfied that the long-term viability of the stock is ensured, the interests of non-commercial fishers are protected, significant adverse effects of the aquatic environment are avoided, and the costs of change are outweighed by the benefits. The information costs will very likely be greater than those of managing to the ordinary level of maximum sustainable yield, and will inevitably be borne by quota holders.

### Recommendation 3: Appropriate principles for setting deemed values rates

- *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 by-catch in other fisheries, deemed values should continue to be set at 200% of port price.*
- *For stocks where over-catch of the TACC is persistent, unless decisions are taken to adjust TACCs (or reduce incidental by-catch by using technical selectivity measures), deemed value rates should be raised until over catch is eliminated.*

Paying a deemed value is a legal substitute for holding ACE to cover catch. When setting a deemed value rate, the Minister must take into account the need to provide an incentive for fishers to cover all catch with ACE.

In order to provide individual incentives to cover catch with ACE, payment of deemed values needs to be a more expensive option than purchasing ACE. Therefore, deemed values should be set at a level above the marginal value of ACE<sup>3</sup> for the stock plus the transaction costs of purchasing ACE. With this level as a minimum, the deemed value should provide fishers with incentives to find ACE to cover catch whenever this is possible. Moving rates above this minimum will provide increasing disincentive to continue catching when ACE is not likely to be available.

Where TACCs are being over-caught, the level for a deemed value that will constrain catch to the TACC can only be determined with certainty by raising rates until over-catch ceases.

In multi-species fisheries, where the TACC for a by-catch species constrains the catch of the target species, deemed values for the by-catch stock may need to be set at quite a high level. This because the ACE price for the by-catch stock will reflect either the cost of reducing by-catch or, if reduction of by-catch is not possible or very costly, the extra cost fishers are willing to pay to access the target species. This high ACE price requires a high deemed value.

For certain high-value species, such as rock lobster and paua that are not taken as by-catch in other fisheries and can be returned to the sea alive, there is no justification for using deemed values to cover catch except temporarily. For these stocks, deemed values should continue to be set at 200% of port price to create an absolute deterrent to over-catch.

Where deemed values are higher than port price, additional compliance attention may be required to ensure illegal discarding is not used as a substitute for paying deemed values.

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<sup>3</sup> This is the value at which ACE would settle if catch were constrained to the TACC.

#### **Recommendation 4: Improving the information and process for setting deemed values**

*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 most important information

on for determining the need to adjust deemed values is whether and the degree to which catch is exceeding the TACC.

Other information relevant to setting deemed values rates includes ACE price, transaction costs, port price, export price, by-catch ratios, and cost recovery levies. Past payment of differential deemed values also provides information on willingness to pay for the right to catch fish in excess of the TACC.

The Ministry should be carrying out analysis of ACE trading data and other information to gain a better understanding of true ACE prices. The analysis should extend beyond an examination of the average or the range of ACE prices, to include disaggregated ACE trading data. Analysis of over-catch at the firm level may be necessary to determine the causes of persistent over-catch for some stocks. A formal process for determining ACE prices (e.g., an ACE survey) is not recommended.

To allow analysis of data from the previous year to be completed (particularly, a comparison of actual catch against TACC) it may be necessary to allow deemed values to be set up to the end of the first month of the fishing year. This shortened timeframe for reviewing deemed value rates would require an attenuated consultation process to be designed.

#### **Recommendation 5: Use of interim deemed values**

*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*

Deemed values should provide the flexibility for fishers to reduce transactions costs by consolidating their purchase of ACE (rather than having to acquire ACE for each trip), but should not provide incentives to avoid acquiring ACE until the end of the fishing year.

If annual deemed values are set around the ACE price, in accordance with recommendation 3, then interim deemed values that are set lower than the cost of ACE may create incentives to delay balancing and potentially lead to over-catch of the TACC.

However, where deemed values are set well above the ACE price for a stock then a lower interim deemed value might be appropriate to reduce transaction costs and limit cash flow burdens within the fishing year. Interim deemed value rates may also be a useful tool for some stocks as a transitional measure.

### **Recommendation 6: Use of differential deemed values**

*Differential deemed values can serve as a backstop to protect stocks from over-fishing and as a value indicator to assist the adjustment of deemed values rates. 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*

Differential deemed values provide a rising price signal to individuals as over-catch increases. They are intended to provide increasing individual and aggregate disincentives to take catch that cannot be covered with ACE. Differential deemed values can therefore provide a back-stop to prevent large over-catches in certain circumstances – for example, when the annual deemed value has been set too low or not been adjusted as conditions change, or when fishers face very different catching costs or by-catch ratios. Used in this way, differential deemed values can also provide valuable price information for bringing the annual deemed value up to an effective level.

However, differential deemed values may also have some perverse effects. They can result in different firms paying different costs for over-catch and may encourage quota owners to hold ACE until late in the fishing year so that fishers facing differential deemed values are willing to pay inflated prices for ACE.

### **Recommendation 7: Redistributing deemed values revenue to quota holders**

*Commercial Only Stocks: Deemed values for catch in excess of the TACC or agreed and binding lesser catch limit should be redistributed 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 redistributed 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*

Currently deemed values revenue is retained by the Crown.

Over-catch of the TACC is carried out by fishers, who are not necessarily quota owners, and this negatively affects quota owners' interests and deprives them of revenue.

In the short term deemed values may limit the price of ACE, reducing the revenue that quota owners could generate by selling ACE. In the long term, catch above the TACC

may reduce the quantity of future ACE and catch that would have accrued to quota owners in the future. It may either cause reductions in the TACC or prevent a TACC increase that would have otherwise been possible. When the stock size declines, the value of ACE may also reduce as a result of increased effort and cost of catching 'each fish'.

Covering persistent and significant over-catch with deemed values may be seen as equivalent to the Crown selling extra ACE to fishers without reference to the rights of quota holders. If catch above the TACC is sustainable then the TACC should be increased allowing quota owners to benefit from the additional ACE. If catch above the TACC is not sustainable, then the quota owners' revenue is being reduced by the use of deemed values, as described above. In either case, the Crown is depriving quota owners of potential revenue, leading to the conclusion that the deemed value revenue should be paid to quota owners. The redistribution of deemed values should be at a rate more or less equivalent to the loss to quota owners i.e. the ACE price.

Only deemed values collected for catch above the TACC should be redistributed to quota owners. Deemed values for catch below TACC should be retained by the Crown so as to create incentives for quota holders to make ACE available for sale, and eliminate any potential reward for constraining ACE supply below the TACC.

An exception should be made where quota owners have collectively decided, through a management plan mechanism, to voluntarily maintain catches below the TACC. Then deemed values above the agreed catch level should be paid to quota owners.

In cases where the stock is shared between commercial and non-commercial extractive users (i.e. recreational and Maori customary fishers), commercial over-catch has a detrimental effect on both commercial and non-commercial interests. Therefore, the impact on non-commercial interests should be recognised by dividing the deemed value revenue in proportion to the allocations for commercial (TACC) and non-commercial use (TAC less TACC). The Ministry of Fisheries currently funds the proportion of costs associated with non-commercial interests in fisheries. The Crown would therefore retain the non-commercial share of deemed value revenue and use it to provide research or services that address the interests of those non-commercial users. Redistributing a share of the revenues to non-commercial fishers themselves would be impractical given the dispersed nature of the rights and that the rights are not individually quantified.

**Recommendation 8: Dealing with perverse effects and risks to the catch balancing regime of redistributing deemed values revenue to quota owners.**

*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 overfishing thresholds for the stocks concerned to prevent fishing without ACE. 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 paid by those quota holders exceeds the value of ACE. Where deemed values are set higher than port price, compliance attention should be focused to ensure that significant*

Redistributing deemed values to quota owners may weaken or eliminate incentives for fishers who are also quota owners to cover all catch with ACE. This is because they will

effectively pay a lower deemed value rate once they have received back their proportion of deemed values revenue. The Group believes this would only be the case in limited circumstances and adjustments can be made for those cases.

Quota owners who land catch in excess of ACE will 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 to quota holders if the amount of deemed value paid after the redistribution is greater than the economic value of 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 (who stands to receive the greatest rebate).

However, increasing deemed values in this way will work against the use of deemed values as a temporary flexibility mechanism by those fishers with smaller or no quota holdings. This could create a competitive advantage for larger quota holders. The use of interim deemed values where appropriate would mitigate the advantage of large quota owners who are also fishers.

Redistributing deemed values may also alter the incentives on quota owners who sell their ACE. Quota owners may become less concerned about the fishing behaviour of those that buy their ACE because the quota owner will capture some of the benefit of over-catch through redistributed deemed values revenues. Conversely, quota owners may be more concerned about the possibility of dumping over-catch because this would result in lost revenue from deemed values. In this case they would be more selective about the fishers they sell their ACE to.

The recommended policies will sometimes require deemed values to be set above port prices, which is likely to require increased compliance attention to prevent illegal discarding. Compliance mechanisms such as catch profiling and strategic placement of observers can be used where discarding is suspected.

If the Minister determines that the deemed value regime is not effective in deterring over-catch and believes an increase in the deemed value will not help, the Minister should set overfishing thresholds for the stocks concerned to prevent fishing without ACE.

## **Recommendation 9: Retrospective application of redistribution of deemed values revenues**

*If recommendation 7 (redistribution of deemed value revenue) is accepted:*

- *(Option 1) 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) that policy should be applied in respect of the revenues collected under the new integrated policy regime. If decisions are made to proceed with the recommended policies, including redistribution, but a legislative opportunity to authorise redistribution 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 redistribution policy to all*

Industry and Government representatives have differing opinions on the retrospective application of any redistribution of deemed value revenues to quota owners. The difference of opinion arises because the completion of the Group's report (and therefore the timing of the implementation of any approved recommendations) has been delayed by a number of factors including a delay in initiating the Group's work, an expansion of the terms of reference, and further delays following the submission of the Group's final report to the Minister.

### **Option 1**

Industry believe that redistribution of deemed values revenues should occur retrospectively.

Since cost recovery was introduced in 1995 industry has considered that deemed values revenues should be credited against cost recovery charges. This is because it was the intent of Crown policy to recover only avoidable costs. Also the Ministry is statutorily obliged to take into account fees and levies imposed on industry when setting cost recovery charges. Industry believes that those fees and levies should include deemed values.

This review by the Group is the end of a long process to resolve the relationship between deemed values and cost recovery. It was originally scheduled for completion at the end of 2003/04. This was recognised in the terms of reference which 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".

However, the terms of reference also expanded the scope of the review considerably from what was originally envisaged. This additional work was a contributor to delayed completion and the outcomes of this work are a valuable achievement.

**Option 2**

The Crown believes that deemed values were introduced as a sanction, removing profitability of over-catch without removing incentives to land and report all catch, and are an entirely separate issue to cost recovery.

The Group's recommendations are viewed as an integrated package of policy settings. The 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 introduced, less over-catch will occur and deemed values revenues should be reduced. Thus past revenue is not related to the new regime. There is no rationale for applying just one aspect of the policy package, the redistribution, retrospectively.

***End of Recommendations***