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"More fish in the water/Kia maha atu nga ika ki roto i te wai"

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Submission - Draft 2011 Deemed Value Standard

Introduction

1. This submission is made on behalf of the NZ Sport Fishing Council (NZSF), the Hokianga Accord, and option4 (the Joint Submitters). This submission is made in the interests of assisting the Minister of Fisheries (the Minister) and Ministry of Fisheries (MFish) to achieve abundant fisheries that will enable all New Zealanders to provide for their social, economic and cultural well-being, pursuant to the Purpose and Principles of the Fisheries Act 1996.
2. The joint submitters appreciate the opportunity to comment on the draft 2011 Deemed Value Standard. The initial Deemed Value Standard was approved in March 2007. This process seeks to update the Deemed Value Standard to be applied from 2011.
3. The Draft 2011 Deemed Value Standard Initial Position Paper (IPP) was released for consultation on 9 November 2010 with submissions due by the 30th. On 29 November MFish advised this deadline had been extended to 21 January 2011.
4. The Joint Submitters have an enduring interest in the manner in which the deemed value regime is administered and have made previous submissions and recommendations, including:
 - ⇒ Review of Deemed Value Rates for 1 October Fishstocks, 26 July 2010
http://www.option4.co.nz/Fisheries_Mgmt/deemedvalues.htm
 - ⇒ Consultation on the recommendations to the Minister of Fisheries of the Joint Working Group on Deemed Values, 20 October 2006
http://www.option4.co.nz/Fisheries_Mgmt/deemedvalues.htm#2006

5. The Joint Submitters have some sympathy for both the Ministry and industry as they struggle to dredge a workable deemed value system out of the remnants of an economist's dream of fisheries management.
6. However, we believe it is unacceptable that both the public and our marine environment are paying the full costs of a futile effort that places the Crown in the untenable position of profiting from commercial overfishing, whilst meeting none of the broader costs.
7. When commercial catch is landed without Annual Catch Entitlement (ACE) and a fee is paid to the Crown, this over-catch is not accounted for within the Total Allowable Catch/Total Allowable Commercial Catch (TAC/TACC) setting process. The Crown receives the payment but the cost is imposed on all users. Not only is this contrary to the Purpose and Principles of the Fisheries Act 1996, but it also undermines both the integrity and credibility of the quota management system.

Recommendations

- ⇒ That the Draft 2011 Deemed Value Standard Initial Position Paper is withdrawn and an alternative proposal be offered for consultation.
- ⇒ That the new Draft Deemed Value Standard Initial Position Paper correctly identifies the Goal and includes a Standard that is clearly recognisable and measurable.
- ⇒ That the Goal in the Ministry of Fisheries' Deemed Value Standard be rewritten to describe the response to the capture of unintentional bycatch by commercial vessels.
- ⇒ That a more suitable Goal could be:
 - “That all legal commercial catch, whether intentional or unintentional, is landed and accounted for, if no ACE is held and no Schedule applies.”

Management framework

8. Many variants were trialled prior to the implementation of the current deemed value regime, these included Fishing Against Another's Quota (FAAQs), Catch Against Another's Quota (CAAQs), the Bycatch Trade-off scheme (BCTO).
9. The Fisheries Amendment Act 1998 and section 75 of the Fisheries Act 1996 provide the statutory framework for setting deemed values.
10. The catch balancing regime was modified in October 2001, to enable commercial fishers to balance their catch at the end of the fishing year through acquiring Annual Catch Entitlement (ACE). If a fisher fails to acquire sufficient ACE they are required to pay a civil penalty (deemed value). This payment can be redeemed throughout the year by the purchase of ACE to balance the catch. Trades are managed by an independent agency, FishServe.
11. The key function of the deemed value regime is to serve as an arbiter between the incentive for commercial fishers to dump unintentional bycatch so as to avoid payment of fees, and the incentive to land the catch and pay the deemed value penalty in lieu of obtaining ACE.
12. Initially the deemed value was a single point estimate aimed at identifying the fee that would best achieve the two seemingly confounding objectives. More recently differential rates have been tried.

13. The process of setting, reviewing, altering, dividing and administering deemed values has become increasingly complex and costly.
14. A more flexible mechanism is required to ensure that all legal commercial catch, whether intentional or unintentional, is landed and accounted for, if no ACE is held and the species is not included in a Schedule of the Fisheries Act 1996.

Quota management system

15. Catch in excess of the Total Allowable Commercial Catch (TACC), whether reported or not, undermines the credibility of the quota management system (QMS).
16. Pursuant to the Fisheries Act 1996, the Minister of Fisheries is obliged to manage fisheries sustainably to enable New Zealanders to provide for their social, economic and cultural wellbeing. In doing so the Minister must set an upper limit, the total allowable catch (TAC), for each fish stock within the QMS.
17. A portion of this TAC is set aside as a total allowable commercial catch (TACC), and allocated to Individual Transferable Quota (ITQ) class shareholders in that stock – these shareholders are also known as quota holders.
18. Both the TAC and the TACC represent the legal, upper bound of catch in each fish stock. Catches in excess of these limits leave the stock over-exploited and less abundant, imposing costs on all users. Major consequences are biodiversity loss and poor quality public fishing.
19. On the first day of each fishing year quota generates Annual Catch Entitlement (ACE), the tradable aspect of the TACC. ACE is described in kilos and is allocated pro-rata on the basis of the shareholding in that stock. When commercial catch is landed without ACE and a fee is paid to the Crown, this over-catch is not accounted for within the subsequent TAC/TACC setting process.
20. Despite the statutory sustainability provisions and the Minister's obligations, as a result of the process outlined in the previous paragraph, the TAC and TACC do not describe maximum permitted catch limits at all.
21. Since both the TAC and TACC can be so easily circumvented, the quota management system, which is often touted as a world-leading regime, does not provide an effective upper catch limit for vulnerable fish stocks!
22. Chronic deeming, ongoing and avoidable, is a major source of conflict between interest groups, particularly when the fishery is below a level that can provide public fishers with a quality fishing experience and a healthy marine environment.
23. Commercial fishers exceeding the TACC in rebuilding fisheries is a very serious ecological issue, continuing unabated to this day despite years of effort to eliminate it. Examples of ongoing, excessive deeming are set out in the attached Appendix One.
24. Excess catch places an extra burden on the stock that, even if sustainable in the short term, defers or prevents rebuilds within the timeframes set by Ministerial decisions.
25. Catch above the TACC is like taking a loan from the bank (fish stock). Deeming only pays the interest on that loan, but commercial interests have never been required to pay back the capital (fish stock).

26. In a depleted fishery the excess catch undermines the viability of the biomass that is required to rebuild the stock.
27. The Joint Submitters want a system where the available ACE is reduced by the same proportion as the preceding year's overcatch i.e. a 120% catch one year is followed by a 80% ACE in the next year. This is the only way that the capital loss (biomass) from the fish stock can be repaid.
28. The commercial shareholders have joined in Commercial Stakeholder Organisations (CSOs), enjoying powers under the Commodity Levies Act, and are well placed to manage over-catch through a shareholder's agreement. The Crown should have no role to play other than to ensure that total catch limits, prescribed under the Fisheries Act, are complied with.

Ministry's draft Goal for deemed value Standard

29. MFish advise in the IPP paragraph 2,

“The goal of deemed value setting is to reduce deemed value payments to a level that is consistent with routine balancing activity of small amounts of unanticipated bycatches and overruns. Catches against deemed values should not be at a level that reflects intentional and on-going fishing on deemed values. The goal is to achieve this in every stock.”
30. While the Joint Submitters acknowledge the need to provide for small amounts of unanticipated bycatch and overruns, due to the variable nature of fishing, the lack of any meaningful analysis of options and case studies reduces this IPP to another round of number guessing and unfounded conjecture.
31. Chronic deeming, intentional and ongoing catch above the total allowable commercial catch (TACC) is unacceptable, and is particularly offensive in depleted fisheries and those fish stocks of high social, economic and social importance to non-commercial interests.
32. The Joint Submitters do not believe the Ministry's goal can be achieved through adjusting deemed value rates. Because deemed values fail to constrain commercial harvest to the TACC, the catch balancing regime is demonstrably flawed.
33. Moreover, the Joint Submitters strongly reject the notion that deemed value payments and TACC setting are integrated processes. Nothing could be further from the truth. And while this notion clearly benefits TACC shareholders as they lobby for TACC increases, the two processes are clearly disconnected.
34. To accept the notion that high rates of deemed value payments are an indicator of the need to increase the TACC is to reward excess catch.
35. In some fish stocks excess commercial catch has led to a TACC increase on the basis that deemed fish are indicators of abundance. Area 2 has historically borne the brunt of TACC increases on the top of persistent over-catching.
36. Excessive commercial catch over a sustained period led to a TACC increase in Snapper 2 in 2002. This management response has created perverse incentives for offending commercial operators to continue that behaviour in the expectation that more quota will ultimately be forthcoming.
37. Commercial overfishing in inshore shared fisheries has serious consequences on non-commercial interests. These impacts are two-fold: over-catch reduces the abundance and availability of fish to people using less sophisticated methods (compared to commercial), and, secondly unfair proportional reductions are imposed that reduce public access while enabling commercial effort to continue.

38. Chronic deemed in Snapper 8, the North Island West Coast stock, led to the reduction in 2005 of the TAC, overall recreational and customary allowances, and the TACC. In the northern area recreational daily bag limits were reduced by 33 percent, even though the TACC overcatch could be solely attributed to the commercial sector.
39. The Minister's SNA 8 decision was highly objectionable at the time. It remains a contentious issue because proportional reductions were applied to both commercial and non-commercial interests, notwithstanding that the excess catch was caused by a mismanaged industry.

The Goal in the Ministry of Fisheries' Deemed Value Standard needs to be rewritten to describe the response to the capture of unintentional bycatch by commercial vessels.

The use of Crown receipts to measure compliance with a Standard that needs to be achieved on the water encourages those involved to meet the Standard in contrived ways.

If the deemed value regime is retained as is it will continue to serve as a powerful tool for commercial interests to leverage TACC increases.

No meaningful data or analysis

40. In paragraph 3 of the IPP MFish state,

“MFish believes that deemed value payments of \$3 million to \$4 million per year are consistent with routine balancing activity across all stocks....MFish therefore proposes that an effective deemed value setting process should result in deemed value payments that are less than 0.1% of quota value. (Statistics NZ estimates quota value at \$4 billion in 2009).”
41. Based on the available fishing company reports, valuing quota at \$4 billion seems to be a highly inflated estimate. Measuring against total receipts would seem to be a more appropriate evaluation process. Either way, we struggle to understand why our fish are being slaughtered for such little return, unless these figures are contrived?
42. This proposal seems more of an exercise designed to inflate quota values in the hope that this reflects well on MFish. However, in doing so it demonstrates that the quota shareholders cannot generate a useful return from such high values. Using the Ministry's figures, it seems there would be more to gain from bank account interest than investing in commercial fishing. Reducing commercial fishing effort would, in the majority of circumstances, benefit the marine environment and enhance the social and cultural well-being of New Zealanders.
43. The Joint Submitters do not agree with MFish that annual deemed value invoices of \$4 million are acceptable or a sign of effectiveness, particularly given that \$2.18 million was invoiced in 2008/09.
44. These excess fish have been taken despite the Purpose and Principles of the Fisheries Act 1996, the 'best available information' that supports Ministerial sustainability decisions and, most significantly, in contravention of the public's non-commercial fishing interests.
45. The IPP does not, but ought to, have had a table outlining, for specific fish stocks, the deemed value invoices from 2001 through to the latest fishing year, details of paid and unpaid invoices and invoice amounts. MFish has supplied this class of information previously.

46. Without this information it is difficult to make an informed comment on what impact the catch balancing regime has had since its inception in 2001, or what difference the Deemed Value Standard has made since 2007.

Deemed value invoices represent thousands of excess, individual fish removed from the water.

Deemed values would be better described in terms of fish numbers so people can understand the context and implications of these excessive removals.

The catch balancing regime has not been managed to constrain commercial effort to the TACC.

The current system is not managed to ensure that fish taken in excess of the statutory limit are replaced.

The lack of liquidity in the ACE markets render them unable to provide catch for balancing. The level of liquidity is determined by a few dominant shareholders, who may, or may not, lease their ACE. The very market conditions the economists rely upon for such trading mechanisms simply do not exist; leaving the deemed value regime to linger on and on.

Recommendation 1

That the Goal be rewritten to describe the response to the capture of unintentional bycatch by commercial vessels.

A more suitable Goal could be -

That all legal commercial catch, whether intentional or unintentional, is landed and accounted for, if no ACE is held and no Schedule applies.

47. If this Goal, or similar, is adopted the somewhat vexed question of how the deemed value Standard is to be measured can now be addressed. The two outputs are:
- a. the volume of catch that is liable to the deemed value regime; and
 - b. the volume of catch for which deemed value payments are made.
48. The two Key Performance Indicators would be:
- c. The observed incidence of unintentional bycatch on vessels; and
 - d. The Crown receipts for deemed value invoices.
49. The MFish IPP avoids addressing these fundamental basic requirements of a deemed value regime and instead begins with an apparent premise that this is purely an economic exercise, and the fish are incidental.

Principle 1

That all catch in excess of a total allowable commercial catch (TACC) will be accounted for by proportionally reducing the amount of Annual Catch Entitlement (ACE) to be generated in the following year.

50. The Crown is in the untenable position of profiting from commercial overfishing while meeting none of the costs.

51. The high costs of assessing stocks and setting total allowable commercial catch (TACC) levels is undermined by catches taken in excess of ACE. Much of these costs are attributed to commercial interests in important, shared-interest fish stocks.
52. The Joint Submitters strongly object to the Crown profiting from commercial catches that exceed and undermine the very output limit upon which all their management rests.
53. Commercial interests are lobbying hard to undertake more management functions under the umbrella of Standards, and postulate that costs can be reduced and effective management delivered with such a structural change.
54. The beginning of this process can be seen in the Harvest Strategy Standard, the Deepwater Research Standard and Highly Migratory Species Fisheries Plan. These examples are poor as most are expressed in unknown outputs (or outputs that are at best guessed at). The bar needs to be set much higher.
55. Under the current regime we oppose any moves to enable the fishing industry to administer the deemed value system. However, administration by the industry could be acceptable if quota holders were made responsible for the overall, collective commercial catch. Any landings in excess of TACC, without covering ACE, would be proportionally deducted from the next year's available ACE, affecting all TACC shareholders of that fish stock. The matter of penalties or fees for over-catching would then be a civil matter between quota shareholders.
56. The very need for a deemed value regime results solely from commercial interests over-exploiting a public, natural resource. As the primary beneficiaries, it follows that accounting for this over-catch ought to be the responsibility of the quota shareholders.
57. Quota shareholders gladly embrace the benefits of private ownership to commercial fishing rights of a public resource. The vigorous defence of those harvesting rights is an indicator of their value. It is therefore appropriate to direct any associated costs and confounding outcomes to the same group that benefit from the rights.
58. In trying to achieve both a public policy and an economic management outcome it is unjust to put the costs of commercial overfishing, both in an economic and in an ecological sense, onto the public.

Ministry proposed Principles

59. There are many controversial and highly contestable statements made in the Draft 2011 Deemed Value Standard Initial Position Paper.
60. The Joint Submitters have refrained from commenting on the proposed set of 10 individual Principles in the IPP, in anticipation that the draft document will be withdrawn and another will be released for consultation.

Conclusions

61. Standards need to be clear and precise.
62. Standards need to accurately measure the performance of the activity.
63. Compliance with the Standard must ensure achievement of the stated Goal.

64. The Draft 2011 Deemed Value Standard Initial Position Paper fails to set any meaningful Standard associated with unintentional and unavoidable bycatch taken by commercial fishing vessels.
65. By confusing Goals, Standards, and Principles, the Ministry's Initial Position Paper abandons the very purpose of the deemed value regime, which is to prevent discarding at sea, trucking, and the deliberate catching of species for which no Annual Catch Entitlement is owned.
66. As noted in our earlier submissions, the deemed value regime is fundamentally flawed.
67. Commercial landings in excess of the TACC, and for which no ACE is held, ought to be proportionally deducted from the next year's ACE.
68. The regime requires an overhaul, to enable penalties or fees for over-catching to become a civil matter for commercial quota shareholders to sort out amongst themselves. This could be resolved by using a range of tools that may include contracts and penalties.
69. In most cases it is a small subset of fishers who cause the over-catch, but if ACE is reduced because of excess fishing then that impacts on all shareholders, making an ideal scenario for shareholder agreements.
70. It is time for both the industry and Ministry to accept that the deemed value regime has not achieved its original purpose. Clearly the system has not been a successful arbiter of a fleet of commercial fishing vessels operating with poor ACE portfolios, a dysfunctional ACE trading market, vast quota management areas, and variable costs and margins in fast-changing markets.
71. Moreover, the current regime simply requires fishers who catch fish without ACE to deplete the fishery and pay a small fee to the Crown. This makes the Crown complicit in the oppression of the public's non-commercial fishing interests. There is no case for the Crown to profit from commercial catches unsupported by ACE.

The joint submitters request the Minister implement practical controls to curb excessive fishing, instead of merely juggling numbers and rates.

It is the expectation of the Joint Submitters that greater rewards, social, environmental and economic, will come from the Ministry achieving better results from rebuilding depleted fisheries in reasonable timeframes, for the benefit of current and future generations of New Zealanders.

The Hokianga Accord, NZ Sport Fishing and option4 appreciate the opportunity to submit on the Draft 2011 Deemed Value Standard. We are available to discuss and assist with the development of a revised Deemed Value Standard IPP and look forward to MFish addressing our concerns. We would like to be kept informed of future developments.

Yours faithfully,

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Appendix One – Analysis of Commercial Catch in Area 2

Chronic deeming and excessive commercial catch has been an ongoing problem in Area 2, between East Cape and Wellington. Non-commercial interests have been vociferous in their opposition to quota increases based on this excessive commercial harvest. Below is a brief analysis of recent catch in several important fish stocks.

Amounts of deemed value payments are specified where that MFish has supplied information. The value of total deemed value invoices has not been determined so they are not included in this brief.

Table 1: Tonnage of Total allowable commercial catch (TACC) and actual catch, and percentage of TACC caught in the Gurnard 2 (GUR 2) fishery from 2006/07 to 2009/10.

Gurnard 2

Year	TACC (tonnes, t)	Actual catch (t)	% of TACC caught	Deemed values paid
2006/07	725	575	79	\$150
2007/08	725	520	72	\$112
2008/09	725	621	86	-
2009/10	725	853	118	\$88,182

- represents unknown amount.

Table 2: Tonnage of Total allowable commercial catch (TACC) and actual catch, and percentage of TACC caught in the Trevally 2 (TRE 2) fishery from 2006/07 to 2009/10.

Trevally 2

Year	TACC (tonnes, t)	Actual catch (t)	% of TACC caught	Deemed values paid
2006/07	241	368	153	\$116,000
2007/08	241	230	95	\$545
2008/09	241	302	125	\$103,188
2009/10	241	261	108	\$34,283

Table 3: Tonnage of Total allowable commercial catch (TACC) and actual catch, and percentage of TACC caught in the Tarakihi 2 (TAR 2) fishery from 2006/07 to 2009/10.

Tarakihi 2

Year	TACC (tonnes, t)	Actual catch (t)	% of TACC caught	Deemed values paid
2006/07	1796	1729	96	\$11,270
2007/08	1796	1716	96	\$584
2008/09	1796	1901	106	\$155
2009/10	1796	1858	103	\$131,464

Table 4: Tonnage of Total allowable commercial catch (TACC) and actual catch, and percentage of TACC caught in the Snapper 2 (SNA 2) fishery from 2006/07 to 2009/10.

Snapper 2

Year	TACC (tonnes, t)	Actual catch (t)	% of TACC caught	Deemed values paid
2006/07	315	329	105	\$71,781
2007/08	315	328	104	\$35,442
2008/09	315	307	97	\$20,750
2009/10	315	296	94	\$329