



**Fisheries New Zealand**

Tini a Tangaroa

# Deemed Values Working Group Final Report

Prepared by Fisheries Management, Fisheries New Zealand

ISBN No: 978-1-99-001767-4 (online)

ISSN No:

April 2020



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## **Executive summary**

The Deemed Values Working Group was convened in April 2019 with the objective to review the information basis and applied process for setting deemed value rates. Whilst acknowledging the deemed value framework as fundamentally sound, the Working Group made seven joint recommendations on how the operation of the deemed values regime could be improved and updated. These recommendations consisted of;

1. A revised statement of purpose for the deemed values regime;
2. The implementation of the Catch Balancing Review Process to guide a more integrated approach to reviewing the management settings of stocks where catch balancing issues are of concern;
3. The formation of a Commercial Catch Balancing Forum to input into the annual review process;
4. The revision of the operational policy statement used to develop advice on the setting of deemed value rates;
5. An agreement to consider the broader use of overfishing thresholds in mixed fisheries;
6. A commitment to increasing the interim deemed value rates to 90% of the annual rate; and
7. An agreement to investigate the feasibility of setting method specific deemed values.

All seven recommendations were subsequently accepted by Fisheries New Zealand and an implementation plan has been developed to ensure that the recommendations of the Working Group are given effect.

## **Background**

One of the core principles of the Quota Management System (QMS) is that the total commercial catch for a fish stock should not exceed the available annual catch entitlement (ACE). The regime used by fishers to balance actual catch against ACE (termed the catch balancing regime) is critical to achieving this.

Commercial catches of many fish stocks can be hard to accurately predict. Therefore, the catch balancing regime must be sufficiently flexible to provide fishers with a mechanism to deal with unintended and accidental catch in excess of their catch rights. The catch balancing regime must also provide incentives and constraints to limit over-catch, while encouraging accurate catch reporting.

### **Deemed values regime**

Deemed values are the price paid by fishers for each kilogram of unprocessed fish (from QMS fish stocks) landed in excess of a fisher's ACE holdings.

Since 2001, the deemed values regime has been the primary catch balancing mechanism (see Appendix 1 for a summarised history of the catch balancing regime).

The balancing of catch against ACE occurs on a monthly basis throughout the fishing year. Under the deemed values regime, fishers have two options to account for catch in excess of ACE holdings; they can either purchase the extra ACE required or pay the relevant deemed value. Failure to pay a deemed value invoice in excess of \$1,000 results in suspension of an



operator's fishing permit, making all subsequent commercial fishing illegal. The flexibility afforded by the deemed value framework comes from allowing fishers to purchase ACE to cover catch after fishing (retrospective balancing), and by allowing for periodic rather than continuous balancing of catch with ACE.

The deemed value regime does not create a single deemed value rate for each stock, but rather a set of rates that apply under different circumstances. Interim deemed value rates are charged each month for any catch landed in excess of an individual's ACE holdings. If the fisher subsequently sources available ACE to cover his/her catch, the interim rates are remitted. If the fisher does not source available ACE by the end of the fishing year, the difference between the interim and the annual deemed value rate is charged for all catch in excess of ACE at year's end. Progressively increased (differential) deemed value rates may also apply as the percentage by which catch exceeds the available ACE increases.

### **Setting deemed values rates**

The statutory framework for setting deemed value rates is provided by section 75 of the Fisheries Act 1996. Section 75 requires the Minister to set deemed value rates for each QMS stock and sets out matters for the Minister to consider when doing so (Appendix 2). Within the statutory framework, the Minister has considerable discretion when setting deemed value rates, however this discretion has been subject to judicial comment.<sup>1</sup>

Fisheries New Zealand develops its advice to the Minister on the setting of deemed value rates based upon an operational policy statement regarding the application of section 75 and other objectives of the Act. Such operational policy statements have been periodically reviewed over time and have been informed by commissioned research, internal policy development and consultation relating to the use of deemed values.

At the commencement of this review, the Deemed Value Guidelines (2012) was the operational policy statement used to guide the development of advice to the Minister on the setting of deemed value rates.

### **Total deemed value payments**

Between the 2001/02 and 2006/07 fishing years, total deemed value payments averaged approximately \$10M per annum. In part to prevent fishers from intentionally fishing in excess of their ACE holdings, the operation of the deemed values regime was changed in 2007 through the implementation of the Deemed Value Standard. As a result, total deemed value payments decreased by approximately 50%.

Between 2007/08 and 2016/17, total deemed value payments varied between approximately \$2M and \$6M per annum. However total deemed value payments for 2017/18 were approximately \$7.8M, the highest amount in 10 years (Appendix 3). The reason for the peak in deemed value payments during 2017/18 was due to higher than usual catches of some stocks for which catch regularly exceeds ACE (e.g. LIN 7, KIN 7) and significant increases in catch for some stocks that had not been over-caught for a number of years (e.g. SKI 3, SKI 7, SWA 4). Fisheries New Zealand does not consider that the increase in deemed value payments during 2017/18 represents a return to operators intentionally fishing on deemed values.

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<sup>1</sup>*Pacific Trawling Limited and Independent Fisheries Limited v The Minister of Fisheries* HC NAP CIV 2007-441-1016 [29 August 2008].



## Why the need for review

The 2019 review of the operation of the deemed values regime was initiated to address changes and issues within the sector that have emerged over the eight years since the previous review (conducted in 2011).

### **Incentives**

Deemed values should provide individuals with economic incentives to balance catch against ACE and not catch in excess of ACE holdings. However, setting deemed value rates too high may create an incentive for fishers to discard fish illegally. If deemed value rates are set too low, fishers would be able to overfish their catch entitlements which could reduce stock sustainability and the value of the quota right.

The incentives created by deemed values are directly related to other economic variables such as operating costs, ACE prices and landed fish prices. When these variables change, the incentives provided by deemed values also change. Additionally, differences in these variables between individuals result in differing incentives. As such, setting the deemed value rate at a level that creates the appropriate incentives for all operators can be difficult.

### **Stock specific issues**

A small, but significant number of stocks are responsible for a large proportion of total deemed value payments. Ten stocks<sup>2</sup> were responsible for over 50% of deemed value payments during 2017/18. These ten stocks were also responsible for almost 60% of deemed value payments during the preceding ten years (Figure 1). Additional information on the deemed value payments associated with the top ten stocks can be found in Appendix 4.

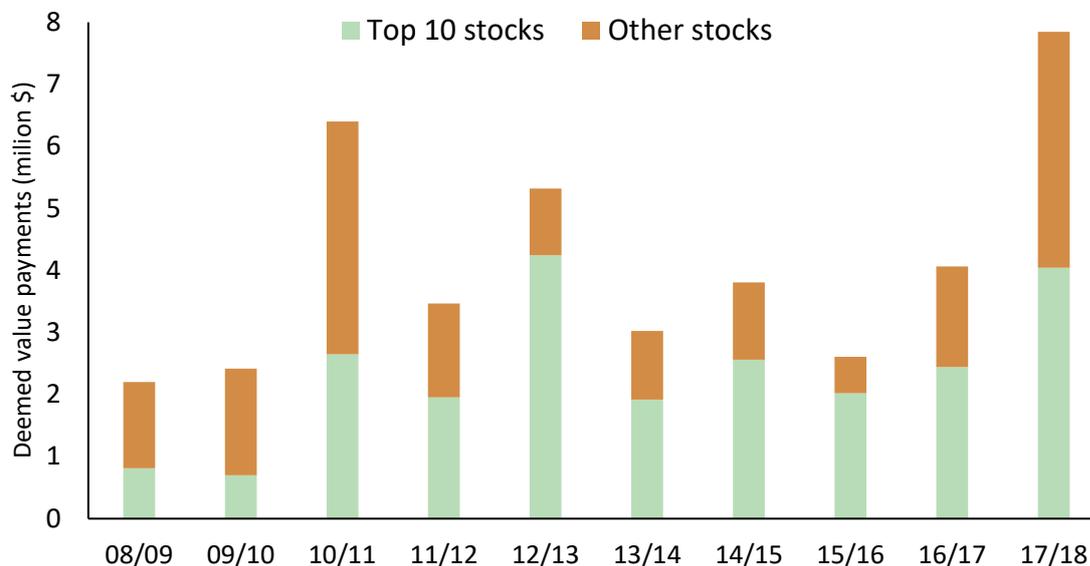


Figure 1 – Deemed value payments for the top ten stocks against all other stocks between the 2008/09 and 2017/18 fishing years.

<sup>2</sup> The 10 stocks are (in descending order of total deemed value payments during the last 10 years); LIN 7, KIN 8, SWA 3, TAR 2, ELE 3, GUR 3, SNA 8, KIN 7, BYX 2 & BNS 3.



Figure 1 indicates that the Deemed Value Guidelines (2012), and associated processes, have not addressed the longstanding issues concerned with a small number of specific stocks that have been consistently over-represented in deemed value payments. On that basis a review of the operational policy and process for prioritising and scrutinising specific stocks, and tailoring adjustments to deemed value rates was warranted.

### **Technology and policy proposals**

The introduction of new technology such as electronic catch reporting and geospatial position reporting (ER/GPR) and policy proposals on landings and discards will have implications for the operation of the deemed value regime. In particular, it will mean that Fisheries New Zealand will have better, and timelier information on which to base its recommendations concerning the development of advice on the setting of deemed value rates.

### **Data limitations**

Fisheries New Zealand faces constraints on the data for landed prices, ACE value and quota value. For example, the price paid per kg of ACE may vary between individuals due to price differentials within vertically integrated companies and/or longstanding contractual relationships between harvesters and quota holders. Similarly, the best available landed price information is based upon the Port Price Survey which does not always capture the inherent variation in the landed price of fish e.g. according to method of capture, location of landings and other factors that influence the price paid to fishers by Licenced Fish Receivers (LFRs).

Limited information can make it difficult to set appropriate deemed value rates in certain circumstances. Stakeholders have raised concerns that the Deemed Value Guidelines (2012) rely too heavily on available ACE and port price data given that indexes of 'average' ACE and port price information can be indicators of limited reliability.

### **Other issues**

Decisions on deemed value rate adjustments are currently made as part of the Sustainability Round process and are based upon fishing activity during the previous complete fishing year. Therefore, the deemed value rate decision process can also have up to an eighteen month lag. The lack of flexibility in the deemed values system to respond quickly to changes, in markets or the biological system, is an ongoing concern.

The incentives for illegal discarding created by high deemed value rates may result in the reported landings of some stocks being less than the available ACE, despite actual catches exceeding this level. The current process, and performance indicators, for identifying stocks for deemed value rate review does not allow for the consideration of such stocks.

Some members of the commercial fishing industry are also of the view that deemed value rates can impact upon the ACE market.<sup>3</sup> If a mechanistic approach to setting deemed value rates higher than the ACE price is applied, the market value of ACE may increase to at, or just under, the deemed value rate. If a policy of ensuring deemed value rates are set higher

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<sup>3</sup> [Stewart, J., and Leaver, J. \(2014\). An examination of the ACE market in New Zealand: Efficiency and deemed value mitigation. Report prepared for the Ministry of Primary Industries. Wellington. Ministry for Primary Industries \(MPI\) research contract: RFP 16393 Research Topic.](#)



than the ACE price is then applied, the market value of ACE would increase again resulting in a circular and self-ramping process (i.e. the auto set problem).

## **Deemed Values Working Group**

To address the issues outlined above, Fisheries New Zealand convened a Deemed Values Working Group (the Working Group) in April 2019.

### **Membership**

The Working Group was chaired by an independent Queens Counsel and consisted of 13 members including;

- MPI/Fisheries New Zealand officials;
- Industry participants;
- Iwi representatives (including Te Ohu Kaimoana and an independent iwi representative); and
- An independent economist (contracted by Fisheries New Zealand).

The Working Group was also supported by a secretariat provided by Fisheries New Zealand.

### **Terms of Reference**

The objective of the Working Group was to develop recommendations on the implementation of the catch balancing regime that:

- a) Ensure sustainability by creating incentives to balance catch with ACE; and
- b) Provide for utilisation through flexible implementation that meets the legal obligations and management objectives for the fishery.

The Working Group was to meet its objective by reviewing the Deemed Value Guidelines (2012) and the information basis and applied process for the adjusting of deemed value rates. Considerations the Working Group were required to take into account included:

- a) Mitigating the potential for quota owners' rights to be damaged by the actions of others, where such actions are beyond their control;
- b) Minimising discards and misreporting, thereby ensuring decision makers have accurate information on harvest; and
- c) Ensuring the regime is relatively simple, cost effective and transparent.

### **Out of scope**

Discussion regarding the redistribution of deemed value payments between the Crown and industry was explicitly excluded by the Terms of Reference.

### **Schedule**

The Working Group met five times between April and August 2019. The agenda, and key outcomes, of each meeting is summarised in Appendix 5.



## **Recommendations of the Working Group**

All Working Group members acknowledged the deemed value framework, and relevant legislation, as fundamentally sound. However, members acknowledged that minor changes to the legislation may be beneficial to improve the regime in future (see Long-term proposals). The main issues raised concerned how the deemed value framework was operationalised.

To improve and update the operation of the deemed values regime, the Working Group made the following recommendations.

### **Recommendation 1**

A revised statement of purpose for the deemed values regime:

*‘The primary purpose of the deemed values regime is to provide incentives for individual fishers to acquire or maintain sufficient ACE to cover catch taken in the course of the year, while:*

- *Allowing flexibility in the timing of balancing;*
- *Promoting efficiency; and*
- *Encouraging accurate catch reporting’.*

**The Working Group agreed that the purpose statement for the deemed values regime was in need of review<sup>4</sup>**

The goal of the Deemed Value Guidelines (2012) is to *‘set deemed value rates that create an effective incentive for individual fishers to balance catch with Annual Catch Entitlement and for the overall catch to remain at or below the total Annual Catch Entitlement available in any one year.’*

The Working Group was in agreement that the guiding statement for the operation of the deemed value framework could be updated and improved. Members agreed that the revised statement should incorporate the following themes:

- Deemed value rates must provide an incentive for fishers to acquire sufficient ACE to balance against catch;
- The incentives provided by deemed values focus at an individual level;
- Deemed values provide flexibility in the timing of balancing; and
- Deemed value rates should incentivise fishers to land and accurately report catch.

Consistent with the above themes, and legislative requirements, the Working Group drafted an agreed purpose statement which would be used to guide the operation of the deemed value framework.

### **Implementation plan**

As all other recommendations in this report have been guided by this purpose statement above, implementation of the following recommendations will give it effect.

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<sup>4</sup> The reference to efficiency within the purpose statement relates to reducing the transaction costs associated with very small ACE trades (by allowing fishers to cover very small quantities of over-catch through the payment of deemed values) and by promoting liquidity within the ACE Market.



## **Recommendation 2**

Fisheries New Zealand adopt an integrated approach and process to reviewing deemed values, and catch in excess of available ACE, on an annual basis through the implementation of the Catch Balancing Review Process.

### **Deemed values form one component of a stock's management regime**

The primary mechanism used to manage commercial catches of QMS stocks is the total allowable commercial catch (TACC); deemed values are secondary management measures which act to support the TACC.

However, as deemed values function within the context of other management settings, catches in excess of the available ACE (and consequent deemed value payments) do not necessarily indicate a problem with the deemed value rates of a stock. Rather, catches in excess of the available ACE (either at the level of the stock or the individual), can indicate that the other management settings of the stock require review.

### **Recurrent catch in excess of available ACE should prompt management action**

The current process for adjusting deemed value rates generally considers deemed value rates in isolation and provides little scope for the consideration of other management measures. Similarly, the process for prioritising stocks for total allowable catch (TAC) review does not explicitly enable the consideration of stocks where catch has exceeded the available ACE. These processes have not resolved the frequent, and often significant, catch in excess of available ACE for some stocks (Appendix 6).

The Working Group was in agreement that while deemed values provide some flexibility with regard to temporary levels of over-catch, repeated catches in excess of the available ACE is not appropriate and should trigger further examination of the causes.

### **The appropriate management action depends upon both the potential causes of the over-catch and stock specific considerations**

Potential causes of catch in excess of available ACE include:

- An increase in stock abundance since the TAC was last set/reviewed
  - Fisheries New Zealand reviews the management settings of a limited number of stocks each year. Therefore, some stocks may go a considerable length of time without a TAC review. As such, the TAC of some stocks may not follow natural variations in stock abundance.
- A scarcity of available ACE with which to balance catch due to:
  - The TAC of a stock set below the genuine bycatch level;
  - Setting the TAC of a stock based on historical catch data that is no longer reflective of current fishing patterns; or
  - Insufficient ACE being made available by quota holders.
- Deliberate catching in excess of ACE holdings.

Stock specific considerations include the status of the stock (i.e. is the biomass at, above, or below, the management target), the ability of fishers to control catch and the significance of the stock to customary and non-commercial sectors. Depending upon the potential causes



and stock specific considerations, the appropriate management action(s) may include proposing a stock for TAC review, adjusting deemed value rates and/or prioritising research or compliance activity.

Given the above, the Working Group recommends that Fisheries New Zealand adopt an integrated approach and process to annually reviewing the management settings of stocks where catch exceeds the available ACE.

### Implementation plan

To implement this recommendation, the Working Group has proposed an annual process, termed the Catch Balancing Review Process (Appendix 7).

The purpose of the Catch Balancing Review Process is to guide a more integrated approach to reviewing the management settings for stocks where catch balancing issues are of concern. As part of the process, Fisheries New Zealand, along with representatives of the commercial fishing industry, would identify and prioritise potential solutions to those issues. These could include TAC reviews, deemed value rate reviews, research planning and other management responses. Outputs of the Review Process would be subject to engagement and consultation with tangata whenua and stakeholders as required.

Following analysis of the available data, Fisheries New Zealand would determine which stocks enter the Review Process based upon a defined set of criteria:

- Catch in excess of available ACE (at the level of the stock, or the individual operator);<sup>5</sup>
- Significant changes in the economic characteristics of the fishery (e.g. landed price, market ACE value); and
- Deemed value rates inconsistent with the revised Deemed Value Guidelines (see recommendation 4).

Such analysis would occur shortly after the end of each fishing year, to allow the timely identification of the appropriate management action(s) so as to align with other Fisheries New Zealand processes e.g. Sustainability Round, research planning etc. (Appendix 8). To increase the responsiveness of the catch balancing regime, additional analysis would be conducted midway through each fishing year so as to identify stocks for deemed value rate review based upon information received during the year to date.

Implementing the Review Process will likely require additional time commitments from all parties. Resources from Fisheries New Zealand would be required for the administration of the Forum and data analysis. However, the resourcing implications of the Review Process are likely to be minor (less than 0.1 FTE) and there may be considerable benefit from moving the timing of this work to a generally less resource intensive part of the fishing year.

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<sup>5</sup> If the catch of an individual operator exceeds their ACE holdings, the operation would incur deemed value payments even if total catch (all operators combined) does not exceed the total ACE available. Individual operators catching in excess of their ACE holdings can indicate that some aspect of a stocks management settings are in need of review. Therefore, including such stocks within the Review Process would allow for a more proactive approach.



### **Recommendation 3**

Fisheries New Zealand forms and facilitates a Commercial Catch Balancing Forum with representatives of the commercial fishing industry who will input into the annual Review Process.

**The Commercial Catch Balancing Forum would provide information and input into decision making on the appropriate response to issues arising from a review of the catch balancing regime.**

To enable ongoing information sharing regarding the operation of the catch balancing regime, the Working Group recommends the formation of a Commercial Catch Balancing Forum (the Forum) comprising industry representatives, Te Ohu Kaimoana and Fisheries New Zealand officials.

The Forum would input into the Review Process by discussing stocks that meet the 'criteria for review' (see above) so as to provide the best possible information on, for example, why a particular stock may have been over-caught, current ACE and landed prices, and to provide indications on where deemed value rates may be incentivising misreporting.

The Forum would meet annually in November to align with other processes administered by Fisheries New Zealand. A second meeting may be convened around May in the following year to provide information on stocks that have been recommended for a deemed value rate review as required.

Output from the Forum's November meeting would be provided to Fisheries New Zealand by December each year. If a May meeting is convened, the output would be provided to Fisheries New Zealand by June. The outputs of the Forum would be available to other sectors as required.

For a shared fishery, where a multi-stakeholder forum has been set up by Fisheries New Zealand to review the management of that fishery, it may separately input into decision making regarding the management settings of that fishery.

**The Forum's output would be assessed by Fisheries New Zealand with any decisions subject to prioritisation, engagement and consultation with iwi and stakeholders.**

The Forum's output would form part of Fisheries New Zealand's annual planning and prioritisation process for TAC reviews, deemed value rate reviews, research planning and other planning processes. Stocks for TAC or deemed value rate review would be publicly consulted on as part of the Sustainability Round process. All decision making will remain with Fisheries New Zealand and the Minister of Fisheries.

#### **Implementation plan**

The Working Group recommended that the first meeting of the Catch Balancing Forum is convened in late 2019.



## **Recommendation 4**

Fisheries New Zealand agrees to update the Deemed Value Guidelines (2012) to allow greater flexibility in the setting of deemed values.

### **The Deemed Value Guidelines (2012) should be amended**

The Working Group agreed that the Deemed Value Guidelines should continue to be the primary document used to develop advice on the setting/adjusting of deemed value rates. However, a number of changes were recommended so as to:

- Better align the Guidelines with the revised purpose statement;
- Allow for greater flexibility in the setting of deemed value rates to account for the consideration of stock specific factors and other management settings through the Review Process; and
- Make explicit the current practice of considering other relevant matters (e.g. significance to customary and recreational sectors) when setting deemed value rates.

The revised Deemed Value Guidelines are attached with the two most substantial changes to the 2012 Guidelines discussed below.

### **1) ACE and port price information**

#### **Questions over the utility of ACE and port price data when setting deemed values**

The Working Group was supportive of the economic theory behind setting a deemed value between market ACE value and landed price. However, the Working Group considered that the available information on ACE value and landed price (the average ACE price reported by FishServe and port price index respectively), rarely captured the variation inherent in such information. As such, the Working Group viewed that setting deemed value rates based solely on the average ACE price and/or port price could benefit from greater flexibility in some circumstances (discussed below).

#### **Reframing ACE and port price as reference points**

In the absence of alternative information sources, Fisheries New Zealand proposed to reframe average ACE price and port price as reference points within the amended Deemed Value Guidelines.

The Working Group agreed to use ACE and port price as reference points (as opposed to principles) when reviewing deemed value rates and view such an approach as consistent with considering deemed value rates within the context of other management tools. The Working Group also recommended that;

- I. The text of the revised Deemed Value Guidelines acknowledges the limitations of using average ACE price and port price data;
- II. Exceptions to using average ACE price and port price as reference points be identified (if appropriate) through the Catch Balancing Review Process. Such exceptions would be based upon stock specific considerations (e.g. the status of the stock) and the consideration of other available information (e.g. export data or additional data supplied through the Commercial Catch Balancing Forum); and
- III. The setting of deemed value rates be refined by the expected provision of relevant information by industry representatives of the Commercial Catch Balancing Forum.



## 2) Differential deemed value rates

### **A range of views were held regarding the use of differential deemed value rates.**

The application of differential deemed values were a core topic of debate during multiple meetings. Differential deemed values were identified as an important backstop to protect stocks from over-fishing and as a potential value indicator to assist the tuning of deemed values to their optimal value. However, the Working Group noted that setting a differential deemed value rate above the landed price may create an undesirable incentive for fishers to illegally discard fish in some circumstances, and that in such cases other catch balancing mechanisms available under the Act may be better placed to prevent deliberate over-catch.

### **‘Differential deemed values may be set’**

The 2012 Guidelines states that *‘differential deemed value rates should generally apply to all stocks’*. During discussions, the Working Group agreed that differential deemed value rates were not suitable for all stocks. As such, the Working Group agreed that the text of the Guidelines should be amended to read *‘differential deemed values may be set’*.

### **Differential deemed values may be reviewed on a stock-by-stock basis**

Whilst there was agreement that differential deemed value rates should continue to be used, no agreement was found regarding which stocks were suitable for differential deemed value rates. Industry and Te Ohu Kaimoana representatives reiterated their concerns regarding the widespread application of differential deemed values. Fisheries New Zealand remained of the view that differential deemed values should remain the norm and that stocks without differential deemed value rates should be the exception.

Compromise was reached by agreeing to consider revisiting the need for the application of differential deemed values, and the exact nature of any differential schedule on a stock by stock basis through the Catch Balancing Review Process. Through the Review Process, those individual stocks where differential deemed values may not be appropriate, or the differential schedule may warrant change, will be identified based upon stock specific considerations.

Such stock considerations may include:

- **The sustainability status of the stock** – Differential deemed value rates should be applied to those stocks subject to rebuilding plans so as to provide a strong incentive for catch to not exceed ACE.
- **Volume of fish taken** – Higher levels of over-catch may occur more frequently as a matter of chance for stocks with a low TACC.
- **Ability of fishers to control catch** – For stocks taken predominantly in target fisheries, fishers have a very high level of control over the amount of that stock landed. Whilst deemed value rates provide an incentive for fishers to avoid species for which they do not hold ACE, for some stocks almost entirely taken as bycatch, fishers may have a more limited amount of control over the amount of that stock landed.
- **Shadow value** – For bycatch species taken in mixed fisheries, differential deemed value rates may be set to remove the value of the target species taken in association with the bycatch species.

By setting the deemed value rate a fisher must pay above the landed price, differential deemed values can incentivise fishers to misreport or illegally discard. Therefore, if a



stringent differential schedule is applied (e.g. to stocks for which there is a sustainability concern), consideration should be given to an aligned compliance and monitoring response.

### Implementation plan

The Working Group recommended that the revised Deemed Value Guidelines supersede the 2012 Guidelines as the operational policy statement used to inform the development of advice on setting deemed value rates.

### **Recommendation 5**

Fisheries New Zealand notes that the deemed value regime forms only one part of the catch balancing system provided for in the Fisheries Act 1996.

#### **Overfishing thresholds can be used as a supplemental catch balancing mechanism**

Although the deemed value system has become central to the operation of the catch balancing regime, other catch balancing provisions, such as overfishing thresholds, are also available under the Act.

Overfishing thresholds, when triggered, prohibit a fisher from operating within a quota management area if that fisher's catch exceeds their ACE holdings for a specific stock and the excess is equal to, or greater than, the overfishing threshold and tolerance level for that stock. Overfishing thresholds currently apply to 74 stocks from 11 species, all of which can be categorised as single species fisheries.<sup>6</sup>

#### **Fisheries New Zealand agrees to consider the broader use of overfishing thresholds in selected mixed fisheries**

The Working Group discussed widening the use of overfishing threshold provisions, as an additional tool for incentivising fishers to stay within ACE holdings, during multiple meetings. Industry representatives expressed strong support for the targeted use of overfishing thresholds in selected mixed fisheries as an alternative mechanism to differential deemed values for excluding specific permit holders who are deliberately catching stocks in excess of their ACE holdings. Support was also expressed for considering the expanded use of overfishing thresholds for those stocks with a high customary value.

Fisheries New Zealand acknowledges that overfishing thresholds are a potentially useful management tool in mixed fisheries. However, Fisheries New Zealand notes that the wider application of overfishing thresholds requires further management and policy considerations. Additionally, Fisheries New Zealand also notes that as overfishing thresholds are ineffective at constraining catch during the last two months of the fishing year,<sup>7</sup> such provisions are not suitable for all fisheries.

Further work to assess the broader application of overfishing thresholds in mixed fisheries (e.g. the risk that overfishing thresholds create a stronger incentive than deemed value rates for fishers to illegally discard catch) will be undertaken by Fisheries New Zealand and reported to the Forum.

<sup>6</sup> Species subject to overfishing thresholds include cockles (COC), deepwater clam (PZL), dredge oyster (OYS/OYU), kina (SUR), long-finned & short-finned eels (LFE/SFE), packhorse rock lobster (PHC), paua (PAU), queen scallop (QSC), scallops (SCA) and spiny rock lobster (CRA).

<sup>7</sup> If an overfishing threshold is triggered as a result of catches in month A, the subsequent permit prohibition is issued on the 15<sup>th</sup> day of month B and comes into force on the first day of month C. As a result of this process, catch in excess of the overfishing threshold during the last two months of the fishing year do not result in a curtailment of fishing activity.



### Implementation plan

The application of overfishing thresholds to particular stocks will be assessed on a case by case basis through the Catch Balancing Review Process.

### **Recommendation 6**

Move the interim deemed value rates for all stocks to 90% of the annual deemed value rate by 1 October 2020.

#### **The risks associated with interim deemed value rates can be mitigated by increasing the interim rate to 90% of the annual rate**

The 2005 Joint Working Group on deemed values recommended that the use of interim deemed values should be phased out for two major reasons:

1. Interim deemed value rates lower than the annual rate may increase the incentive for fishers to delay balancing. Delays in balancing may lead to a 'race for ACE' at the end of the fishing year, thereby increasing the risk that fishers are unable to balance catch with ACE.
2. Lower interim rates, relative to the annual rate, introduce the risk that an operator may fish excessively on interim deemed values before entering liquidation once annual rates are due.

As section 75(3) of the Act requires that the interim deemed value rate be set below the corresponding annual deemed value rate, the recommendation of the 2005 working group was unable to be fully implemented without legislative amendment. However, the risks outlined above were mitigated by revising the Deemed Value Guidelines so as to provide for the setting of interim rates closer to the annual rate.

#### **The interim deemed value rates of all stocks have not been transitioned to the recommended 90% of the annual rate**

Although the 2012 Guidelines endorsed setting interim deemed value rates at 90%, as of 2019, the interim deemed value rates of 462 stocks are set below 90%.

As the rationale for phasing out the use of interim deemed value rates has not changed, the Working Group recommended that consideration be given to removing the provision requiring that interim deemed value rates be set lower than the annual rate (see Long Term Recommendation 2). As this recommendation would require legislative amendment and would take time to implement, in the interim, the Working Group recommended that the interim deemed value rates of all stocks be moved to 90% of the annual rate.

### Implementation plan

The working group recommended that the interim deemed value rates of all April stocks are adjusted to 90% of the annual rate from 1 April 2020 and the interim deemed value rates of all October stocks are adjusted to 90% of the annual rate from 1 October 2020.



## **Recommendation 7**

Investigate the feasibility of setting method specific deemed value rates.

### **Price differentials due to method of capture can lead to setting a deemed value rate with conflicting incentives**

One of the major uncertainties inherent in port price data is the discrepancies in the price fishers receive for fish from the same fish stock depending upon method of capture and/or product state upon landing. For example, some fishers may receive a price for line caught fish landed fresh two or three times higher than that received for trawl caught fish landed frozen.

Such price discrepancies can create conflicting incentives when setting deemed values for those stocks caught using two (or more) fishing methods. Setting the deemed value based upon the port price obtained for the lower value method (e.g. trawl) may create an incentive for fishers using the higher value method (e.g. lining) to catch in excess of their ACE holdings. Likewise, setting the deemed value based upon port price obtained for the higher value method may unduly penalise fishers using the lower value method (by setting the deemed value above their landed price) and may create an incentive to not accurately report catch.

### **The feasibility of setting method specific deemed value rates is unknown**

The selected use of method specific deemed values on appropriate stocks would contribute towards alleviating the problem of a single set of deemed value rates creating conflicting incentives. Whilst setting method specific deemed values would likely require legislative change, the feasibility of setting method specific deemed values is currently unknown and would likely require changes to reporting requirements.

### **Implementation plan**

Fisheries New Zealand will investigate the feasibility of setting method specific deemed value rates, and report its findings to the Catch Balancing Forum when the analysis has been completed.

## **Long-term proposals**

Although acknowledged as fundamentally sound, the Working Group identified some minor changes to the relevant legislation (section 75) that could be implemented to improve the operation of the deemed values regime.

### **Long-term proposal 1**

Consider removing the provision (section 75(3)) that requires interim deemed value rates to be set below the annual rate.

Based upon the rationale provided in recommendation 6 above, the working group recommended that consideration is given to amending the legislation to remove section 75(3) at the first available opportunity.



## Long-term proposal 2

Consider amending the legislation to allow the amendment of deemed value rates during the course of the fishing year.

Current legislation does not allow for deemed values to be adjusted during the course of the fishing year. Given the increase in the timeliness and availability of information afforded through ER/GPR, the Working Group considered that the capacity to adjust deemed values during the fishing year could be beneficial under certain circumstances.

## Implementation

The final report of the Working Group was provided to the Deputy Director-General of Fisheries New Zealand in September 2019.

Fisheries New Zealand has considered, and accepted, the recommendations of the Working Group and has developed an implementation plan to ensure that the recommendations are given effect. Fisheries New Zealand has also committed to considering the long-term proposals of the Working Group at the next available opportunity.



## **Appendix 1 – A summarised history of the catch balancing regime in New Zealand fisheries**

Prior to 2001, catching fish without holding the relevant catch right before fishing, or failure to balance catch, was a criminal offence. Various catch balancing provisions were available to fishers including leasing additional quota, surrendering catch to the crown, the bycatch trade-off system and the payment of deemed values.

Due to the complexity of the pre-2001 system, the catch balancing regime was simplified through the passing of the Fisheries Amendment Act 1999. Through these changes, deemed values became the key catch balancing mechanism. Alongside the introduction of annual catch entitlement (ACE) as the principal catch right, the catch balancing regime moved from a criminal to a civil penalty regime. The 2001 changes to the catch balancing regime resulted in multiple benefits for industry by reducing transaction and enforcement costs and increasing efficiency in the ACE market.

Additional information on the evolution of the catch balancing regime can be found in [Walker, S; Townsend, R. 2008. Economic Analysis of New Zealand's Deemed Value System.](#)

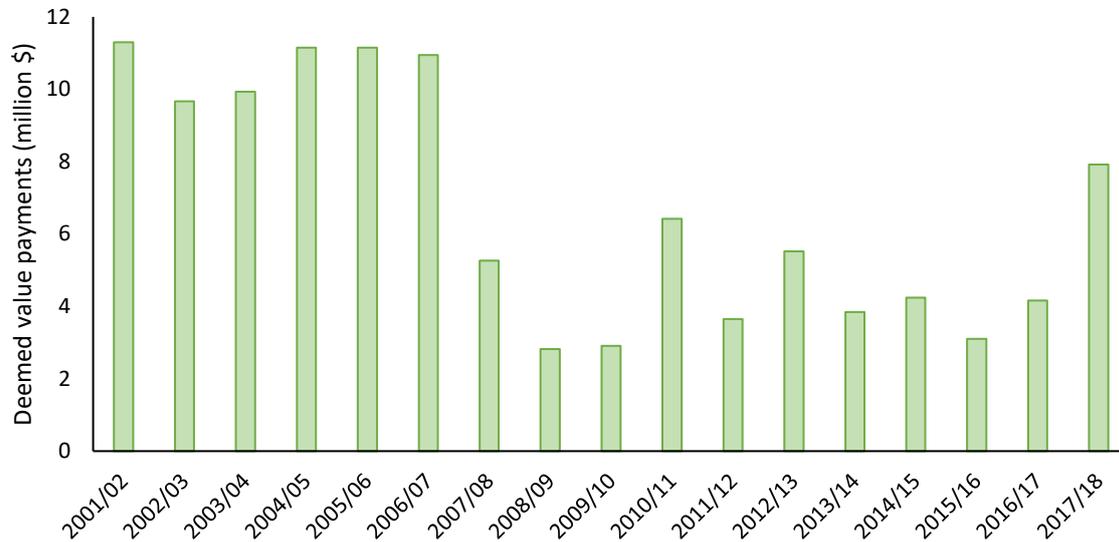
## **Appendix 2 – The legal context relating to the setting of deemed values**

Section 75 of the Fisheries Act 1996 (the Act) provides the statutory framework for setting deemed values. Under section 75(2)(a), the Minister must take into account whether deemed value rates are set at levels that provide an incentive to balance catch with ACE. The Minister may also consider the criteria under section 75(2)(b):

- a) the desirability of commercial fishers landing catch for which they do not have ACE;
- b) the market value of ACE for the stock;
- c) the market value of the stock;
- d) the economic benefits obtained by the most efficient commercial fisher, licensed fish receiver, retailer, or any other person from the taking, processing, or sale of fish, aquatic life or seaweed;
- e) the extent to which catch of that stock has exceeded or is likely to exceed the TACC for the stock in any year; and
- f) any other matters that the Minister considers relevant.



**Appendix 3 - Total deemed value payments (million \$) between the 2001/02 and 2017/18 fishing years (October & April stocks combined)**



**Appendix 4 – Deemed value payments (thousand \$) for the top 10 stocks, and all other stocks between the 2008/09 and 2017/18 fishing years**

Stock	Fishing year										08/09 to 17/18
	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	
LIN 7	20	0	1,030	1,052	2,193	418	838	963	1,070	1,696	9,279
KIN 8	36	66	19	393	322	748	262	199	39	188	2,272
SWA 3	0	1	0	62	763	5	779	0	265	132	2,007
TAR 2	0	131	399	0	0	0	344	165	404	323	1,767
ELE 3	184	133	164	136	232	207	107	278	102	181	1,726
GUR 3	215	213	70	17	120	208	113	253	147	326	1,682
SNA 8	354	29	735	96	235	9	2	33	91	16	1,600
KIN 7	0	0	1	110	81	149	59	113	193	536	1,242
BYX 2	3	125	228	57	78	1	57	17	60	305	933
BNS 3	2	0	0	29	220	175	0	1	71	339	837
All other stocks	1,389	1,719	3,756	1,513	1,075	1,105	1,245	586	1,619	3,806	17,813
<b>Total</b>	<b>2,202</b>	<b>2,417</b>	<b>6,403</b>	<b>3,466</b>	<b>5,319</b>	<b>3,026</b>	<b>3,807</b>	<b>2,608</b>	<b>4,062</b>	<b>7,848</b>	<b>41,159</b>



## Appendix 5 – Schedule, including agenda items and key outcomes for all meetings of the Deemed Values Working Group

Meeting date	Agenda items	Key outcomes
11 <sup>th</sup> April	<ol style="list-style-type: none"> <li>1. Introduction &amp; overview of the deemed value framework and opportunity for members to outline their concerns with the operation of the deemed value framework.</li> <li>2. Identification of items for discussion in subsequent meetings.</li> </ol>	<ul style="list-style-type: none"> <li>• Acknowledgement amongst members that the deemed value framework is fundamentally sound and does not require major overhaul.</li> <li>• Agreement of items for discussion in subsequent meetings (<i>'purpose'</i>, <i>'principles'</i> and <i>'process'</i>).</li> </ul>
24 <sup>th</sup> May	<ol style="list-style-type: none"> <li>1. Discussion surrounding the purpose of deemed values.</li> <li>2. What other catch balancing mechanisms can be used to complement deemed values?</li> </ol>	<ul style="list-style-type: none"> <li>• Agreement of an overriding purpose statement ('goal') for the setting/adjusting of deemed values.</li> <li>• Acknowledgement of overfishing thresholds as a potentially useful management tool in mixed fisheries.</li> </ul>
12 <sup>th</sup> June	<ol style="list-style-type: none"> <li>1. Discussion of the principles used to adjust deemed values.</li> </ol>	<ul style="list-style-type: none"> <li>• Agreement that the current Guidelines (which consider deemed values in isolation) should be updated, and the operation of deemed values should be considered alongside other management tools.</li> <li>• Revision of the wording of some principles used to adjust deemed values. Agreement that a Catch Balancing Forum should for part of the Review Process.</li> </ul>
11 <sup>th</sup> July	<ol style="list-style-type: none"> <li>1. Discussion of draft Catch Balancing Review Process and Deemed Value Guidelines</li> <li>2. Drafting of Working Group recommendations</li> </ol>	<ul style="list-style-type: none"> <li>• Members generally happy with the draft Review Process. Suggestion that the text surrounding the Guidelines be expanded to take note of members concerns regarding data limitations and differential deemed values.</li> </ul>
19 <sup>th</sup> August	<ol style="list-style-type: none"> <li>1. Finalisation of the Catch Balancing Review Process and Deemed Value Guidelines</li> <li>2. Drafting of Working Group final report</li> </ol>	<ul style="list-style-type: none"> <li>• Members generally comfortable with the documents provided although a number of detailed comments were worked through. Further discussion on the application of differential deemed values. Consensus reached that the use of differentials will be considered on a stock by stock basis taking into account agreed stock specific considerations</li> </ul>



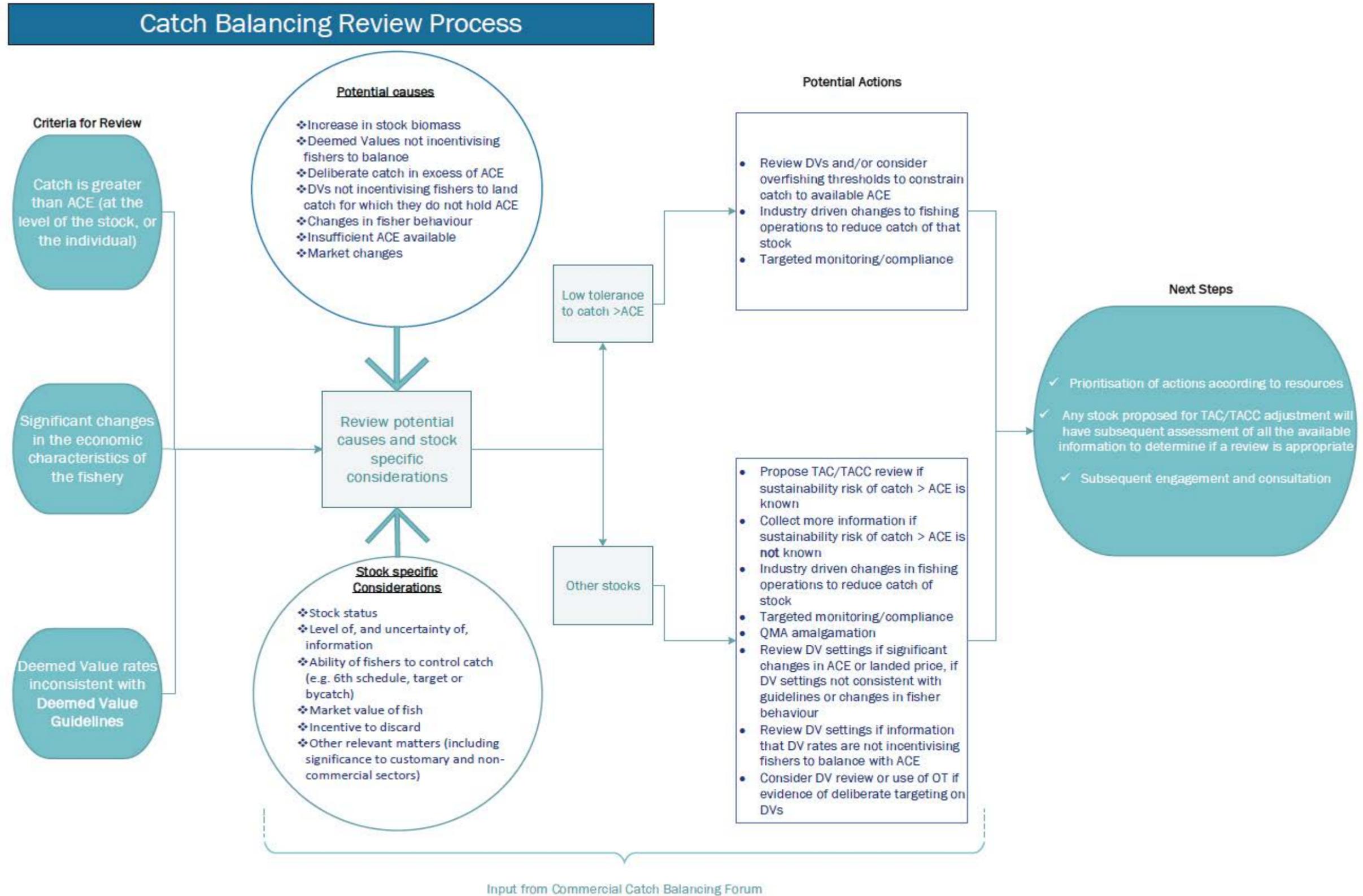
**Appendix 6 - Catch against available ACE, and total deemed value payments for selected inshore and deepwater fish stocks between the 2013/14 and 2017/18 fishing years**

Stock	2013/14		2014/15		2015/16		2016/17		2017/18	
	% ACE caught	DVs								
LIN 7	104%	<b>\$418k</b>	108%	<b>\$838k</b>	109%	<b>\$963k</b>	110%	<b>\$1,070k</b>	113%	<b>\$1,696k</b>
KIN 7	131%	<b>\$149k</b>	142%	<b>\$59k</b>	173%	<b>\$113k</b>	309%	<b>\$193k</b>	284%	<b>\$536k</b>
TAR2	97%	<b>&lt;\$1k</b>	105%	<b>\$344</b>	101%	<b>\$165</b>	107%	<b>\$404k</b>	106%	<b>\$323k</b>
BYX 2	98%	<b>\$1k</b>	101%	<b>\$57k</b>	100%	<b>\$17k</b>	101%	<b>\$60k</b>	107%	<b>\$305k</b>
TRE 2	114%	<b>\$140k</b>	89%	<b>&lt;\$1k</b>	108%	<b>\$72k</b>	123%	<b>\$173k</b>	113%	<b>\$115k</b>
SWA 3	98%	<b>\$5k</b>	114%	<b>\$780k</b>	83%	<b>&lt;\$1k</b>	102%	<b>\$265k</b>	101%	<b>\$132k</b>

*All stocks shown are amongst the top 15 invoiced deemed value stocks during the time period shown.*

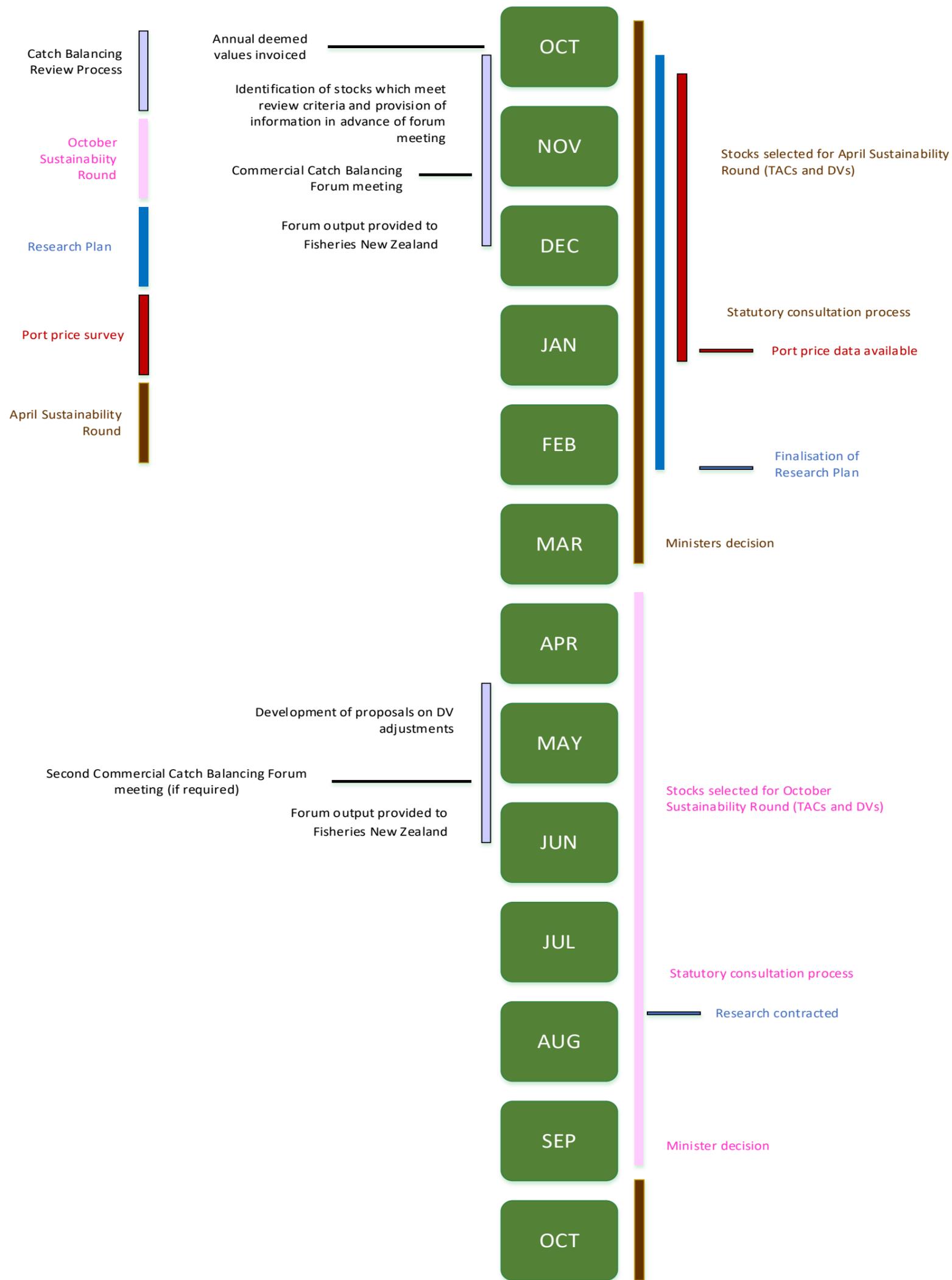


Appendix 7 - Catch Balancing Review Process





### Appendix 8 – Schedule for the Catch Balancing Review Process (and other Fisheries New Zealand processes)



Outputs of the Catch Balancing Review Process and Commercial Catch Balancing Forum would be subject to engagement and consultation with tangata whenua and stakeholders as required.