

17 July 2015

Mr M Dunne
Ministry for Primary Industries
PO Box 5620
Wellington

Dear Martyn

REVIEW OF DEEMED VALUE RATES FOR SELECTED FINFISH STOCKS
MPI Discussion Document No: 2015/23

1. You have asked for comments on the review of deemed values for selected finfish stocks. This submission reflects the view of Fisheries Inshore NZ Limited and the Deepwater Group Ltd.

The Submitters

Fisheries Inshore New Zealand

2. Fisheries Inshore NZ Limited (FINZ) represents the inshore finfish, pelagic and tuna fisheries of New Zealand. It was formed in November 2012 as part of the restructuring of industry organisations. Its role is to deal with national issues on behalf of the sector and to work directly with and behalf of its quota owners, fishers and affiliated Commercial Stakeholder Organisations (CSOs). As part of that work it will also work collaboratively with other industry organisations and SREs, Seafood New Zealand, Ministry for Primary Industries (MPI) and Department of Conservation.
3. Its key outputs are the development of, and agreement to appropriate policy frameworks, processes and tools to assist the sector to more effectively manage inshore, pelagic and tuna fishstocks, to minimise their interactions with the associated ecosystems and work positively with other fishers and users of marine space where we carry out our harvesting activities.
4. FINZ works closely with other commercial stakeholder organisations that focus on regional and operational issues, including the adjustment of specific deemed values. The Northern Fisheries Management Stakeholder Company Ltd, Area 2 Inshore Finfish Management Company and Southern Inshore Fisheries Management Company are the mandated organisations with respect to the matters consulted on and FINZ supports and endorses their submissions.

5. For that reason, we have not commented on the deemed value proposals for the majority of stocks being reviewed in this round, the exception being KIN7 and KIN8.
6. Any queries in respect of inshore stocks should be directed to Tom Clark, FINZ, (Tel 04 802 1514 or email Tom@inshore.co.nz).

Deepwater Group

7. Deepwater Group Limited (DWG) is a non-profit organisation that works in partnership with the Ministry for Primary Industries to ensure that New Zealand gains the maximum economic yields from their deepwater fisheries resources, managed within a long-term sustainable framework.
8. Their mission is to optimise the sustainable economic value of our deepwater fisheries and vision is to be recognised as the best managed deepwater fisheries in the world.
9. This submission contains comments on behalf of the Deepwater Group on the deemed value proposals for deepwater stocks
10. Comments or queries in respect of the deepwater stocks should be directed to Richard Wells, DWG, (Tel 021 457 123 or e-mail Richard@resourcewise.co.nz).

The Deemed Value Process

11. We have submitted previously on the failure of the Ministry to follow the deemed value process approved by the Minister in March 2008. The following extract is from the Ministry's website¹ :

"In May 2005 a Crown-Industry Joint Working Group (JWG) made nine recommendations on how to improve the deemed value regime to the Minister of Fisheries. Stakeholders were given the chance to comment on the JWG recommendations in a public consultation in late 2006.

Taking the views of stakeholders, the Ministry of Fisheries analysed the recommendations and prepared advice for the Minister. In March 2008 the Minister made final decisions on the recommendations.

Each of the JWG recommendations, followed by the Minister's decisions, are outlined below. At the end of this page are links to the reports and advice papers referred to above.

RECOMMENDATION 1

The JWG recommended that chronic over-catch should trigger management action.

The Minister agreed with this recommendation. Where over-catch of the Total Allowable Commercial Catch (TACC) is occurring, consideration will be given to the most appropriate management actions, including:

- (a) Deemed value increase and differential deemed value adjustments;*
- (b) Reassessment of best information relating to appropriateness of TACCs; and*
- (c) Other management measures such as overfishing thresholds.*

¹ http://www.fish.govt.nz/en-nz/Consultations/Archive/Consultations+from+2006/Deemed+Values/Final+Decisions.htm?wbc_purpose=Basic&WBCMODE=PresentationUnpublished%252525252525252

12. The Ministry supported the recommendation. The Final Advice Paper to the Minister² contained the following comment from the Ministry:

Ministry Comment

20. *The Ministry supports this JWG recommendation that significant TACC over-catch should trigger management action. Deemed values are the primary mechanism for addressing over-catch. However, the Ministry agrees that increasing a deemed value rate is not the only available response to over-catch, and consideration of other management measures, as appropriate, is also needed.*
21. *The Ministry has already amended its catch balancing guidelines to make the deemed value setting process more responsive to over-catch and allow deemed values to be set on a case by case basis. To support these new guidelines, additional resources will be directed at monitoring over-catch and deemed value payments throughout the year.*
22. *The emphasis for both the JWG and the Ministry is on case by case consideration of the need for management action for stocks that are being over-caught. Where over-catch is ongoing and deemed value rates are being considered in response, the Ministry will need to take this as a signal to reassess the best available information on the appropriateness of current TAC levels. There is further discussion of TAC adjustment later in this paper. The appropriateness of applying other management mechanisms to the stock, such as over-catch thresholds, and area and method restrictions, will also need to be considered.”*
13. The Final Advice Paper contains a further discussion on management actions in response to over-catch (see paras 126-134) Paras 129-131 in particular state:
- “129. If a TAC is set too conservatively then deemed value payments or restricted catches represent a loss of value to extractive users, which could be avoided if the TAC was reassessed.*
- 130. Therefore, it is important to address the responsiveness of stock and TAC assessment mechanisms to over-catch, both to reduce costs on industry of deemed value payments, where catch is sustainable, and to reassure industry about the functioning of the management regime and robustness of TACs in the face of increasing deemed value rates.*
- 131. If ongoing over-catch is occurring and information suggests that some or all of that over-catch might be sustainable then a process to assess the appropriateness of the TAC level for the stock should be initiated. This will require some modification of Ministry processes to ensure that those processes take into account, and give appropriate priority to, the signal provided by over-catch and deemed value payments.”*
14. Para 134 is also of relevance to the issue:
- “The assessment of information on the appropriateness of TAC levels may result in identification of a need to generate further information through directed research effort, which may take some time and have cost recovery implications. Gathering new information is often costly and if this extra cost is not justified by returns on a stock, or associated stocks, then high levels of uncertainty and hence carefully set TACs will be largely unavoidable.”*
15. The Ministry process then commences with an assessment of the causes for the over-catch and an evaluation of the appropriate management response. The discussion contained in

² http://www.fish.govt.nz/NR/rdonlyres/1AFE0966-1602-41F6-8316-8C6D6EAF849/0/Final_Advice_on_JWG_recommendations.pdf

paras 129-131 is fundamental to the evaluation of options particularly in the case of ongoing over-catch. Increasing deemed values is not the only option to be considered.

16. The Ministry has referred to the High Court judgment of Priestley J in the Pacific Trawling and Independent Fishing case (CIV 2007-441-1016) where the Court held that the Minister was unable to take into account the adequacy or otherwise of the TACC in reviewing deemed values to set aside the industry submissions on the process. Industry supports that general finding but notes the Minister has the discretion to take into account any such matters as the Minister considers relevant. That judgment applies only to the Minister exercising his power to set deemed values.
17. Ministerial consideration of deemed value proposals is subsequent to a Ministry review of the circumstances relating to the over-catch of stocks. It is only where the Ministry has already determined that reviewing the deemed value is the most appropriate option that the Ministerial consideration of deemed values arises. The judgment does not obviate the need for the Ministry to follow the process approved by the Minister to review and identify the cause of over-catch and take an appropriate management response to the matter. That includes consideration of the adequacy of the TACC. It is not within the Ministry's power to ignore a Ministerially approved process.
18. Insofar as industry is aware, the Ministry only followed the process in 2007 and has not subsequently followed the approved process. Certainly, the process has not been used in any shape or form for the past five years.
19. Not only does the Ministry not seek to follow the process, it has not given any recognition to the process in any documentation relating to the deemed values. The Deemed Values Guidelines continues that approach, ignoring the approved process and the need for consideration of options.
20. This matter has been raised in every submission since 2008 from Seafood New Zealand, or its predecessor SeaFIC, provided on the deemed values sustainability measures. It appears to have been ignored in most years by the Ministry. The SeaFIC submission of January 2011 on the Draft 2011 Deemed Value Standard dealt with the issue at some length. We note this was ignored in the final deliberations of the Ministry on the standard.
21. We request the current guidelines document be withdrawn and be amended to include the need to review the management options in the case of an over-catch occurring.
22. We agree with the comments in paras 129-133 of the Final Advice Paper referred to earlier. We consider that the failure to follow the approved process has again flawed the current deemed value proposals. We comment further on this matter in respect of the deemed value proposals for KIN7 and KIN8.

Use of 0.1% Quota Value to Determine if Deemed Values are significant

23. We are unclear as to where or why this performance measure/criterion has emerged. It seems to fulfil two roles – firstly as a criterion for a deemed value to be reviewed and secondly as a measure of the performance of the process.
24. We can support the measure as a criterion for initiating a review of a stock but for an entirely different rationale to the Ministry's reasoning. From the perspective of a quota-owner, it is a clear signal that the deemed values are consuming a disproportionate amount of the available rent from the fishery and the circumstances for the deemed values should

be reviewed, with the first option being a review of the TAC/TACC if none has been recently undertaken.

25. As a measure of the performance of the fishery, we are unclear as to how the Ministry might view the measure. From the perspective of a quota-owner, if the ratio of deemed value to quota-value rises, it provides a clear signal that fishers are unable to balance catch with ACE and that a more appropriate management response may be to review the adequacy of the TAC/TACC.
26. From an operational perspective, based on information deficiencies, we consider the measure is not robust and should not be used. Our analysis of the quota transfers indicates that in the period between 1 October 2013 and 30 June 2015 there were only 78 stocks for which FishServe considered there were sufficient arms'-length transfers to generate a reliable market average price. The stocks for which there are no values includes a number of the stocks reviewed in this consultation. Furthermore there are many stocks for which a reliable quota transfer price since the introduction of the stock to the QMS cannot be assessed. Without a reliable quota transfer price, the ratio of deemed value payments to quota value cannot provide a meaningful outcome for all stocks.
27. We wish to see the Ministry's analysis that supported the introduction of the measure for either purpose.

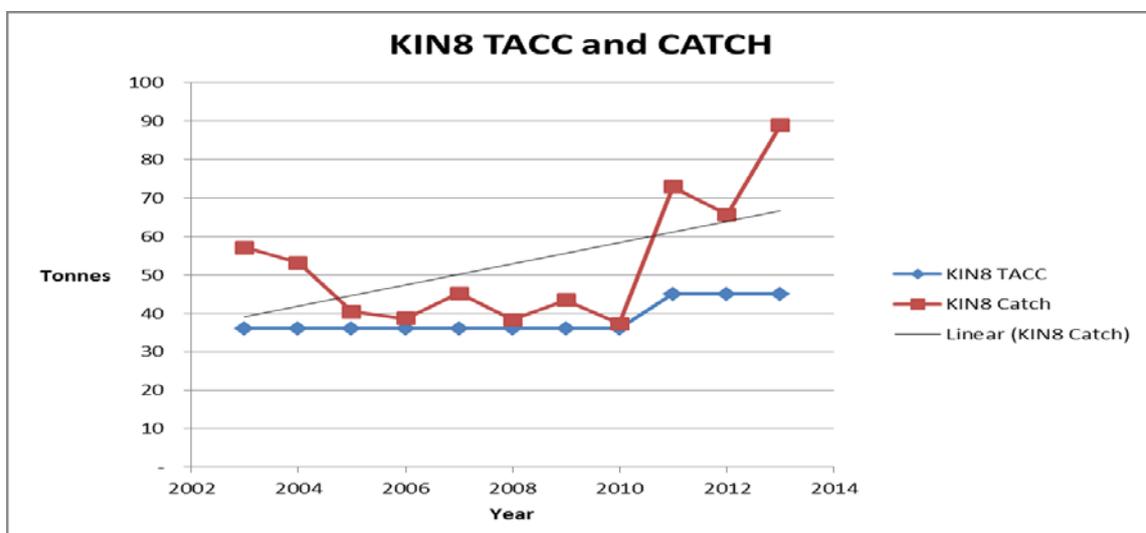
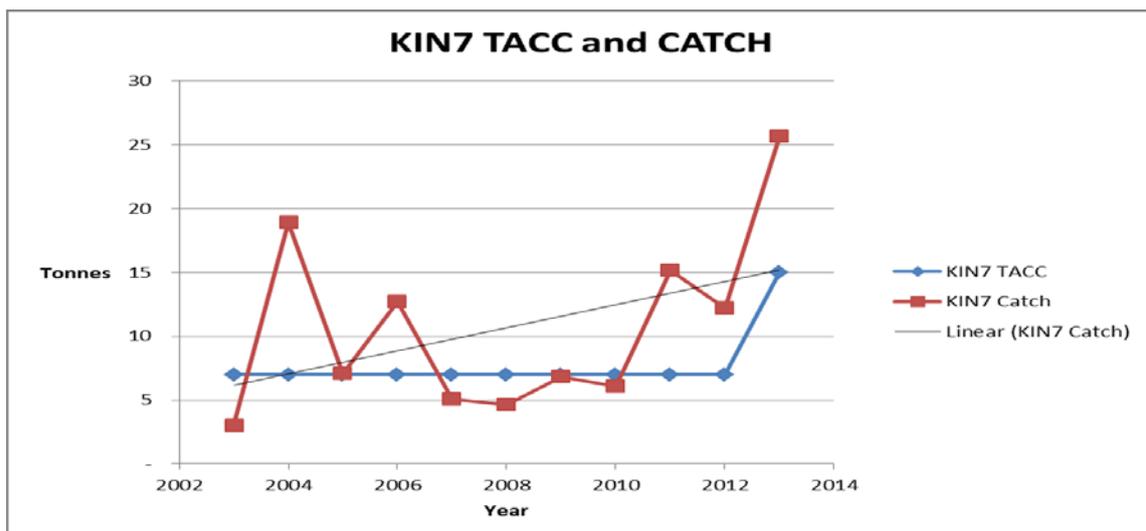
Engagement with Industry

28. While the August 2012 Final Advice Paper on the Deemed Value Standard indicated that the Ministry was changing its stakeholder engagement process from a joint Review Group to a greater reliance on the fisheries plans process, there was no discussion with industry organisations on the current deemed value proposals prior to the release of the consultation document.
29. Industry had previously provided a list of stocks it wished to include in the sustainability round for 2015. There was no response or discussion with industry on the proposals, whether in the fisheries plan context or on a stock specific basis.
30. That low level of engagement and lack of engagement is not conducive to achieving collaborative progress on the management of inshore fisheries.
31. We request the Ministry to amend its processes and to implement processes that will result in collaborative management of stocks, including the assessment of management options in stocks with an over-catch.

KIN7, KIN8 Deemed Value Proposals

32. The review of deemed values for KIN7 and KIN8 was requested by industry as a response to a protracted over-catch in the stocks.
33. Industry's preferred response was an increase to the TAC/TACC for these stocks. As can be seen from the following graphs, KIN7 and KIN8 have a history of being over-caught. As set out in our request for these stocks to have TAC/TACC reviews:
 - a. The fisheries have had a fundamental change since the growth of the jack mackerel fishery and by-catch of kingfish has increased;

- b. The TACCs set in 2003/04 were unreasonably set at less than half of the reported catch in the five years prior to their introduction to the QMS (Note that the TACCs were not set at 80% of the catch history years of 2000/01 and 2001/02 as purported in the consultation document - KIN7 was set at 42% and KIN8 at 59%)
- c. While kingfish may be returned to the sea under Schedule 6, only 26% of the catch has been able to be returned to the sea under this provision. The remainder must be retained and landed (as it is not likely to survive post release /is already dead);
- d. KIN7 and KIN8 are not targeted by commercial fishers. They are an unavoidable by-catch in commercial fisheries and especially in the jack mackerel fishery. The assertion in the consultation document that the TACCs have been broadly set at the level of unavoidable by-catch is not correct and is misleading;
- e. The Stock Assessment Plenary summarises status of kingfish as “Although fluctuating, catches of kingfish have shown very little trend over the last 20 years and there is no direct evidence to suggest that the current catch levels are not sustainable.”
- f. KIN7 and KIN8 have had minor TACC increases in the recent past but the TACCs have still not been increased to their pre-QMS catch levels.



At present, the Crown receives an unreasonable share of the economic rent from the fishery as shown in the following table:

KIN7 KIN8 RETURNS FROM THE FISHERY					
	Quota-owners' ACE Revenue (\$)	Deemed Values (\$)			Crown Share (%age)
		2011/12	2012/13	2013/14	
KIN7	89,700	126,763	92,932	171,441	69%
KIN8	280,800	452,405	369,594	860,325	50%

34. This is unreasonable and unacceptable.
35. Industry believes that a review of the TAC/TACC would be in line with the processes approved by the Minister in 2008 and is entirely consistent with the reasons provided by the Ministry to support the recommendation that
- “Where over-catch of the Total Allowable Commercial Catch (TACC) is occurring, consideration will be given to the most appropriate management action, including:*
- (a) Deemed value increase and differential deemed value adjustments;*
- (b) Reassessment of best information relating to appropriateness of TACCs; and*
- (c) Other management measures such as overfishing thresholds.”*
36. The Ministry declined the latest industry request to review the TAC/TACCs for the stocks. No review appears to have been undertaken as to the source of the over-catch or any consideration given to the most appropriate management response. However, the Ministry recognises that despite the extreme settings already applying to deemed values for KIN7 and KIN8, the deemed value framework cannot control the level of over-catch. That would indicate deemed values are not an appropriate management response.
37. Instead of addressing the TACCs as would be consistent with the sustainable utilisation objectives of the Fisheries Act, MPI has repeatedly chosen not to recognise the structural change in the fisheries and inadequacies of the TACCs and has maintained a position that industry needs to fish with the existing TACC. Appropriate responses to an over-catch do not include turning a blind eye to the issue when it is evident that an alternative option to increasing deemed value rates must be considered.
38. It is not clear whether the decision not to take the appropriate management response and review the TACC is evidence of:
- a. a lack of understanding of what constitutes quality fisheries management;
 - b. ignorance of the Minister’s 2008 approvals;
 - c. a decision not to follow the Minister’s 2008 decisions;
 - d. a decision to deny KIN7 and KIN8 quota-owners the ACE revenue that should rightfully belong to them; or
 - e. a decision to enrich the Crown by not reviewing the TACCs and retaining the deemed value payments.
39. The only reason proffered by the Ministry for not reviewing the TACCs is a preference for the matter to be considered in the context of a multi-sector collaborative working group:
- a. yet to be established,
 - b. the terms of reference for which have not been promulgated,
 - c. the inclusion of KIN7 and KIN8 in that process not been considered;

- d. no compelling reason to consider KIN7 and KIN8 to be shared fisheries;
 - e. there seems no solid timeline for advancement of the process; and
 - f. the membership of which not been appointed.
40. The decision to delay consideration of a TACC increase for KIN7 and KIN8 will mean a continuation of the problems discussed above and set false expectations as to the level of interest in and management of the KIN7 and KIN8 stocks.
41. We urge the Ministry to re-consider its decision to decline a TACC increase for KIN7 and KIN8.
42. In respect of the KIN7 and KIN8 deemed values, MPI proposes to take no action. It notes that the conversion factors are to be reviewed and that will, when approved, reduce the level of deemed values paid by reducing the greenweight of fish recorded as caught. However the TACC will not be reviewed.
43. We cannot support the MPI proposal not to amend the deemed values for KIN7 and KIN8. The Ministry recognises that the deemed value rates are failing to provide an effective incentive for commercial fishers to constrain bycatch against the TACC for KIN7 and KIN8. In the circumstances, until MPI addresses the situation in a more comprehensive manner, continuing the current settings is unreasonably using the Ministry's powers to derive an undue enrichment from the stocks while not benefiting the management of the stocks.
44. The annual deemed values for KIN7 and KIN8 are set at the highest ratio compared to the port price for any New Zealand finfish. KIN7 annual deemed values are 3.2 times the 2015/16 port price with the maximum differential rate being 6.4 times the port price. For KIN8, the comparative ratios are 2.1 and 4.2 times. For comparison, the comparable ratio for SNA1, considered to be the most highly shared finfish stocks, is 1.24 for the annual rate and 3.4 for the maximum differential rate. There is no logic that supports that the relative deemed value rates for KIN7 and KIN8 being significantly higher than for the prime SNA fishery. Setting deemed value rates that are significantly higher than the gross price a fisher can expect to receive for landing his catch can only serve to act as a disincentive to land the catch.
45. The deemed values for KIN7 and KIN8 have resulted in the ACE price for KIN7 and KIN8 being substantially in excess of the port prices received by fishers. We cannot accept that poor management of a stock should result in a market failure that incentivises quota-owners to arbitrage poor fisheries management into "price gouging" for ACE. This is only one more indicator that the KIN7 and KIN8 fishstocks are being unreasonably managed.
46. We request that the deemed values for KIN7 and KIN8 be decreased to be consistent with a port price of \$2.78 for KIN7 and \$4.15 for KIN8.

Deepwater Stock Deemed Value Proposals

47. The deemed values for FRO8, FRO9, LDO1, RBT3, RBY7, RIB4 and RIB8 stocks are being reviewed as a consequence of an over-caught TACC. The proposal for RIB8 is to introduce differential deemed values and the change proposed for the remainder of the stocks is to increase the interim deemed value rates.
48. We do not see any need to amend the deemed value settings for these stocks and note that:
- a. There has been no review of the circumstances for any over-catch;

- b. There has been no assessment of the most appropriate management option;
 - c. FRO8 and FRO9 have had a long history of being over-caught and, with no sustainability issues noted, an increase in the TACC would have been the most appropriate management response. Any sustainability issue is further offset by the significant under-catch of the FRO7 stock which is the southern component of the single West Coast frostfish biological stock;
 - d. LDO1 has had a history of the TACC being fully or near fully utilised and with no sustainability issues noted, an increase in the TACC would have been the most appropriate management response;
 - e. RBT3, RBY7 and RIB4 have had an over-catch for the first time in 2013/14 and, with only a nominal TACCs having been set, any deemed value changes are premature tinkering. An appropriate review of the circumstances for the over-catch in all fisheries was not undertaken.
 - f. While RIB8 has had over-catches in recent years, it has only a nominal TACC of 1 tonne. An increase in the TACC would have been the most appropriate management response.
49. Lifting an interim deemed value to 90% to align the setting to an administrative process in the absence of any sustainability or over-catch issue is unnecessary tinkering, rather than fisheries management. Had a review of the circumstances for the over-catch in all stocks been undertaken, there would have been no justified need to tinker with interim deemed value rates and a TACC increase would have been identified as the most appropriate fisheries management response for RIB8.