

## **Summary of Submissions on “Deemed Values - The Recommendations of the Crown and Industry Joint Working Group on Deemed Values: A Public Discussion Paper.”**

1. The summary of submissions is broken down into three parts:
  - (a) A general overview of individual submissions
  - (b) Views on the specific recommendations in the Discussion Paper
  - (c) Other issues raised in submissions

### **Overview of Submissions**

#### *Altair Fishing Limited & Tasman Tuna Fishing Limited (Altair and Tasman)*

2. Altair Fishing Limited & Tasman Tuna Fishing Limited (Altair and Tasman) concentrate on recommendation 7 in their submission. The recommendation is supported in general terms but Altair and Tasman believes redistribution of deemed values (DV) revenue should also be restricted to those quota shares where Annual Catch Entitlement (ACE) has been sold.

#### *Barron Fishing and Pacific Trawling (Barron & Pacific)*

3. Barron Fishing and Pacific Trawling (Barron & Pacific) state that DVs are not penalties and should not be used as such, and that ACE market is not a true supply and demand market. They submit that policy makers need to be aware of court decisions on DVs.

4. Barron Fishing and Pacific Trawling (Barron & Pacific) state the need to better utilise overfishing thresholds and tolerance levels, as well as the need to consider permit suspension for chronic offenders, in order to stop significant overfishing before it happens. Barron & Pacific believe that this, in combination with abolishing interim and differential DVs will force the ACE market to cover catch in ‘real time’. Barron & Pacific do not support the recommendations relating to the redistribution of DV revenues.

#### *Challenger Finfisheries Management Company Limited (CFMC)*

5. Challenger Finfisheries Management Company Limited (CFMC) supports the recommendations, including Option 1 of recommendation 9. CFMC states that it is concerned with the possible risks of some of the recommendations which it believes could lead to spiralling increases in DV and ACE prices and increased dumping and misreporting. However, CFMC is hopeful that those risks can be managed by implementing the full package of recommendations.

#### *Independent Fishing Limited (IFL)*

6. Independent Fishing Limited (IFL) considers that the DV regime needs to be significantly tuned in order to be fair, reasonable, flexible, and create the right incentives. IFL does not support a number of the recommendations relating to the setting of DV rates but supports interim and differential DVs being phased out. It conditionally supports redistribution of deemed value revenue to quota owners, subject to the system being made fairer for fishermen, and supports Option 1 of recommendation 9 on the same basis.

7. IFL proposes that, in general, DVs should leave fishers in a neutral position. It submits that DV rates should be set at 25% or higher than the port price and that there should be a return to the situation where fishers who pay DVs and make a loss at the end of the year should be able to claim those losses back. IFL also considers that this

process should take into account any different market treatment gained by fishers using foreign charter vessels (i.e. duty exemption or subsidisation).

*Joint submission from Non-Commercial Fishers (NCF)*

8. Submitters in the 'Joint submission from Non-Commercial Fishers' (NCF) are pleased that deeming is being addressed but are very concerned that there is too much focus on the rights of quota holders, to the detriment of considering the effect of proposals on non-commercial fishing interests and sustainability.

9. The specific interest of NCF in deeming relates to shared fisheries, or fisheries important in the food chain of shared fish, and then only to deeming above Total Allowable Commercial Catch (TACC) in those stocks. In these stocks NCF view the TACC as the maximum level for commercial catch that can be taken while still achieving the management objectives in that fishery. Exceeding this TACC places extra burden on the sustainability of the stock and damages the interests of other sectors by, for example, deferring or preventing stocks from rebuilding.

10. NCF believe that since deemed catch is clearly attributable to commercial fishers it should therefore be taken into account within the commercial allocation. NCF propose that this could be done by subtracting catch in excess of TACC from the next years TACC. This cut in TACC would 'repay' the fishstock for the extra fish taken by way of deeming the year before, and allow stocks below BMSY to rebuild. The alternative to this is to create a new lower TACC and a deeming allowance within the 'old' TACC level. The deeming allowance would then act as a buffer to overcatch of the 'old' TACC.

11. NCF emphasise that a cornerstone of the QMS was giving quota owners rights which has created a responsibility on commercial fishers to constrain total commercial catch to TACC. NCF consider that deeming above TACC occurs when quota holders collectively fail to manage the catching aspects of their quota and to issue or provide ACE in balanced catching portfolios. Thus any loss suffered is quota owners collective responsibility. NCF submit that redistributing DV revenue above the TACC reduces the incentives on quota owners to work collectively to constrain total commercial catch and may create incentives to do the opposite.

*The New Zealand Seafood Industry Council (SeaFIC)*

12. The New Zealand Seafood Industry Council (SeaFIC) supports all of the recommendations with support for option 1 of recommendation 9. SeaFIC generally agrees with the rationale of the JWG for its recommendations. The exception being repatriation in shared stocks where SeaFIC supports the recommendation on the condition that proportionality is introduced and recreational fishers are constrained to their allocation.

13. SeaFIC spends some time in its submission addressing the concerns held in some parts of industry that the recommendations may create adverse incentives. It considers the risks can be adequately managed through effective implementation of the recommendations of the JWG as a package. SeaFIC's submission is supported by the submissions of Sanford, TOKM, CFMC and supported with some reservations by NZFCF (see below)

*NZ Federation of Commercial Fishermen (Inc) (NZFCF)*

14. NZ Federation of Commercial Fishermen (Inc) (NZFCF) supports the recommendations of the JWG, with preference for Option 1 of recommendation 9. However, it urges caution in designing the system to redistribute DV revenues because of the affect on the catching sector of DV payments. NZFCF is pleased that the review

recognises that the DV regime requires attention. NZFCF believes that it is fundamental that TACCs are set appropriately, and there is an urgent need to address unbalanced TACCs. This is because fishers bear the burden of DVs, often in situations where they are unable to control the mix of species caught. NZFCF notes that quota holders are currently able to hold back ACE and carry it over to the next year, which impacts on ability of fishers to balance ACE and catch. NZFCF recommends that an industry government group be set up to review DV rates annually

*R.A Burch, Skipper F.V Nancy Glen (R Burch)*

15. R.A Burch Skipper of the F.V Nancy Glen (R Burch) does not support any of the recommendations. He believes that more research is needed into new gear and methods for selective fishing. He thinks that DVs encourage over fishing by allowing fishers to stay fishing to harvest all of their ACE holdings of one species while over fishing other species. R Burch supports a by-catch trade off system.

*Sanford Limited (Sanford)*

16. Sanford Limited (Sanford) supports the recommendations, with support for Option 1 of recommendation 9, although they submit that DV revenue should be redistributed to quota owners regardless of whether the TACC has been exceeded. Sanford supports sharing redistribution in shared fisheries only on the conditions that proportionality is introduced, reliable information is gained on non-commercial catch, and non-commercial catch is constrained within its allocations.

17. Sanford believes the recommendations are a positive move which will address concerns held by Sanford. It believes that the primary purpose of DVs should be ensuring that quota rights are not undermined and that incentives should be put in place so that the responsibility for catch balancing sits with property rights holders. Sanford strongly supports increasing DV rates to ensure that quota rights are robustly safeguarded and that fishers modify their behaviour or ensure they have sufficient ACE to cover catch. Sanford believes that it is possible to implement enforcement to adequately mitigate against the risk of dumping or misreporting.

*South East Resources (2001) Limited (SERL)*

18. South East Resources (2001) Limited (SERL) supports the review of the DV regime. Its submission makes similar points to the IFL submission. It opposes recommendations relating to the setting of DV rates but supports interim and differential DVs being phased out. SERL emphasises the need for the system to be fair to all parties including the Crown, quota holders and fishers. They submit that DVs should place fishers in no worse than a neutral position. SERL supports redistribution of DV revenues, but only if a fair system is implemented which addresses the ability of quota holders to manipulate the ACE market. The submission further questions the ability to carry forward ACE if redistribution occurs. SERL believes that the TACCs of species which are consistently over or under caught need to be urgently reviewed.

*Te Ohu Kai Moana Trustee Limited (TOKM)*

19. Te Ohu Kai Moana Trustee Limited (TOKM) supports the recommendations of the JWG, with support for Option 1 of recommendation 9. TOKM generally agrees with the rationale of the JWG for its recommendations. However, it believes that the allocation of a proportion of DVs to non-commercial interests in shared fisheries raises some questions about the management of non-commercial allocations and the possibility of compensation in the event that those allocations are exceeded.

*United Fisheries Limited (UFL)*

20. United Fisheries Limited's (UFL) submission states that it 'supports many of the recommendations,' but that it wishes to make a number of comments regarding the proposals. UFL states that the proposal to raise DV rates until over catch ceases is heavy handed and inequitable and will not stop over catch. It believes the use of ACE trading prices as one information source when setting DVs is unrealistic and that DVs should differentiate between ACE fishers and quota owning integrated fishing companies.

21. For the purposes of the recommendation by recommendation analysis later in this document, UFL is assumed to agree with a relevant recommendation other than in the circumstances where it has made specific comment as outlined above.

## Recommendations

### 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 over-catch, including gear restrictions and overfishing thresholds.*

**Support:** SeaFIC, Sanford, NZFCF, TOKM, UFL, Barron & Pacific and CFMC

22. SeaFIC and Sanford support recommendation 1 as they believe that overcatch undermines quota rights and potentially puts sustainability at risk. Sanford further states that overcatch diminishes the economic efficiency of the QMS.

23. SeaFIC endorse using a range of management responses to create a customised approach in each case of overcatch of a stock to address the complex issues around DV rates, TACC setting, and catch levels.

24. SeaFIC, TOKM, NZFCF and Barron & Pacific consider that the TACC setting processes needs to be more responsive.

25. NZFCF state that the TACC should be adjusted if chronic overcatch has not impacted upon sustainability and that lack of review impinges on fishermen's right to utilise the resource. NZFCF consider that 20 years of managing under the QMS should have provided enough information to address imbalances between TACC's and harvest levels. NZFCF also believe that ongoing use of deeming undermines the effectiveness of the QMS.

26. Barron & Pacific supports recommendation 1 but believes mechanisms need to be developed to suspend the permits of chronic offenders so that the majority are not punished for the actions of a few.

**Partial support:** NCF

27. NCF support taking action to address overcatch, but oppose relying primarily on the DV mechanism and oppose increasing TACC's to cover overcatch in shared fisheries.

28. NCF support taking action to address all overcatch in shared fisheries, not just in situations where there is 'significant levels' of overcatch. They 'consider any fishing above TACC is significant in shared fisheries.'

29. NCF submit that deeming in shared fisheries is not appropriate and that this approach should only occur in solely commercial fisheries. NCF submit that economic sanctions to constrain commercial catch to TACC have been used for 20 years and that this approach has failed. They consider that a new approach is needed in shared fisheries so that the interests of non-commercial fishers do not continue to be placed second.

30. NCF believe the proposal to increase TACCs to cover chronic deeming is unacceptable in shared fisheries, particularly for those stocks which are rebuilding, or under a proportional allocation system. Increasing the TACC is unacceptable because it does not take account of the management objectives of the fishery and ignores the information principles of the Act. Any TACC adjustment should be based on best available stock assessment of sustainable catch levels.

31. NCF propose some alternative arrangements to the current deemed value regime for shared fisheries, which are discussed in more detail under the “General Issues” section of the submissions summary.

**Oppose:** SERL, IFL and R Burch

32. SERL and IFL state that fishers cannot be precise about catch composition. Both IFL and SERL say that TACC setting is not infallible and therefore the Government should not regard TACC as a figure which absolutely should not be exceeded. IFL and SERL further explain that the mixed nature of fisheries and conservatively set TACCs mean they believe that some overcatch is inevitable.

33. SERL and IFL are concerned that the current system of deeming is creating incentives for the Government to set low TACCs to maximise DV revenue as fishers cannot balance their catch and must pay the Crown.

34. SERL goes on to say that there has been significant long term overcatch in the deepwater fishery which must indicate sustainability.

**Not stated:** Altair & Tasman

## **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.*

**Support:** SeaFIC, Sanford, NZFCF, TOKM, Barron & Pacific, UFL and CFMC

35. TOKM believes that guidance can be gained from typical Commercial Stakeholder Organisations requirements of between 66% and 75% quota owner support from decisions such as second tier levy setting, amalgamations, subdivisions and business planning.

36. SeaFIC sees this as part of the wider need for greater engagement with industry in setting stock management targets and TACs. It believes this engagement will ensure flexible application of the Fisheries Act 1996 so that the sustainability and utilisation objectives are met.

**Oppose:** IFL, SERL and R Burch

37. IFL considers that the information requirements of s14A and 14B are probably too high and should be re-examined, especially given the fisheries in question are bycatch fisheries and often cannot sustain high costs.

38. SERL opposes lowering the 95% threshold but states that the mechanism could be used to adjust some TACCs which it believes are set far too low.

**Not stated:** Altair & Tasman, NCF. (Note: non-commercial fishing interests are protected under s14A(5)(c) when considering setting alternative management targets under s14B)

### **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.*

**Support:** Sanford, TOKM

39. Sanford submits that interim and annual DV rates should be set at a level which removes any economic incentive to take fish without ACE. Therefore, DVs should be set at around 150-200% of port price to remove all revenue created by over fishing.

40. Sanford and TOKM believe that if fishers dump to avoid paying DV or ACE then this signals the need for further enforcement not lower DVs.

**Conditional support:** NZCFC, SeaFIC and CFMC

41. SeaFIC and NZFCF support is conditional on the implementation of a more responsive and flexible approach to setting and review of Total Allowable Catch (TAC) and TACCs. They state that DVs should not be considered a substitute for ensuring TAC/TACCs are set at appropriate levels.

42. NZCFC supports the idea that DV rates also need to be set to encourage the landing of all fish and mitigate the risks of dumping and misreporting.

43. SeaFIC agrees that increased DV rates create a risk of increased dumping and misreporting, however it considers that those risks can be adequately managed by adjusting TACCs in multi species fisheries where chronic overcatch is occurring, and by ensuring compliance effort is responsive to the potential incentives created. Although SeaFIC notes that incentives would be better aligned if compliance costs were attributed directly to stocks where the compliance risks were higher, instead of being spread generically.

44. SeaFIC emphasises the difference between legitimate short term fluctuations in use of deeming and ongoing significant overcatch covered by DVs. SeaFIC considers the latter would undermine the QMS to a greater extent than the manageable risk of dumping and misreporting.

**Oppose:** Barron & Pacific, R Burch, SERL, UFL and IFL

45. Barron & Pacific say that there should be mechanisms to stop significant overcatch before it happens rather than just using financial mechanisms. Barron & Pacific consider that DVs need to be set above ACE price but not at a level which is a penalty, and they believe that if DVs are set above 'landed value' this is liable to be judicially challenged.

46. UFL believes that the proposal to raise DV rates until overcatch ceases is heavy handed and inequitable. UFL believes that this will lead to smaller, responsible companies having to stop catching while other companies continue overcatching.

47. UFL, SERL and IFL consider that the DV price heavily influences the ACE price and that high DVs would lead to inflated ACE prices and therefore increase risks of fishers dumping catch. Furthermore, IFL point out that the ACE price for some species can be inflated by factors outside the value of the fishstock.

48. IFL and SERL submit that DVs should be set at a level that leaves fishers who catch without ACE in a no worse than a neutral financial position.

49. IFL is concerned that ACE can be unobtainable for some bycatch stocks and that high or differential DVs can be so punitive as to outweigh the gains from the whole catch making trips uneconomic.

**No stated position:** NCF, Altair & Tasman,

#### **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 fishing year.*

**Support:** SeaFIC, Sanford, NZFCF, TOKM and CFMC

50. Sanford notes the incentives created by the cost recovery system for quota owners to maintain lower port prices and therefore welcomes the use of multiple information sources. Other suggested sources are the export value of a species, the market value for quota and prices at the Auckland Fish Market.

51. NZFCF believes the process would have greater value and better outcomes if all affected stakeholders are involved in analysis and setting DV rates.

52. SeaFIC considers that cost recovery levies are a relevant factor in setting DV rates and should set the minimum floor for DVs. Any DV rate below this level would undermine incentives to hold quota as it would be cheaper to pay DVs than pay the levies for holding quota.

**Partial support:** IFL, SERL & UFL

53. IFL, SERL do not believe that the information needed to set DVs is available at the beginning of the fishing year. IFL suggests some factors which influence appropriateness of DV rates are (the economic costs and returns of fishing in that year.) catch, energy, processing, storage and transport costs, foreign exchange rates and market returns.

54. IFL and Sanford suggest that the market differential between fresh and frozen fish needs to be taken into account in setting DV rates.

55. UFL believes the proposal to use ACE trading prices as one information source when setting DVs is unrealistic because DVs are important in setting ACE prices.

**Oppose:** R Burch and Barron & Pacific

56. Barron & Pacific believe determining and addressing the reasons for overcatch should be the focus of efforts rather than penalising the problem once it happens.

**No stated position:**, NCF, Altair & Tasman

## **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 appropriate.*

**Support:** SeaFIC, Sanford, NZFCF, TOKM, UFL, IFL, SERL Barron & Pacific, and CFMC

57. IFL and SERL support the total abolition of interim DVs as they believe that interim DVs encourage delayed ACE purchasing. This, in combination with differential DVs, allows quota holders to distort the ACE market.

58. SeaFIC agrees that differential DVs increase incentives to delay balancing catch.

59. Barron & Pacific support recommendation 5, while recognising the role of interim DVs in providing economic relief. To take this into account they consider that DVs should be remitted monthly on acquisition of ACE.

**Oppose:** R Burch

**No stated position:** NCF, Altair & Tasman

## **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 previous year(s).*

**Support:** SeaFIC, Sanford, TOKM, NZFCF, IFL, SERL, UFL, Barron & Pacific and CFMC

60. IFL and SERL consider the use of differential should be abolished as, along with interim DV rates, they distort the ACE market.

61. SeaFIC and NZFCF support use of differential DVs being reduced to a minimum but submit that differential DVs should not be automatically applied in cases where a TACC is exceeded.

62. Barron & Pacific state that DVs are not penalties but that the use of differential DVs defeat this principle. They also believe that differential DVs are inequitable as they reflect catch to ACE position not actual overcatch.

**Oppose:** R Burch

**No stated position:** NCF, Altair and Tasman

### **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 commercial over-catch.*

### **Commercial Only stocks**

**Support:** NZFCF, SeaFIC, TOKM, Sanford UFL, and CFMC

63. NZFCF supports recommendation 7 in relation to commercial stocks while urging caution in designing a system that redistributes DV revenue. NZFCF believes it needs to be acknowledged that the DV burden typically falls on the catching sector and that this occurs when TACCs are set inappropriately.

64. Sanford believes that fishing using DVs undermines quota rights whether the TACC is exceeded or not because it reduces revenue which can be gained from ACE. Therefore, Sanford considers that DV revenues should be paid to quota owners regardless of whether total catch has exceeded the TACC.

65. SeaFIC however supports the restriction of redistribution of DV revenue to catch above TACC because they say this provides incentives for quota owners to make ACE available and therefore improves the ACE market.

66. SeaFIC recognises the need for caution in designing the redistribution system given that DVs fulfill other purposes than protecting property rights, eg sustainability.

67. SeaFIC believes that industry concerns that redistribution will reduce incentives for quota owners to make ACE available, especially once the TACC has been caught are not realistic. It states that, if DVs are set appropriately, there are no realistic scenarios in which it would be economically rational to withhold ACE in order to get a share of the DV revenue on catch above TACC. SeaFIC cites analysis it carried out, which shows no clear relationship between deemed catch below TACC (which could have been balanced with ACE) and deemed catch above TACC (the revenue from which would be redistributed).

**Partial support:** Altair & Tasman, SERL, IFL,

68. Altair & Tasman agree with recommendation 7 in general terms but believe that redistribution of DVs revenue should be restricted to both catch in excess of TACC and those quota shares where ACE has been sold (or utilised). They submit that quota holders require incentives to sell all ACE holdings where the TACC has been caught so that fishermen have every opportunity to balance their catch.

69. SERL and IFL support redistribution of DV revenues on the condition that the whole system is modified (along lines of the rest of their respective submissions) and the ability of quota holders to manipulate the ACE market is addressed.

70. SERL further questions the ability to carry forward ACE if redistribution occurs, while IFL believes the ACE market is open to manipulation if the ability to carry forward ACE remains.

71. IFL submits that only utilised ACE should be eligible for redistribution of DV revenue. IFL further states that the Government should not retain DV monies for catch below TACC as recommended by the JWG because it amounts to selling ACE without quota holdings.

72. IFL believes that DV revenue should be split between the stakeholder group relevant to the fish stock (80%) and the quota owner (20%) to ensure money goes toward better management of the fish stock.

**Oppose:** Barron & Pacific, R Burch

73. Barron & Pacific consider that DV revenues should be used for research or management of the relevant stock.

**No stated position:** NCF

### **Shared stocks**

**Support:** None

**Partial support:** SeaFIC, TOKM, Sanford, UFL, and CFMC and (in line with overall partial support for redistribution) NZFCF, Altair & Tasman, SERL, IFL

74. SeaFIC and Sanford support the shared stock proposal on the condition that information is increased about non-commercial catch and measures are taken to constrain non-commercial sectors to their allowances.

75. Sanford states a further condition; that proportionality is implemented between sectors and can only be amended on a willing seller, willing buyer basis.

76. SeaFIC and Sanford both state that the reason their support is conditional is because quota owners are not compensated for overcatch of non-commercial allowances, which impinges on their rights.

77. SeaFIC further states that the portion of the TAC that relates to 'other sources of fishing mortality' should be allocated to reducing the level of illegal fishing, as this is the primary source of 'other' mortality. SeaFIC notes that TACs have not been set for

several shared stocks with high DV payments such as SCH1, HPB3, TRE2 and BCO3. Also non-commercial catch estimates are unreliable in these stocks.

78. TOKM notes the importance of accurately setting customary and recreational allowances so that the TACC is not unduly constrained. TOKM submits that if a proportion of DV revenue is going to non-commercial interests the Crown should, based on JWG principles, compensate quota owners for overfishing of non-commercial allowances. TOKM believes the non-commercial share of DV revenue should be applied to the development of better information and reporting systems for the customary and recreational catch to enable better quantification of which sector is affecting the interests of other sectors.

**Oppose:** NCF and (in line with overall opposition) Barron & Pacific, R Burch

79. NCF believe that the rental or return quota owners are entitled to should be confined to fish taken within the TACC (the commercial allocation). Refunding DVs above the TACC reduces the incentives on quota owners to work collectively to constrain total commercial catch and may create incentives to do the opposite. NCF consider that any erosion or loss suffered from catch above TACC is the quota owner's collective responsibility as they collectively hold, control and/or issue all catching aspects of their quota rights.

80. In response to calls for proportionality, NCF state that the statutory rights of commercial and non-commercial fishers are quite different and as such carry vastly different responsibilities. Further, they believe that exceeding recreational allowances, which are often poorly estimated, does not necessarily pose a sustainability risk in the absence of evidence that effort and catch is actually increasing.

81. The NCF submission contains a detailed rebuttal of the desirability of proportional allocation in shared fisheries which they consider is grossly unfair to non-commercial fishers.

**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 discarding of by-catch is detected and prosecuted.*

**Support:** SeaFIC, Sanford, TOKM, UFL, NZFCF and CFMC

82. NZFCF supports recommendation 8 but would encourage Ministerial intervention if subsequent manipulation undermined the catch balancing system. However, it is unsure that overfishing thresholds would be appropriate.

83. SeaFIC notes that overfishing thresholds can be used to stop individuals from fishing without ACE if the catch balancing regime was being manipulated and undermined. SeaFIC also emphasises that careful analysis will be needed to determine the cause of overfishing, which may include DVs set too low, TACC not set at optimal level, or collusion between quota owners driven by redistribution.

84. TOKM emphasises the importance of targeting compliance so that fishers who do abide by the rules are not penalised through increased observer levies.

**Oppose:** R Burch and Barron & Pacific

85. Barron & Pacific question the ability to stop quota owners who hold significant proportions of any stock from manipulating the system by for example overfishing in the knowledge they will receive a significant proportion of DV revenue back.

**Not stated:** IFL, SERL , NCF, Altair & Tasman

86. SERL emphasises the need for the DV system to be fair to all parties.

### **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 revenues generated under the new policy settings.*

### **Support option 1: SeaFIC, Sanford, NZFCF, TOKM and CFMC**

87. SeaFIC support Option 1 because of the historical context of the DV issue. This stems from the introduction of the cost recovery regime in 1995, where no credit was given to industry for the substantial DVs revenue received by Government. Industry has pursued the issue since through:

- a legal challenge in 1998,
- a Select Committee review which acknowledged ambiguity in the Act and lead to legislative change in 2001 (leaving the 1995 to 2001 position unresolved),
- the Joint Working Group on unders and overs in 2003, and
- finally, as a recommendation from unders and overs process, the JWG on DVs.

88. The JWG on DVs has also been delayed by several factors:

- Ministry resourcing delaying the start of the JWG,
- expansion of the scope of the JWG leading to longer deliberations, and
- delays by the Ministry in consulting on the recommendations.

89. It was originally envisaged that the JWG would start in late 2003, which SeaFIC states may have allowed the changes to take affect in the 2003/04 fishing year (starting 1 Oct 2003). Further, the Terms of Reference provided for consideration of “applying the outcomes of the review as if the review had been completed by 1 Oct 2004,” which SeaFIC believes potentially allowed for 2003/04 revenue to be brought to account. During the process the Government has retained all DVs revenue collected.

90. SeaFIC estimates that approximately \$16 million of DV revenue would have been redistributed to quota owners, had that policy been in place over the last two fishing years. However, it notes that in future years the recommendations of the JWG would significantly reduce overcatch and therefore DV revenue available to be redistributed. SeaFIC further notes that JWG analysis shows that DV revenue will only amount to partial compensation for the potential losses of quota owners

91. TOKM notes that redistribution would need to occur directly to Iwi where allocation of relevant stocks has occurred.

**Conditional support option 1: SERL and IFL**

92. SERL and IFL support option 1 subject to a fair regime being implemented.

**Oppose:** Barron & Pacific and R Burch

**No stated position:** UFL, NCF, Altair & Tasman

## Other Issues

### *Process*

93. NCS are disappointed that the JWG review process has occurred between industry and Government and has not included input from non-commercial stakeholders. They are also concerned that the consultation document encourages consideration of the recommendations as a package, which they believe implies that deals or tradeoffs have already been made. This is not regarded as a proper policy process by NCS as they consider it does not allow proper regard to be given to non-commercial fishing interests and means there has not been any opportunity for dialogue between sectors.

94. SeaFIC consider that it would be appropriate for the members of the Joint Working Group to be involved in reviewing submissions and developing agreed responses to the issues raised before the Ministry prepares final advice to the Minister.

95. CFMC also support the involvement of representative industry members in reviewing submissions and assessing the issues they raise, but submit that final advice to the Minister should be jointly formulated as well.

### *Alternative Deemed Value Proposal in Shared Fisheries*

96. NCF submit that there is an obligation to take greater account of commercial overcatch within the TACC setting process. The NCF are concerned that the recommendations put forward by the JWG may not be compatible with the sustainable utilisation purpose of the Fisheries Act 1996. This is because catch above the TACC, which is subject to the deemed value regime, is neither incorporated into the commercial allocation nor 'allowed for' under s21 (1) (b), the provision covering all other mortality caused by fishing. Deemed catch therefore remains unaccounted for in the allocation process. NCF contend that not accounting for deemed in the allocation process seriously undermines the integrity of the QMS. NCF believe that this gap in the TACC setting process is 'one of the mechanisms which makes non-commercial interests subordinate to commercial rights and excesses, and is therefore a source of major conflict'.

97. NCF submission contains two alternative proposals for shared fisheries to ensure that deemed catch is taken into account. The first proposal, which they consider the most effective measure, would be to reduce the TACC the following year by the amount of any commercial overcatch.

98. NCF propose that, if the incentives of the above proposal are resisted, the TACC should be split into a reduced TACC and a "deeming allowance" which would add together to equal the 'old' TACC. The deeming allowance could then be increased and decreased depending on levels of overcatch in the previous year. Under this scenario NCF consider that the DV revenues should be returned to the quota owners up to the level of the previous TACC. Quota owners would have no entitlement to compensation because the ACE/quota reduction would be implemented to constrain commercial fishers to their sustainable entitlement – the 'old' TACC.

99. NCF believe that either of these proposals would create strong incentives for quota owners to act collectively. Immediate quota cuts for taking fish in excess of the TACC would focus quota owners on preventing overcatch, and therefore reconsider catch plans

and distribution of ACE offerings, to maximise control over the value of their quota holdings.

100. NCF submit that there needs to be a process available whereby fisheries important to non-commercial fishers can be nominated for management under this 'shared fishery' DV regime. NCF further note that under their proposals over-allocation, where the TACC is set at a level that is not likely to constrain commercial catch, would still need to be addressed.

#### *Interaction between commercial and non-commercial fishing interests*

101. The NCF submission contains wider discussion of the interaction between recreational fishing interests and QMS commercial fishing rights. Deeming above TACC is seen by NCF as further eroding the rights of recreational fishers, which they believe are already diminished by being fitted into the leftovers of a poorly managed QMS. The NCF submission also contains appendices discussing the issues associated with proportional allocation between sectors and a case study from the SNA8 fishery.

#### *General Comments about the Deemed Values Recommendations*

102. SeaFIC notes concerns by some industry members that the JWG recommendations may result in increasing DV rates to prevent overcatch in situations where TACC adjustments or measures such as improving gear selectivity are not an option. However, SeaFIC considers this to be consistent with the role of DVs.

103. SeaFIC also states that setting DVs at the right level is not easy and there will undoubtedly be cases where DVs are not set appropriately and may therefore push ACE prices either up or down. SeaFIC notes that:

- if overcatch persists when DVs are high it will be because fishers are still gaining economic benefit, most likely from associated species or other transactions and this should be taken into account when setting DVs.
- ACE and DVs rates will stabilise once overcatch is eliminated, and the option of setting overfishing thresholds remains.
- it has advocated to the Ministry that triggers are built into the DV setting guidelines to identify opportunities to reduce DV rates, where appropriate. The suggested trigger is when catch is at or below the TAC for at least two years, and where there has been no significant use of DVs .

104. SeaFIC does not support holding DVs in a special purpose fund, to be used to offset cost recovery levies, as it believes this would create incentives for inflated spending on the activities funded by this revenue.

## Appendix 1

List of submitters:

1. Altair Fishing Limited & Tasman Tuna Fishing Limited
2. South East Resources (2001) Limited
3. Barron Fishing and Pacific Trawling
4. Independent Fishing Limited
5. Challenger Finfisheries Management Company Limited
6. United Fisheries Limited
7. Sanford Limited
8. The New Zealand Seafood Industry Council
9. Te Ohu Kai Moana Trustee Limited
10. R.A Burch, Skipper F.V Nancy Glen
11. NZ Federation of Commercial Fishermen (Inc)
12. Joint submission from Non-Commercial Stakeholders
  - 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